



Kosovo Property Claims Commission  
Komisioni i Kërkesave Pronësorete Kosovës  
Komisija Kosovske Agencijeza Imovinu

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## DECISION

PANEL NO: 1

DECISION NO.: KPCC/D/C/146/2012

DECISION DATE: 29/02/2012

Commissioners Heiskanen (Chairperson),  
Vokshi and Wühler

## ORDER

*(1) In the 6 (six) claims referred to in parts A and B of the attached Schedule, the Commission*

*decides that*

*The claimant or the property right holder, as the case may be, has established ownership over the claimed property;*

*(2) In each of the 6 (six) claims referred to in paragraph (1) above, the Commission*

*orders that*

*(a) The claimant or the property right holder, as the case may be, be given possession of the claimed property;*

*(b) Any other person unlawfully occupying the property vacate the same within 30 (thirty) days of the delivery of this order; and*

*(c) Should any other person unlawfully occupying the property fail to comply with the order to vacate within the time stated, they shall be evicted from the property.*

*(3) The Commission additionally decides that Claim Nos. 08115 and 11120 be dismissed insofar as the Claimant seeks compensation for damage to, or loss of use of, the claimed property.*

*(4) In the 5 (five) claims referred to in part C of the attached Schedule, the Commission decides that the claim be dismissed.*

(5) *In Claim No. 11120, referred to in part D of the attached Schedule, the Commission decides that the claim be refused.*

## LEGAL FRAMEWORK

1. On 13 June 2008, Law No. 03/L-079 adopting and amending UNMIK Regulation 2006/50 (“UNMIK/REG/2006/50”) on the resolution of claims relating to private immovable property, including agricultural and commercial property entered into force in Kosovo. The Law included an annex (“Annex I”) adopting and amending UNMIK Administrative Direction No. 2007/5 (“UNMIK/ADM/DIR/2007/5”), which implements UNMIK/REG/2006/50. Law No. 03/L-079 and Annex I established the Kosovo Property Agency (“KPA”) as an independent agency and amended certain provisions of UNMIK/REG/2006/50 and UNMIK/ADM/DIR/2007/5 as necessary to effect the change in the applicable legal framework. In accordance with their terms, Law No. 03/L-079 and Annex I entered into force upon their publication in the Official Gazette.
2. Pursuant to section 22 of UNMIK/REG/2006/50 the Regulation ceased to be in force after 31 December 2008. Accordingly, Law No. 03/L-079 is presently the sole source of the Commission’s statutory authority. The provisions of UNMIK/REG/2006/50 remain relevant to the extent that they have been incorporated by reference to Law No. 03/L-079.

## REASONS FOR THE DECISION

3. A claimant is entitled to an order from the Commission for repossession of the property, if the claimant proves:

- (a) ownership of private immovable property, including agricultural and commercial property; or
- (b) a use right in respect of private immovable property, including agricultural and commercial property,

where the claimant or the property right holder, as the case may be, is not now able to exercise such property rights, and where the claim involves circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. (See section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.)

4. Where the claimant makes an ownership claim pursuant to section 3.1(a) of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission must resolve the issue of ownership and, if ownership is proven to the satisfaction of the Commission and the claimant does not indicate otherwise, make an order for repossession in favour of the claimant or the property right holder, as the case may be. Where the claimant makes a claim for a property use right pursuant to section 3.1(b) of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission may consider the claim in a summary procedure and make an order for recovery of possession. (See section 3.1 of UNMIK/REG/2006/50 read together with section 9 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079.)<sup>1</sup>

<sup>1</sup>There appears to be a technical error in Annex I. While Annex I clearly appears to be intended to replace UNMIK/ADM/DIR/2007/5 in its entirety, including all its three annexes, Article 26 of Annex I provides that the title of Annex III of UNMIK/ADM/DIR/2007/5 shall be replaced by a title referring to Annex II. However, there is neither specific provision nor any other indication in Law 03/L-079 or its Annexes that the intention of this particular amendment was to delete Annex I or Annex II of UNMIK/ADM/DIR/2007/5. Accordingly the

5. The Commission held its twenty-seventh session from 27 to 29 February 2012 in Prishtinë/Priština. A total of nineteen commercial property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-seventh session, together with supporting documentation, claims processing reports, verification reports and other relevant information. Seven commercial property claims which had been presented to the Commission were referred by the Commission back to the Executive Secretariat during the session. In sum, a total of twelve commercial property claims were resolved by the Commission during the session.

6. At the Commission's session, the Executive Secretariat presented the claims to the Commission and reported on the processing of and the legal and evidentiary issues raised by the claims. At the Commission's request, the Executive Secretariat provided additional information and explanations, as required.

*A. Claims covered by the present decision*

7. The present decision applies to the twelve claims for commercial property submitted to the Commission during the twenty-seventh session. In each of these claims, except for Claim Nos. 00541 and 00547, the claimant seeks the resolution of an ownership claim. The Claimant in Claim Nos. 00541 and 00547 claims confirmation of a use right to the claimed property.

8. Eleven of the twelve claims covered by this decision have not previously been considered by the Commission, while Claim No. 08115 was the subject of an earlier Commission decision. However the earlier decision in this case was overturned by the Commission on account of an incorrect notification of the claimed property during claims processing by the Executive Secretariat. The claim consequently stands to be re-determined following correct notification of the claimed property. Evidence and information provided by any respondents to the claim or any current occupants of the claimed properties is taken into account by the Commission in the re-determination of the claim. In the claims in which previous decisions have been overturned by the Commission, the Executive Secretariat has written to each claimant advising them of the notification error and informing them that their claims will be re-determined following correct notification of the claimed property. The claimant as well as the relevant cadastral authorities, have been advised that the previous Commission decision is invalid and cannot be used for the purposes of any legal transaction.

9. The Commission notes that the three claims identified in part A of the attached Schedule are uncontested in the sense that at the time the claimed properties were notified there was no evidence of illegal occupation or use of these properties by any person or, even if there was such evidence, no party has contested the validity of the claim within the 30-day period prescribed in section 10.2 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, or at any later stage during the proceedings, pursuant to section 10.3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. Based on the information provided by the Executive Secretariat, the Commission is satisfied that the Executive Secretariat has made reasonable efforts to notify the claimed properties, the persons who maybe currently occupying the properties, and any other persons who may have a legal interest in such

properties, as required by section 10.1 of UNMIK/REG/2006/50 and section 10.1 of Law No. 03/L-079. Accordingly these claims must be considered uncontested.

10. The Commission further notes that the nine claims identified in parts B and C of the attached Schedule are contested in the sense that the party occupying the claimed properties, or a party that has expressed a legal interest in such properties (the "Respondent"), has contested the validity of the claim within the 30-day period prescribed in section 10.2 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, or at a later stage during the proceedings, pursuant to section 10.3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. Pursuant to section 10 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, each of the Respondents has been provided with a copy of the claim submitted by the respective claimant. In accordance with section 3.5 of Annex II to UNMIK/AD/2007/5 as adopted by Law No. 03/L-079, the claimants have been provided with a copy of the documents submitted by the respective Respondent in response to the claim. Both parties in each case have thus been given an opportunity to comment on the information provided by the other party, and any such comment or information has been taken into account during the processing and adjudication of the claim.

*1. Claims granted*

11. The Commission notes that in the claims identified in parts A and B of the attached Schedule, the claimants have submitted various types of documents in support of the ownership claims, including inheritance decisions, possession lists, certificates for immovable property right, contracts on sale, allocation decisions and court decisions on the recognition of ownership right. The Commission is satisfied that inheritance decisions confirming an ownership interest indeed constitute proof of ownership. The other documents submitted by claimants including contracts involving property transactions, create a rebuttable presumption of ownership. No evidence has been received or obtained by the Secretariat *ex officio* which would rebut the presumption of ownership. Consequently the Commission is satisfied that the documents submitted prove the claimants' ownership over the claimed properties. The documents have been verified as being valid by the Executive Secretariat, as relevant.

*a. Claim Nos. 08115, 10016 and 21012*

12. In Claim No. 10016, referred to in part A of the attached Schedule, the Claimant has filed the claim in his capacity as the property right holder of the claimed property. The claimed property is a commercial premise, namely a tailor shop, which the Claimant purchased in 1988. In light of the Commission's findings in paragraph 11 above, the Claimant's claim stands to be granted.

13. In Claim No. 08115, referred to in part A of the attached Schedule, the Claimant has lodged the claim in his capacity as the property right holder. The Claimant seeks confirmation of his ownership right and repossession over the claimed commercial property, namely a sawmill. In light of the Commission's findings in paragraph 11 above, the Claimant's claim stands to be granted.

14. In Claim No. 21012, referred to in part A of the attached Schedule, the Claimant has filed the claim in his capacity as a family household member of the alleged property right holder, namely his father. The claimed property is a garage. The Claimant seeks confirmation of his ownership rights over the claimed property and repossession. In light of the Commission's findings in paragraph 11 above, the claim stands to be granted.

b. *Claim Nos. 17564, 17565 and 17566*

15. In Claim Nos. 17564, 17565 and 17566, referred to in part B of the attached Schedule, the Claimant submitted the claims in his capacity as a family household member of the alleged property right holder, namely his father. The Claimant seeks confirmation of his ownership rights and repossession of the claimed properties. The claims relate to commercial properties, namely restaurant premises and a shop.

16. The Claimant alleges that his father bought the claimed property from a third party, namely Milos Vujisic, in 1966. In support of this allegation the Claimant submitted a final and enforceable judgment of the Municipal Court of Pejë/Peć dated 3 April 1968 confirming the property right of the Claimant's father over the claimed properties. The Executive Secretariat has verified this judgment as being genuine.

17. The Respondent, who is currently using the claimed properties, asserts that he purchased the properties from the same third party, Milos Vujisic, represented by an authorized representative, namely Ramiz Rexhepi, in 2000. The power of attorney allegedly issued by Milos Vujisic in 2000, authorizing Ramiz Rexhepi to sell the properties at issue could not be verified by the Executive Secretariat and does not appear to be genuine. In any event, Milos Vujisic was no longer the owner of the property at the time of the alleged sale and therefore could not have validly transferred ownership rightfully to the Respondent. Consequently, the Respondent does not have a valid defence against the Claimant's ownership claim.

18. In light of the Commission's findings in paragraphs 11 and 15-17 above, the Claimant's claims stand to be granted.

2. *Claims dismissed or refused*

19. In order to satisfy the requirements for a valid claim, the claimant or the property right holder, as the case may be, must show that he or she had an ownership right in respect of the claimed property, and that he or she is not now able to exercise his or her property right due to the circumstances directly relating to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

20. Pursuant to section 11.4 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission shall dismiss the whole or part of a claim where:

- (a) The claimant has failed to file a complete claim in accordance with the procedures set out in the Regulation;
- (b) The claim is not within the scope of jurisdiction of the KPA; and
- (c) The claim has previously been considered and decided in a final administrative or judicial decision.

21. Section 8.6 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 provides the Commission with the power to dismiss or refuse a claim on any ground, including those set down in section 11.4 of UNMIK Regulation 2006/50 as adopted by Law No. 03/L-079.

22. Claims which are dismissed as falling outside the Commission's jurisdiction or for procedural reasons and not on account of the merits of the claim, may be capable of resolution through the local courts, subject to the applicable law. In such claims the Commission's decision does not constitute a *res judicata*. Section 3.2 of UNMIK/REG/2006/50 as adopted

by Law No. 03/L-079 confirms the claimants' right to pursue before courts of competent jurisdiction claims that do not fall within the mandate of the Commission, as set out in section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. (See also section 8.1 of Annex III of UNMIK/ADM/DIR/2007/5 concerning the Commission's authority to refer issues arising in connection with a claim which are not within its jurisdiction, to a competent local court or administrative board or tribunal.)

23. Pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the jurisdiction of the Commission is limited to property claims that are conflict-related in the sense that they involve circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999, where the claimant is not now able to exercise such property rights. In order to establish whether or not a claim falls within its jurisdiction, the Commission must determine whether the claimant or the property right holder, as the case may be, has been displaced from the claimed property, or has lost possession or control over such property, as a consequence of the conflict. The Commission must also establish whether or not the claimant or the property right holder, as the case may be, is now able to exercise his or her rights over the claimed property.

*a. Claim Nos. 00107 and 00883*

24. Claim No. 00107, referred to in part C of the attached Schedule, has been submitted by the Claimant in his capacity as a family household member of the alleged property right holder, namely his mother. The Claimant claims that his mother is the owner of the claimed property, namely a restaurant, of which she allegedly lost possession in 1999 due to the conflict.

25. The Respondent contests the ownership right of the Claimant's mother, claiming that the claimed property was unlawfully expropriated from his grandfather in 1979. The dispute was brought to the Municipal Court of Prishtinë/Priština in 2005 and a decision was issued by the Court in 2006. However, it appears that the court proceedings are still be pending.

26. In Claim No. 00883, referred to in part C of the attached Schedule, the Claimant lodged the claim in his capacity as the property right holder. He asserts that he purchased the claimed property, namely a shop, in 1991. The Respondent who is currently using the premises claims that he has a rental agreement with the company "COKA" concerning the claimed property since 1993. The Claimant has initiated a lawsuit in August 2006 with the Municipal Court of Prishtinë/Priština to have his ownership right of the claimed property confirmed.

27. Pursuant to Section 18 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission's jurisdiction is excluded if judicial proceedings in respect of the claim have been commenced prior to 16 October 2006, the date on which UNMIK/REG/2006/50 entered into force. Since the judicial proceedings in respect of the claimed properties in the claims covered by this section A.2.a were commenced by the Claimants in 2005 and 2006, respectively, these claims are not within the jurisdiction of the Commission and accordingly stand to be dismissed.

*b. Claim Nos. 00541 and 00547*

28. The Claimant submitted Claim No. 00541 in his capacity as the property right holder and Claim No. 00547 in his capacity as a family household member of the alleged property right holder, namely his father. The Claimant claims that he and his father lost possession over the claimed property, a shop, in 2005 when the premises were destroyed. The Claimant

states that they had been permitted to use the claimed property by the Municipality of Glllogovc/Glogovac since 1992.

29. The Claimant's claims do not arise out of the circumstances involving the 1998-99 conflict. Accordingly the claims fall outside the jurisdiction of the Commission and stand to be dismissed.

*c. Claim No. 11120*

30. The Claimant submitted Claim No. 11120 in his capacity as the property right holder. He seeks confirmation of ownership and repossession of the claimed property, namely an office. The Claimant asserts that he concluded a contract on joining means with the Public Housing Enterprise ("PHE") in 1994 for the purpose of construction of the claimed property. The Claimant further alleges that he paid 76 % of the agreed purchase price to the PHE but did not pay the remainder of the sum as he left Kosovo in 1999 in the circumstances of the conflict. He further acknowledges that he never took possession of the property as this was still under construction at the time of his departure.

31. The PHE confirms that it concluded a contract on joining of means with the Claimant, however it argues that the Claimant only paid 28% of the purchase price, and since he failed to comply with his contractual obligations, the contract was terminated. In 2001 the PHE concluded a contract on joint ventures with a third party, Sadik Rama, transferring ownership over the claimed property. In 2006 Sadik Rama sold the property to Nysret Mucaj, who again in 2009 sold the property to Muharrem Kurtaj. Messrs Mucaj and Kurtaj have participated in the present proceedings as Respondents.

32. In the course of the processing of the claim the PHE explained that the contract on joining of means had in fact not been terminated. Instead, the PHE had published a notice inviting all those who had entered into a contract on joining of means for the premise in question to participate in a meeting. The Claimant did not attend the meeting, and the PHE considered that the Claimant had waived his contractual rights and accordingly entered into a further contract with Sadik Rama. In 2005 the Claimant wrote to the PHE asking the PHE to return to him the partially paid purchase price. The PHE confirmed during the processing of the claim that it had not returned the purchase price to the Claimant, but indicated that they were willing to do so. In this connection, the Commission notes that the Executive Secretariat has verified the payment receipts submitted by the Claimant, which show that the Claimant has indeed paid 76% of the purchase price.

33. The Commission notes that although the Claimant paid a substantial part of the purchase price, he failed to pay the full purchase price. The Claimant also confirms that the claimed property was still under construction at the time of the 1998-99 conflict and accordingly the claimed property did not exist at the time. In these circumstances, the Claimant could not have acquired ownership over the claimed property prior to the critical period and accordingly his claim stands to be refused. The Commission's decision is without prejudice to the Claimant's right to seek reimbursement of the part of the purchase price he paid to the PHE, if necessary, before competent local courts. The Commission notes that the PHE does not dispute that it is under an obligation to reimburse the Claimant for the payments made under the contract on joining of means towards the claimed property.

*d. Claim No. 17019*

34. Claim No. 17019 has been filed by the Claimant in his capacity as the property right holder. The Claimant alleges that he purchased the claimed property, namely a shop, in 1998,

and that he rented the property out in 2003. He states that he terminated the rental agreement in 2004 and has filed the claim in order to have the former tenant vacate the shop.

35. Based on his own account, the Claimant did not lose possession of or control over the claimed property as a result of the 1998-99 conflict. Accordingly the claim falls outside the Commission's jurisdiction and stands to be dismissed.

*B. Claims for compensation*

36. In Claim Nos. 08115 and 11120 the Claimants also seek, in addition to ownership and use right, compensation for physical damage to, or for loss of use of, the claimed property or for the loss of inventory and loss of rent due to unlawful occupation. Under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the Commission has no jurisdiction over such claims. Accordingly these claims must be dismissed.

*C. Concluding remarks*

37. The Commission's decision and order also apply, where appropriate, to any associated property, *i.e.* any buildings or other constructions owned or used by the claimant or the property right holder, as the case may be, which form a unit with the claimed property.

38. Section 8.8 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 allows the Chairperson of the Commission to sign a cover decision approving all individual claims identified in the cover decision, if the number of claims decided in a session is high. The Commission considers that this is appropriate in the present case.



Chairperson

**APPEALS**

UNMIK/REG/2006/50 and the Law No. 03/L-79 provide that:

12.1 Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision.

12.3 The appeal may be filed on the grounds that:

- (a) The decision involves a fundamental error or serious misapplication of the applicable material or procedural law; or
- (b) The decision rests upon an erroneous or incomplete determination of the facts.

Information on the appeals procedures is contained in the separate Appeals Information Sheet provided to parties with this decision.

**\* The English version is the official of all Property Claims Commission decisions. In case of conflict between the English language version and the Albanian or Serbian language version, then the meaning in the English language shall prevail.**



Spreadsheet /Lista /Prilog  
Part A/Pjesa A/Deo A

KPA10016
KPA21012
KPA08115

Spreadsheet /Lista /Prilog  
Part B/Pjesa B/Deo B

KPA17565
KPA17566
KPA17564

Spreadsheet /Lista /Prilog  
Part C/Pjesa C/Deo C

KPA00107
KPA00541
KPA00547
KPA00883
KPA11120
KPA17019