



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/153/2012  
DECISION DATE: 19/04/2012

Commissioners Heiskanen (Chairperson),  
Vokshi and Wühler

## ORDER

*(1) In the 2 (two) claims referred to in part A 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 Claim No. 16019, referred to in part B of the attached Schedule, the Commission*

*decides that*

*As at the date of the destruction of the commercial property the property right holder satisfied the requirements for establishing ownership over the claimed property;*

*(3) In each of the 3 (three) claims referred to in paragraphs (1) and (2) 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.*
- (4) *In the 6 (six) claims referred to in parts C and D of the attached Schedule, the Commission decides that the claim be dismissed.*
- (5) *In the 5 (five) claims referred to in parts E and F 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>

5. The Commission held its twenty-eighth session from 17 to 19 April 2012 in Prishtinë/Priština. A total of fourteen commercial property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-eighth session, together with supporting documentation, claims processing reports, verification reports and other relevant information. All fourteen 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 fourteen claims for commercial property submitted to the Commission during the twenty-eighth session. In each of these claims, except for Claim No. 01147, the claimant seeks the resolution of an ownership claim. The Claimant in Claim No. 01147 claims confirmation of a use right to the claimed property.

8. The Commission notes that the eight claims identified in parts A, B, C and E 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 may be 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.

9. The Commission further notes that the six claims identified in part D and F 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

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<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 Commission considers that all three Annexes of UNMIK/ADM/DIR/2007/5 are included in the legislative package and will be referred to by the Commission in this decision as Sub-Annexes I, II and III, respectively.

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*

10. 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, namely purchase contracts and certification on immovable property rights. The Commission is satisfied that the submitted documents 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.

11. In Claim No. 00101, 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 garage, which the Claimant purchased in 1975. In light of the Commission's findings in paragraph 10 above, the Claimant's claim stands to be granted.

12. In Claim No. 10757, referred to in part A of the attached Schedule, the Claimant has lodged the claim in his capacity as a family household member of the alleged the property right holder, namely his father. The claimed property is a commercial premise, namely a restaurant, which the Claimant's father purchased in 1990. In light of the Commission's findings in paragraph 10 above, the Claimant's claim stands to be granted.

13. In Claim No. 16019, referred to in part B of the attached Schedule, the Claimant has filed the claim in her capacity as the property right holder. The claimed property used to be a store, but it was entirely destroyed during the 1998-99 conflict. The Claimant seeks confirmation of her ownership rights over the claimed property and repossession. In light of the Commission's findings in paragraph 10 above, the claim stands to be granted.

### *2. Claims dismissed or refused*

14. 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.

15. 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.

16. 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.

17. 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.)

18. 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 No.31547*

19. Claim No. 31547, referred to in part C of the attached Schedule, has been submitted by the Claimant in his capacity as the property right holder. The Claimant contends that he is the owner of the claimed property, namely a shop, of which he allegedly lost possession in 1999, as a result of the conflict. By a power of attorney dated 11 June 2002, the Claimant authorized Liman Hasa to sell certain properties owned by the Claimant, including the claimed property. The Claimant alleges that Liman Hasa misused the power of attorney by transferring the claimed properties to himself. The Commission notes that there is here no issue of duress as envisaged in section 4 of the UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079, but rather an issue of an alleged misuse of a power of attorney, a matter that falls within the jurisdiction of local courts. The Commission also notes that the property is still registered in the Claimant's name. Accordingly, the Commission considers that, even if the Claimant may have lost possession of the claimed property as a result of the 1998-99 conflict, he is now able to exercise his property rights. Accordingly, the Claimant's claim stands to be dismissed as falling outside the jurisdiction of the Commission pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

*b. Claim Nos. 01147 and 28536*

20. Claim No. 01147, referred to in part D of the attached Schedule, has been submitted by the Claimant in his capacity as the property right holder. The Claimant claims to have a right of use over the claimed commercial premises, namely an insurance office, of which he allegedly lost possession on 17 June 1999 due to the conflict. The Claimant states that the office is illegally occupied by an unknown person. The Claimant has submitted as evidence an allocation decision, issued by the Municipality of Mitrovica dated 25 November 1994, granting him temporary allocation of the municipal land and a permission to establish a

temporary structure for commercial purposes over the land parcel. This document has been verified by the Executive Secretariat as being genuine.

21. During the notification of the claimed property, it was discovered that there is a permanent structure, consisting of residential and commercial premises, erected on the claimed parcel.

22. The Commission notes that pursuant to the allocation decision submitted by the Claimant, the Claimant was granted a right of use over the land for a period of five years, as well as a permission to construct a temporary structure on the land.

23. Claim No. 28536, referred to in part D of the attached Schedule, was submitted by the Claimant in his capacity as a family household member of the alleged property right holder, namely the Claimant's son. The Claimant claims that his son has an ownership right over the claimed commercial property, of which he allegedly lost possession in June 1999 due to the conflict. The Claimant states that the property is illegally occupied by an unknown person. The Claimant has submitted as evidence an administrative decision, issued by the Municipality of Prizren dated 4 April 1994, granting his son temporary allocation of the municipal land and a permission to establish a prefabricated temporary structure over the land parcel. The Claimant asserts that his son has set up a kiosk on the parcel. The administrative decision has been verified by the Executive Secretariat as being genuine.

24. During the notification of the claimed property, it was discovered that no temporary commercial structure as asserted by the Claimant existed on the claimed property, which is now being used as a parking lot.

25. Pursuant to Article 9 of the Law on Property and other Real Rights (Law No. 03/L-154), moveable property is defined as "*independent corporal objects that are not permanently attached to the ground or a part of the ground, and are generally capable of being moved.*" In light of this definition, the properties claimed in Claim Nos. 01147 and 28536 must be considered to constitute moveable and not immovable property. This finding is unaffected by the current status of the claimed properties. Accordingly these claims fall outside the jurisdiction of the Commission and stand to be dismissed.

*c. Claim Nos. 16001, 16002 and 34473*

26. Claim Nos. 16001, 16002 and 34473 have been filed by the Claimant in his capacity as the property right holder. The Respondents allege that they purchased the respective claimed properties from the property right holder; the property at issue in Claim No. 16001 was purchased in 2011, and those at issue in Claim Nos. 16002 and 34473 were purchased in 2000. Confronted with the Respondents' statements, the Claimant acknowledged that the claimed properties had been sold and indicated that he wished to withdraw the claims, however, he failed to do so. Accordingly, the Commission considers that, even if the Claimant may have lost possession of the claimed property as a result of the 1998-99 conflict, he was subsequently able to exercise his property rights. Accordingly, the Claimant's claims stand to be dismissed as falling outside the jurisdiction of the Commission pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

*d. Claim No. 10260*

27. The Claimant submitted Claim No. 10260 in her capacity as the property right holder. The Claimant claims that she has lost possession over the claimed property, a shop. She claims that she acquired ownership over the claimed property based on a construction contract

concluded between the Claimant and the Public Housing Enterprise ("PHE") dated 18 April 1995. However, the Claimant confirms that the construction of the property was finalized only in 2000, whereas she left Prishtinë/Priština in July 1999 as a result of the conflict. The Claimant acknowledges that she had never been in possession of the claimed property as it was not finalized by the time of her departure. The Claimant alleges that she fulfilled almost all of her financial obligations under the construction contract. The representative of the PHE stated that only one receipt could be verified in their records, but acknowledged that some documents went missing during the conflict in 1999.

28. The Respondent, who is the current occupant of the claimed property, asserts that he entered into a contract on joining of means with the PHE in 2000 in respect of the claimed property. The Respondent states that he has taken care of his obligations under the contract and considers himself the rightful owner of the claimed property.

29. In the course of the processing of the claim the PHE explained that the contract on joined construction of office premises had in fact not been terminated. The PHE stated that they were not able to contact the Claimant as she did not leave any contact details with them subsequent to her departure from Pristina in 1999. In the circumstances, the PHE considered that the Claimant had waived her contractual rights and accordingly entered into a further contract with the Respondent. The Claimant contests PHE's explanations and alleges that she contacted the PHE in 2000 and sought possession of the property.

30. The Commission notes that although the Claimant paid a substantial part of the purchase price, she 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 relevant period and accordingly her 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 she 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 joined construction of office premises towards the claimed property.

*e. Claim Nos. 51117, 51119, 51120 and 51122*

31. In Claim Nos. 51117, 51119, 51120 and 51122 the Claimant lodged the claims in his capacity as the property right holder. The Claimant filed these claims together with a number of other claims. In support of his claims the Claimant filed a possession list, which shows him as a co-owner of a number of parcels. However, each of the parcels listed in this possession list are also claimed in one of the other claims submitted to the KPA, respectively. In Claim Nos. 51117, 51119, 51120 and 51122 the Claimant failed to specify the claimed property altogether. Although he was contacted several times by the Executive Secretariat and requested to specify the claimed properties and provide any additional documents, the Claimant failed to provide any further information. Accordingly, in the absence of a proper identification of the properties that are being claimed, the claims stand to be refused.

*B. Concluding remarks*

32. 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.

33. 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

KPA00101
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KPA10757
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Spreadsheet /Lista /Prilog  
Part B/Pjesa B/Deo B

KPA16019
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Spreadsheet /Lista /Prilog  
Part C/Pjesa C/Deo C

KPA31547
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Spreadsheet /Lista /Prilog  
Part D/Pjesa D/Deo D

KPA01147
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KPA16001
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KPA16002
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KPA28536
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KPA34473
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Spreadsheet /Lista /Prilog  
Part E/Pjesa E/Deo E

KPA51117
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KPA51119
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KPA51120
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KPA51122
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Spreadsheet /Lista /Prilog  
Part F/Pjesa F/Deo F

KPA10260
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