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INSTRUCTION

No.4, dated 21.11.2007

ON THE APPROVAL OF THE PROCEDURE FOR THE DELETION OF REGISTRATIONS MADE IN CONTRADICTION WITH LAW AND THOSE CREATING OVERLAPPING, AT THE IMMOVABLE PROPERTY REGISTRATION OFFICE

Pursuant to point 5 of Article 100 of the Constitution, Articles 115 and following, Law No. 8485, dated 12.5.1999 "Administrative Procedure Code of the Republic of Albania" and Articles 10 and 56 of Law No. 7843, dated 13.7.1994 "On immovable property registration", as amended, upon the proposal of the Minister of Justice, the Council of Ministers

HEREBY INSTRUCTS:

1. Approval of the procedure for the deletion of registrations:

a) In cases of registrations made in contradiction with Law No. 7843, dated 13.7.1994 "On immovable property registration", as amended and Articles 192-197 of the Civil Code, (for the registrations made after the entry into force of the Civil Code).

b) When two or more registrations, which have not derived from one another, were made for the same property, by creating overlapping. In this case, the registrations after the first registration are deleted, when the latter is in compliance with Articles 192-197 of the Civil Code.

2. The deletion of registrations is made by the Chief Registrar, upon the request of the registrar of the relevant immovable property registration office, according to the stipulations made in Law No. 8485, dated 12.4.1999 "Administrative Procedure Code of the Republic of Albania", and Article 10 of Law No. 7843, dated 13.7.1994 "On the immovable property registration", as amended and in accordance with the provisions of this instruction.

The Chief Registrar deletes the registrations made after the first registration, when for the same

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property there is more than one registration, despite the fact that for each of them, after the registration at origin (for the first time of the ownership title) one or more transactions were made, partially or for all of the property, and regardless of one or all of these registrations were made in the registers of the former mortgage or registers created by the immovable registration offices.

3. The identification of the above cases of registrations is mainly made by the registrar, by the employees of immovable property registration offices, during the examination or processing of the documentation, pursuant to the recommendations given in the control reports, conducted by state control bodies or at the request of the parties affected by these registrations. Employees of property registration offices are obliged, each time, to examine documentation, process the practices applied by citizens at counters, provide or perform a service as provided in Law No. 7843, dated 13.7.1994 “On immovable property registration”, as amended, verify whether there are any conditions of unlawfulness for the respective property registration, as defined in points 1 and 2 of this instruction. If it results so, then the case is referred to the registrar in written form detailing the circumstances and the legal cause of the unlawfulness. Otherwise, the corresponding note according to point 7 of this instruction is made, indicating the lack of overlapping or unlawfulness, the date and the author of the verification. This note becomes part of the file and is subject to subsequent eventual verifications.

In cases when the identification of the unlawfulness is made through the request of the interested parties that may be affected by it, the registrar, in addition to the verification procedure provided in point 4 of this instruction, verifies the applicant’s legitimacy if he/she is a holder of a registration in the quality of the owner, state subject, having the administration or ownership or the lawyer of the state. The application is submitted in writing, according to the template form, approved by the Chief Registrar.

4. In cases when the registrar has been informed according to point 3 of this instruction and has identified the unlawfulness, according to point 2 of this instruction, he/she must perform the following actions:

a) Verifies the elements of the case observed, the act of registration (s) made, for the purpose of fulfilling the conditions of registration, as defined in the Law no.7843, dated 13.7.1994 “On immovable property registration”, as amended and Articles 192-197 of the Civil Code.

b) Verifies in the register, evidences and specifies the chronological order of the property registration at the IPRO, depending on the order of submission of the legal documentation in this office, for the cases of overlapping, regardless of when the title of ownership was drawn up or issued and when the notes were made in the register.

Then, the registrar performs the following actions:

i) Specifies which of the registrations resulting in overlapping was first made in time and fulfills the requirements set forth in Law No. 7843, dated 13.7.1994 “On immovable property registration”, as amended and Articles 192-197 of the Civil Code.

ii) Verifies the clearly overlapped part or parts and determines the parts that remain after this verification in area and boundaries.

iii) Verifies whether a judicial process is ongoing for these registrations, where his/her office is called as a party. Verification is made at the protocol of the respective immovable property registration

office.

The Registrar shall make the verification process under this point no later than 30 days from the date of information, by submitting the application, the notification made by the employees of the respective office, the findings by state control bodies or by the registrar on his/her own.

5. At the end of this process, the registrar shall prepare a reasoned decision, in accordance with Appendix 1, attached to this instruction, requiring the registrar, where applicable, the deletion of:

a) the registration when he/she notes that the act of registration was made in violation of Law No. 7843, dated 13.7.1994 “On immovable property registration”, as amended and/or Articles 192-197 of the Civil Code, for actions performed after 1 November 1994, even when it does not create overlapping with any other property;

b) overlapped parts of the property, in the case of overlapping of ulterior registrations, which do not derive from the first completed registration, meeting the requirements set forth in Law No. 7843, dated 13.7.1994 “On immovable property registration”, as amended and Articles 192-197 of the Civil Code, and makes the division of property, which is not overlapped;

c) any other consequent registration resulting from these ulterior overlapped registrations for that part included in the overlapped part according to letter “a”, until the elimination of any possible eventual overlaps;

ç) previous registrations, which do not even meet the requirements of Articles 192-197 of the Civil Code, only for the overlapped parts of the property, and makes the division of the property share that is not overlapped. It also requires the deletion of any other subsequent registration, resulting from letter “b” of this point;

d) both overlapped registrations in the cases of letter “a” of this point.

6. The Registrar notifies the interested party/ies no later than 10 days from the day on which he/she has sent his/her decision to the Chief Registrar, through the “answer-received” postal service, at their address, according to the provisions of Decision No. 24, dated 19.1.2007 of the Council of Ministers “On the procedure of issuing documents by some immovable property registration offices and amendments to their tariffs”, or by displaying an announcement at the local office and the administrative unit with a term of 10 days. The notice, having attached a copy of the decision of the registrar, also highlights the right to submit, at the Chief Registrar, within a 30-day term all the documents deemed necessary by them.

Confirmation of receipt is made according to the procedures determined in the Civil Procedure Code, in the section of notifications and in the Administrative Procedure Code and is deposited in the respective file.

7. Immediately upon the completion of such actions and confirmation of receipt, the Registrar makes the suspension of the registration, by making notes along the register in the “Notes” column, for registrations made in the books of the former mortgage and in the “E” section of the card, for the properties registered in the registers created by the immovable property registration offices. The note contains the number and date of the decision, and a brief description of its content, which is valid until its approval or repeal by the Chief Registrar. Suspension does not extend over the part of the divided

property, which has no overlapping.

8. No later than 10 days from taking the decision of suspension, the registrar delivers to the Chief Registrar, the relevant file, which contains:

- a) the relevant documentation of the registration, which is deemed null and void;
- b) the relevant documentation of each property, which is overlapped;
- c) documentation drafted in accordance with point 4 of this instruction;
- ç) copies of notifications, confirmation or announcement according to point 6 of this instruction;
- d) photocopies of the register, where suspension of actions were made according to point 7 of this instruction.

9. The Chief Registrar, after receiving the file, according to point 8 of this instruction, within 24 hours, transfers it for examination to the appeal sector. The Chief Registrar may also assign specialists of other sectors, for the examination of files of overlapping, who shall work under the conduct of the appeal sector. Such examination shall be made within the term of no more than 20 days from the date of request's receipt. The appeal sector makes the following actions:

- a) conducts an administrative investigation, examining all the fascicle prepared by the registrar, according to point 8 and the evidence submitted by the parties during the time of examining this process;
- b) holds a hearing session with the parties or their representatives, only if such an action is deemed necessary by him/her, in order to be clarified about the actions or the documentation;
- c) gives the parties no more than 5 days available to submit the documentation unified with the original, in case they are photocopies or any additional evidence.

Conduct of the procedures provided in letters "b" and "c" is not indispensable and does not affect the regular investigational process. Failure to submit documents according to letter "c", within the term, does not inhibit the chief registrar to take a decision, assessing such attitude in conformity with other evidence.

10. Within the above term, the appeal sector prepares the legal evaluation and drafts the relevant draft decision, signed by this sector, which shall be reviewed within 48 hours by the deputy chief registrar in charge with the appeal, who then passes the file to the Chief Registrar.

11. The Chief Registrar reviews the file and after verifying that this case is not subject to judicial review where IPRO is a party, within the general 30-day term from the receipt of the request, takes a decision, pursuant to the Administrative Procedure Code and Article 10 of Law No. 7843, dated 13.7.1994, as amended, according to Annex 2, attached to this instruction. The Chief Registrar, as appropriate, decided for the full or partial approval of the decision of the registrar or his/her disapproval.

When the deletion of one or more registrations is approved in the decision, it shall also comply with the provisions of letters "a", "b", "c" "ç" or "d" of point 5 of this instruction. In the case of partial approval or disapproval of the decision of the registrar, the Chief Registrar shall also order the removal of the suspension for those parts of registrations for which no decision has been taken for deletion.

The decision of the Chief Registrar shall be notified to the interested party/es within 10 days and confirmation of the notification receipt shall be deposited in the relevant file. A copy of the decision is notified to the State Advocacy Office and to the Ministry of Economy, Trade and Energy.

12. The Chief Registrar's decision shall, within 24 hours, be sent to the registrar for immediate execution. The suspension measure set out according to point 7 of this instruction loses power even if the Chief Registrar has not given a decision within the foreseen timeframe.

Execution of the decision of the Chief Registrar to delete one or several registrations (fully or partially) by the registrar shall be done by making notes in registers, in the relevant columns or sections, according to the provisions of point 7 of this instruction, referring to the number and date of the decision, without deleting and disposing of, in any case, the registrations or notes that are subject to deletion. Deletion is considered made at the time of registrations and notes in registers by the registrar.

Registrations, for which deletion was decided, according to the above procedure, are considered to have never existed and do not incur any administrative obligation for the immovable property registration office. They do not serve as a basis for the demand/provision of any services anticipated in the law on immovable property registration and may not serve to make any transactions or legal actions on the property or other real rights that they indicate.

13. Against the decision of the Chief Registrar, the interested parties, which are part of the process, may appeal at Tirana Judicial District Court within 30 days of receipt of the notification.

14. The immovable property registration office shall be in charge for the execution of this instruction.

This instruction shall enter into force after its publication in the Official Journal.

PRIME MINISTER
Sali Berisha

APPENDIX 1



**REPUBLIC OF ALBANIA
MINISTRY OF JUSTICE**

IMMOVABLE PROPERTY REGISTRATION OFFICE _____

Address: Tel:, Fax:

DECISION

No. _____, dated, _____

ON THE DELETION OF IMMOVABLE PROPERTY ILLEGAL REGISTRATIONS

Today as of date ___/___/_____, pursuant to Article 10 of Law No. 7843, dated 13.7.1994 "On immovable property registration", as amended, Articles 192-197, Law No. 7850, dated 29.04.1994 "Civil Code of the Republic of Albania", Law No. 8485, dated 12.05.1999 "Administrative Procedure Code of the Republic of Albania", Article 22, Law No. 9701, dated 02.04.2007 "On some addenda and amendments to Law No. 7843, dated 13.7.1994 "On immovable property registration", as amended," Instruction No. 1, dated 31.01.2007 of the Council of Ministers "On the registration procedures in the immovable property registration offices", in the quality of the Registrar of the immovable property registration office of _____ district, I took under review the registrations made of immovable properties in the register, pertaining to the subject/subjects.

Subject/subjects:

(Generalities of the subject having registered immovable property, and the address declared)

With immovable property:

(property's information from the card, such as: number of the cadastral zone, property number, volume, page, address of property, etc.)

Identification source:

Examination of the above data is based on:

FOR THESE REASONS,

based on the above and pursuant to Article 10 of Law No. 7843, dated 13.7.1994 “On immovable property registration”, as amended, Law no. 8485, dated 12.05.1999 “Administrative Procedure Code of the Republic of Albania”, in the quality of the Registrar of the immovable property registration office of _____ district,

I DECIDED:

a) To ask the Chief Registrar the deletion of the following registration/registrations made in violation of law

(full and accurate description of the property, including the relevant area and boundaries according to the legal documentation),

in charge of the subject/subjects

(Generalities of the subject/subjects. In case of its legal heir/s, to be also mentioned the number and the date of the heritage proof and the pertaining parts of each one, enumerated as per the heritage proof),

b) The alignment plan is attached to the decision according to the relevant conventional signs.

c) The decision is drawn up in (6) copies.

(2 copies remain at the protocol of the institution, 1 copy is delivered to the Chief Registrar, 1 copy is delivered immediately and no later than 10 days to the subject from the protocol office, 1 copy to the State Advocacy and 1 copy to the Ministry of Economy, Trade and Energy.)

ç) The decision is notified to the party subjects when there are several such ones and to the interested third parties who have set limitations or burden on the part or parts of the property that are subject to deletion.

It was announced on ___/___/____.

REGISTRAR OF THE IMMOVABLE PROPERTY REGISTRATION OFFICE OF _____
DISTRICT

(Name, surname, signature, seal)

APPENDIX 2



REPUBLIC OF ALBANIA
MINISTRY OF JUSTICE

CENTRAL IMMOVABLE PROPERTY REGISTRATION OFFICE

Address: _____ Tel.: _____ Fax: _____

DECISION

No. _____, dated, _____

ON THE DELETION OF IMMOVABLE PROPERTY ILLEGAL REGISTRATIONS

Today as of date ___/___/_____, pursuant to Article 10 of Law No. 7843, dated 13.7.1994 "On immovable property registration", as amended, Articles 192-197, Law No. 7850, dated 29.04.1994 "Civil Code of the Republic of Albania", Law No. 8485, dated 12.05.1999 "Administrative Procedure Code of the Republic of Albania", Article 22, Law No. 9701, dated 02.04.2007 "On some addenda and amendments to Law No. 7843, dated 13.7.1994 "On immovable property registration", as amended," Instruction No. 1, dated 31.01.2007 of the Council of Ministers "On the registration procedures in the immovable property registration offices", in the quality of the Chief Registrar, I took under review:

Decision: no. _____, dated ___/___/_____, of the registrar of the immovable property registration office of _____ district, pertaining to the subject/subjects.

Subject/subjects:

(Generalities of the subject having registered immovable property, and the address declared)

With object:

(Object of the registrar's decision and its legal basis)

After reviewing the reasoning of the decision, the documentation attached, written materials found in file no.....prot., dated....., those created from the correspondence with other institutions, and after I completed the required procedural actions _____

III. LEGAL ANALYSIS OF FACTS

(Give all the arguments and your reasoning related to compliance or not with the applicable law of the facts set out in the decision of the registrar.)

IV. CONCLUSION

(Present a brief conclusion if you accept or not the registration status, fully or partially, after the legal analysis of facts that you have made.)

FOR THESE REASONS,

based on the above and pursuant to Article 10 of Law No. 7843, dated 13.7.1994 “On immovable property registration”, as amended, Articles 192-197 of Law No. 7850, dated 29.04.1994 “Civil Code of the Republic of Albania”, Law No. 8485, dated 12.05.1999 “Administrative Procedure Code of the Republic of Albania”, in the quality of the Chief Registrar,

I DECIDED:

a) *(one of the cases below)*

I. Upholding decision no. _____, dated ___/___/___ of the immovable property registration office registrar _____ district and approval of the registrar’s request for the deletion of registrations

(full and accurate description of the property, including the relevant area and boundaries according to the legal documentation),

in charge of the subject/subjects

(Generalities of the subject/subjects. In case of its legal heir/s, to be also mentioned the number and the date of the heritage proof and the pertaining parts of each one, enumerated as per the heritage proof),

II. Partial approval of decision no. _____, dated ___/___/___ of the immovable property registration office registrar of _____ district and ordering the deletion of the registrations, as follows hereunder:

(full and accurate description of the property, including the relevant area and boundaries according to the legal documentation).

Removal of the suspension measure for the remainder of the above-mentioned property registration.

in charge of the subject/subjects

(Generalities of the subject/subjects. In case of its legal heir/s, to be also mentioned the number and the date of the heritage proof and the pertaining parts of each one, enumerated as per the heritage proof),

III. Disapproval of decision no. _____, dated ____/____/____ of the immovable property registration office registrar of _____ district.

Removal of the suspension measure for the remainder of the above-mentioned property registration.

b) The alignment plan is attached to the decision according to the relevant conventional signs.

c) The decision is drawn up in (6) copies.

(2 copies remain at the protocol of the institution, 1 copy is delivered to the registrar from the protocol office, 1 copy is delivered immediately to the subject from the protocol office, 1 copy to the State Advocacy and 1 copy to the Ministry of Economy, Trade and Energy.)

ç) Against this decision, appeal can be made within 30 days from the date of its notification at the First Instance Court of Tirana Judicial District.

It was announced today as of date ____/____/____

CHIEF REGISTRAR

(Name, surname, signature, seal)