

**UNITED NATIONS**  
United Nations Interim  
Administration Mission in  
Kosovo



**UNMIK**

**NATIONS UNIES**  
Mission d'Administration  
Intérimaire des Nations Unies au  
Kosovo

UNMIK/REG/2008/4

5 February 2008

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**REGULATION NO. 2008/4**

**AMENDING UNMIK REGULATION NO. 2002/13 ON THE  
ESTABLISHMENT OF A SPECIAL CHAMBER OF THE SUPREME COURT OF  
KOSOVO ON KOSOVO TRUST AGENCY RELATED MATTERS**

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution No. 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo, and UNMIK Regulation No. 2001/9 of 15 May 2001 on 3a Constitutional Framework for Provisional Self-Government in Kosovo,

Having consulted the Economic and Fiscal Council and the Provisional Institutions of Self-Government in Kosovo,

Having promulgated UNMIK Regulation No. 2002/13 of 13 June 2002, on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related Matters, UNMIK Regulation No. 2002/12, on the Establishment of the Kosovo Trust Agency and UNMIK Regulation No. 2005/18 of 22 April 2005 Amending UNMIK Regulation No. 2002/12 on the Establishment of the Kosovo Trust Agency,.

For the purpose of facilitating the implementation of effective judicial oversight over the work of the Kosovo Trust Agency by the Special Chamber of the Supreme Court of Kosovo,

Hereby amends the preamble and sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 14 of UNMIK Regulation No. 2002/13,

Consequently, the Regulation will read as set out hereunder as of the date on which the present Regulation enters into force:

**REGULATION NO. 2008/4**

**ON THE ESTABLISHMENT OF A SPECIAL CHAMBER OF THE  
SUPREME COURT OF KOSOVO**

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo and section 8.1(u) of UNMIK Regulation No. 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo,

For the purpose of enhancing the capacity of the Special Chamber of the Supreme Court of Kosovo to adjudicate claims relating to the decisions or actions of the Kosovo Trust Agency pursuant to UNMIK Regulation No. 2002/12 of 13 June 2002 on the Establishment of the Kosovo Trust Agency, as amended by UNMIK Regulation No. 2005/18 of 22 April 2005, and such other matters as may be referred to it by law,

Hereby promulgates the following:

Section 1

Establishment of a Special Chamber

1.1 A Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (hereafter “Special Chamber”) is hereby established.

1.2 The seat of the Special Chamber shall be in Pristina unless the Special Chamber decides to sit elsewhere to hear a particular case.

Section 2

Definitions

For the purposes of the present Regulation:

- (a) “Agency” shall mean the Kosovo Trust Agency:

(b) “Applicable Law” shall mean the law applicable in Kosovo pursuant to UNMIK Regulation No. 1999/24 of 2 December 1999, as amended, on the Law Applicable in Kosovo;

(c) “Corporation” shall have the meaning set out in Regulation No. 2002/12, as amended;

(d) “Enterprise” shall have the meaning set out in Regulation No. 2002/12, as amended;

(e) “Judgement” shall mean the final determination by a court of the rights and obligations of the parties in a case;

(f) “Decision” shall mean any determination by a court and shall include ruling or an order; and

(g) “Regulation No. 2002/12” shall mean UNMIK Regulation No. 2002/12 of 13 June 2002 on the Establishment of the Kosovo Trust Agency, as amended from time to time.

Words of any gender used in the present Regulation shall include any other gender and words in singular number shall be deemed to include the plural and the plural to include the singular.

### Section 3 Composition

3.1 The Special Chamber shall be composed of up to twenty (20) judges, thirteen (13) of whom shall be international judges and seven (7) shall be habitual residents of Kosovo. One international judge shall be designated by the Special Representative of the Secretary-General as President of the Special Chamber. Appointment of judges to serve on the Special Chamber shall be made by the Special Representative of the Secretary-General. Judges who are habitual residents of Kosovo shall be appointed after consultation with the President of the Supreme Court of Kosovo.

3.2 The President of the Special Chamber shall designate from any of the serving and available judges assigned to the Special Chamber one or more groups of two international judges and one judge who is a habitual resident of Kosovo, each to serve on one of five panels of three judges established for the conduct of trials and adjudication of claims and counter claims in the first instance. Each panel so established shall be specialized in one of the following areas and presided over by an international judge specialized in the same area:

- (a) privatization-related matters;
- (b) matters related to entitlements of employees under section 10 of Regulation No. 2003/13 as amended from time to time;
- (c) general ownership and creditor claims;
- (d) matters related to the liquidation of Enterprises; and
- (e) the reorganization or restructuring of Enterprises pursuant to Regulation No. 2005/48 as amended from time to time;

the procedural rules promulgated under section 7 shall set out further details.

3.3 The President acting in conformity with the procedural rules promulgated under section 7 of the present Regulation shall also assign two international judges and two judges who are habitual residents of Kosovo as appellate judges, who together with the President of the Special Chamber acting as presiding judge constitute the appellate panel:

(a) On all matters appealed to it the appellate panel shall sit as a panel of not fewer than three judges, the majority of whom shall be international judges.

(b) The President of the Special Chamber in conformity with the procedural rules promulgated under section 7 of the present Regulation may appoint members of a trial panel to sit on the appellate panel, and may appoint a member of the appellate panel to temporarily sit on a trial panel. He may also delegate the function of the presiding judge in the appellate panel.

3.4 In making the appointment of judges who are residents of Kosovo special account shall be taken of the use of community languages, as defined in the applicable law.

3.5 If a judge is unable to discharge its duties, a substitute judge shall be assigned by the Special Representative of the Secretary-General after consultation with the President of the Special Chamber.

Section 4  
Jurisdiction

4.1 The trial panels of the Special Chamber shall have primary jurisdiction for claims or counterclaims in relation to the following:

(a) Challenges to decisions or other actions of the Agency undertaken pursuant to Regulation No. 2002/12, including the imposition of fines as provided for in section 27 of Regulation No. 2002/12;

(b) Claims against the Agency for financial losses resulting from decisions or actions undertaken pursuant to its administrative authority in respect of an Enterprise or Corporation;

(c) Claims, including creditor or ownership claims, brought against an Enterprise or Corporation currently or formerly under the administrative authority of the Agency, where such claims arose during or prior to the time that such Enterprise or Corporation is or was subject to the administrative authority of the Agency;

(d) Claims involving recognition of a right, title or interest in property in the possession or control of an Enterprise or Corporation currently or formerly under the administrative authority of the Agency, where such claims arose during or prior to the time that such Enterprise or Corporation is or was subject to the administrative authority of the Agency;

(e) Claims involving an official list of eligible employees of an enterprise issued by the agency and the eligibility of employees under section 10 of Regulation No. 2003/13, as amended;

(f) Claims related to the liquidation of an Enterprise under the administrative authority of the Agency, and claims for rescission of transactions of an Enterprise undergoing a liquidation proceeding as provided for in section 9.4 of Regulation No. 2002/12;

(g) All claims and applications related to the reorganization or restructuring of Enterprises pursuant to Regulation No. 2005/48, as amended from time to time;

(h) Enforcement, upon application of the Agency, of the powers of the Agency exercised pursuant to Regulation No. 2002/12;

(i) Appeals from Judgements or Decisions delivered by courts in Kosovo on matters included under this section;

(j) Matters wherein the international members of the Board of Directors have suspended a decision of the KTA successor institution. Such matters shall be decided as a matter of urgency;

(k) Applications for protection of legality from Judgements or Decisions delivered by courts in Kosovo on matters included under this section; and

(l) Such other matters as may be assigned by law.

Each trial panel of the Special Chamber shall have primary competence for one of the matters set out under section 3.2(a) to (e) as determined by the procedural rules promulgated under section 7 of the present Regulation.

4.2 Notwithstanding section 4.1, a trial panel may refer specific claims, categories of claims, or parts thereof, to any court having the required subject matter jurisdiction under the applicable law. No court in Kosovo shall exercise jurisdiction over claims or adjudicate cases involving subject matters described in section 4.1, unless such claims or matters have been referred to it in accordance with this section.

4.3 A Judgement or Decision of a court to which a matter has been referred by a trial panel of the Special Chamber pursuant to section 4.2 may be appealed only to a trial panel of the Special Chamber, unless the trial panel decides otherwise in accordance with the procedural rules promulgated under section 7. Section 4.4 shall apply to any subsequent Judgement issued by a trial panel.

4.4 The appellate panel shall have exclusive jurisdiction to decide appeals against any Judgement or Decision by a trial panel of the Special Chamber, unless otherwise provided by the present Regulation.

4.5 Nothing in this section shall prejudice the rights of claimants to pursue outside the Special Chamber claims which do not involve a subject matter described in section 4.1.

4.6 The Special Chamber may, upon application by a party or upon its own initiative, effect the transfer of any action pending in any court in Kosovo to which an Enterprise is a party to a trial panel of the Special Chamber.

## Section 5 Claimants and Respondents

5.1 Claimants in proceedings before the Special Chamber shall be limited to:

- (a) Persons who claim ownership or other property rights, creditors and other persons who claim a direct financial interest in the subject matter of the claim;
- (b) The Agency;
- (c) Enterprises or Corporations under the administrative authority of the Agency; and
- (d) Other persons that the Special Chamber deems necessary for the full and complete adjudication of the case before it.

5.2 Respondents in proceedings before the Special Chamber shall be limited to:

- (a) The Agency, on its own behalf, with respect to a claim described in sections 4.1(a), (b) and (e);
- (b) An Enterprise or Corporation, currently or formerly under the administrative authority of the Agency, with respect to a claim described in sections 4.1(c) and (d);
- (c) The Agency, an administrator, any other person or Enterprise actively involved in the liquidation or reorganization under Regulation No. 2005/48 of an Enterprise, with respect to a claim or application described in sections 4.1(f) and (g);
- (d) Persons subject to a claim by the Agency described in sections 4.1(f) and (h); and
- (e) Other persons the Special Chamber deems necessary for the full and complete adjudication of the case before it.

### Section 6

#### Period of Time to File a Claim Challenging Decisions or Actions of the Agency

6.1 A claimant may only submit a claim challenging a decision or action of the Agency within nine (9) months from the later of: (a) the date that such claimant knew or with reasonable diligence should have known of the decision or action of the Agency, or (b) the date on which the Special Chamber gives public notice that it is able to accept claims.

6.2 The provisions set out in section 6.1 shall be subject to the claimant having previously given to the Agency the notice required pursuant to section 30.2 of UNMIK Regulation No. 2002/12.

6.3 A person sued by the Agency or an Enterprise or Corporation may bring a counterclaim against the Agency or Enterprise or Corporation within the time limits established by Applicable Law. Section 30.2 of UNMIK Regulation No. 2002/12 shall not apply to such counterclaim.

### Section 7

#### Rules of Procedure before the Special Chamber

The Special Representative of the Secretary-General shall promulgate rules for the conduct of proceedings before the Special Chamber through the issuance of an administrative direction. Such rules shall provide a party with a meaningful opportunity to have his claim adjudicated, including a judicial review of such adjudication, in an impartial and transparent manner within a reasonable period of time and in accordance with norms established under the European Convention on Human Rights and having regard to generally accepted international standards. In cases that are not clearly or expressly covered by such Rules the Special Chamber shall have authority to issue additional Rules of Procedure consistent with these principles.

### Section 8

#### Production of Evidence and Conduct of Proceedings

8.1. The Special Chamber may order any person in Kosovo to submit documents, give testimony, or otherwise provide relevant information necessary for the adjudication of a case, in accordance with the procedural rules to be promulgated under section 7.

8.2 A trial panel of the Special Chamber may delegate the conduct of proceedings to a single international judge or a sub-panel consisting of two of its members, one of which shall be an international judge. Judgements made and Decisions taken by the single judge or the sub-panel shall be deemed to be issued by the trial panel, unless the order delegating the case to the single judge or sub-panel requires the trial panel to take the Decision or make the Judgement.

### Section 9

#### Judgements, Decisions and Appeals

9.1 The Special Chamber shall render Judgements within two months of completion of the proceedings. The deliberations of the trial panels and the appellate panel shall remain undisclosed.



9.2 All Judgements and Decisions of the Special Chamber which are not issued by a single judge shall be adopted by a majority vote.

9.3 Judgements and Decisions shall be in writing and shall:

- (a) summarize the factual and procedural background of the proceedings;
- (b) indicate the panel's findings of fact and the reasons in law for its Judgement or Decision; and
- (c) state the factual and legal basis of the compensation, if any, to which a prevailing party is entitled in accordance with the provisions in section 10.

9.4 The Special Chamber may issue a Judgement or Decision without undertaking a hearing to receive testimony and other evidence:

- (a) if the claimant has submitted a claim on which no relief can be awarded as a matter of law, assuming the truth of the allegations in the submission of the claimant; or
- (b) if, after providing the parties reasonably sufficient time to submit documentary evidence, the Special Chamber determines that no genuine disputes of material fact necessary to decide the case remain.

9.5 A Judgement or Decision of a trial panel shall be served on the parties within thirty (30) days of adoption. Within thirty days from the receipt thereof, a party may appeal to the appellate panel for a review of such Judgement or Decision. Where a Decision, including a Judgement issued pursuant to section 4.3, is appealed the appellate panel shall first determine whether the Decision or Judgement so appealed merits a review. If the appellate panel decides not to review the Decision or Judgement issued pursuant to section 4.3 of the trial panel such Judgement or Decision becomes final. Where the appellate panel reviews a Judgement or Decision it may decide to confirm, revoke or alter the Judgement or Decision made by a trial panel.

9.6 Judgements and Decisions shall be made available to the public.

9.7 A Judgement or Decision of the appellate panel shall be served on the parties within thirty (30) days. Judgements and Decisions of the appellate panel are final and can be executed forthwith.

Section 10  
Remedies

10.1 The power of the Special Chamber to award relief shall be subject to the limitations set out in this section.

10.2 Awards against an Enterprise or Corporation shall be enforceable only with respect to property or assets owned by the Enterprise or Corporation concerned, including any property or assets of such Enterprise or Corporation that is held in trust by the Agency.

10.3 Awards recognizing a right, title, or interest with respect to particular assets that are in the ownership, possession, or control of an Enterprise or Corporation shall be executed against such assets only if the Enterprise or Corporation has maintained the right or title to, or interest in, such assets as of the date the Decision awarding the relief was issued. Where the right, title or interest with respect to such assets has been transferred to a third party acting in good faith pursuant to a decision by the Agency under sections 8 or 9 of Regulation No. 2002/12, the prevailing party shall be entitled to payment of monetary compensation in an amount reflecting the fair market value of the asset. The compensation amount shall be calculated on the basis of the value of the transaction conducted by the Agency and involving the assets in question. The Court may also award damages as it determines fit in accordance with the procedural rules promulgated under section 7. Any award for compensation, or compensation and damages shall enjoy priority status over unsecured claims against such Corporation.

10.4 Awards against the Agency acting directly in its own capacity shall be subject to the provisions of section 18 of Regulation No. 2002/12.

10.5 No party shall be entitled to a remedy that would require the rescission of a completed transaction or the nullification of a contract validly entered into with a third party that acted in good faith and fully performed by the Agency, pursuant to its authority under UNMIK Regulation No.2002/12.

10.6 The Special Chamber may order provisional remedies, in accordance with the procedural rules promulgated under section 7 of the present Regulation.

Section 11  
Costs

Each trial panel of the Special Chamber shall decide on the allocation of costs of the proceedings before that panel, including reasonable attorneys' fees and compensation therefore incurred in pursuing the claim or counterclaim in accordance with the procedural rules to be promulgated under section 7. A Judgement or Decision of the appellate panel shall include the allocation of costs of the entire proceedings, including costs for the proceedings before a trial panel.

Section 12  
Applicable Law

The present Regulation shall supersede any provision in the Applicable Law that is inconsistent with it.

Section 13  
Implementation

The Special Representative of the Secretary-General may issue administrative directions for the implementation of the present Regulation.

Section 14  
Entry into Force

The present Regulation shall enter into force on 31 March 2008, by which time the procedural rules promulgated under section 7 shall have been duly adjusted.

Joachim Rucker  
Special Representative of the Secretary-General