



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

Perandori Justinian 5  
Pristina  
Tel: +381 (0) 38 249-918  
Fax: +381 (0) 38 249-919  
E-mail: mailbox@kpaonline.org

## DECISION

PANEL NO: 1

DECISION NO.: KPCC/D/C/177/2012  
DECISION DATE: 24/10/2012

Commissioners Heiskanen (Chairperson),  
Vokshi and Wühler

## ORDER

*(1) In Claim Nos. 17540 and 92710, referred to in part A 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 and the associated land parcel, or such part thereof as specified in the respective individual decision;*

*(2) In the two claims referred to in paragraph (1) above, the Commission*

*orders that*

*(a) The property right holder be given possession of the associated land parcel on which the commercial property stood;*

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

*(c) Should any 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) In each of the sixteen (sixteen) claims identified in part B of the attached Schedule, the Commission decides that the claim be dismissed;*

*(4) In Claim No. 11559, referred to in part C of the attached Schedule, the Commission decides that the claim be refused;*

- (5) *The Commission additionally decides that Claim Nos. 00736, 00737, 10009, 11559, 11563, 11565, 11573, 11765 13244 and 35350 be dismissed insofar as the Claimant seeks compensation for damage to, or for loss of use of, the claimed property; and*
- (6) *In cases in which there is more than one owner the above decisions and order do not affect the rights of any respective co-owners.*

## **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 thirty-first session from 22 to 24 October 2012 in Prishtinë/Priština. A total of 64 commercial property claims were submitted by the Executive Secretariat of the KPA (the “Executive Secretariat”) to the Commission at its thirty-first session, together with supporting documentation, claims processing reports, verification reports and other relevant information. One claim which had been presented to the Commission was withdrawn by the Executive Secretariat during the session. In sum, a total of 63 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 deals with nineteen claims out of the 63 claims for commercial property resolved by the Commission during its thirty-first session. The remaining 44 claims are dealt with in decision KPCC/D/C/176/2012.

8. In fourteen of the claims covered by the present decision, the claimants seek the resolution of an ownership claim. In the remaining five claims, the claimants seek the resolution of a claim for a right of use. All of these claims relate to commercial properties, including, as the case may be, the associated land, which, at the time of their notification, were found to be entirely destroyed.

9. The Commission notes that all nineteen claims covered by the present decision 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.

*I. Claims granted*

10. 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 a property right in respect of the claimed property, and that he or she is not now able to exercise his or her property right

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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.

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.

1. *Claim No. 17540*

11. Claim No. 17540, referred to in part A of the attached Schedule, has been filed by the Claimant in his capacity as the property right holder of the claimed property (a shop). The Claimant seeks the confirmation of his ownership right over the claimed property and repossession. The Claimant submitted in support of his claim various types of documents including a possession list from 2005 and minutes of the public tax administration from 1996. The documents have been verified by the Executive Secretariat as being genuine.

12. The Commission is satisfied that the documents submitted by the Claimant in support of his claim indeed constitute proof of ownership over the claimed property. The Commission notes that the claim is uncontested and no evidence has been received or obtained by the Executive Secretariat *ex officio* which would rebut the presumption of ownership based on the submitted documentary evidence. Accordingly, the claim stands to be granted.

2. *Claim No. 92710*

13. Claim No. 92710, referred to in part A of the attached Schedule, has been filed by the Claimant in his capacity as the property right holder of the claimed property (a shop). The Claimant seeks the confirmation of his ownership right over the claimed property and repossession. The Claimant submitted in support of his claim various types of documents including a positively verified construction permit granting the Claimant the right to build a residential and a commercial building on the claimed property. The buildings were destroyed during the 1998-1999 conflict.

14. The Commission is satisfied that the documents submitted by the Claimant in support of his claim indeed constitute proof of ownership over the claimed property. The Commission notes that the claim is uncontested and no evidence has been received or obtained by the Executive Secretariat *ex officio* which would rebut the presumption of ownership based on the submitted documentary evidence. Accordingly, the claim stands to be granted.

II. *Claims dismissed or refused*

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-07907/50 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.

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 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.

19. While the Commission has taken the view that a loss of possession that occurred outside the period 27 February 1998 and 20 June 1999 may nonetheless be considered to be directly related to or result from the conflict, depending on the circumstances of the case, it must be satisfied that there is some evidence indicating that the property loss involved circumstances surrounding the conflict.

1. *Claims dismissed*

a. *Claim No. 12012*

20. Claim No. 12012 has been filed by the Claimant in the capacity of a family household member of the property right holder, namely his father. The Claimant seeks confirmation of his alleged ownership right over the claimed property and its repossession. In support of this claim, the Claimant alleges that his father used to be the owner of the claimed property until 1984 when it was expropriated in favour of the Socially Owned Enterprise "Malishgan." The Claimant family has been unable to regain possession since then. The Executive Secretariat obtained *ex officio* the certificate for immovable property rights listing the Socially Owned Enterprise "Malishgan" as owner of the claimed property.

21. The Commission notes that based on the Claimant's own account, the claim does not involve circumstances directly related to or resulting from the 1998-1999 conflict. Accordingly, the claim falls outside the jurisdiction of the Commission and stands to be dismissed.

b. *Claim Nos. 00736 and 00737*

22. Claim Nos. 00736 and 00737 have been filed by the Claimant in his capacity as the property right holder of the claimed property. Claim Nos. 00736 and 00737 relate to the same property. The Claimant seeks confirmation of his alleged ownership right over the claimed property and repossession. The Claimant alleges that his family used to be the owner of the claimed property until 1965 when it was expropriated by the Municipality of Gjakova/Dakovica. The Claimant's family has been unable to regain possession since then. The

Claimant has produced in support of his claim various documents including the administrative decision on expropriation.

23. The Commission notes that based on the Claimant's own account, the claims do not involve circumstances directly related to or resulting from the 1998-1999 conflict. Accordingly, the claims fall outside the jurisdiction of the Commission and stand to be dismissed.

*c. Claim Nos. 10006, 10009, 11506, 11510, 11563, 11565, 11573, 11765, 36503, 35350 and 53928*

24. Claim Nos. 10006, 10009, 11506, 11510, 11563, 11565, 11573, 11765, 36503, 35350 and 53928, referred to in part B of the attached Schedule, have been filed by the respective Claimant in his or her capacity as the alleged property right holder either in person or through an authorized natural person, or as the case may be in his or her capacity as a family household member of the property right holder. The claims are uncontested in the sense 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.

25. In all of the above claims the Commission finds, on the basis of the evidence before it, that the respective property right holder acquired only a temporary use right over the claimed property and was therefore only authorized to build a moveable structure on the claimed properties. Accordingly, all of these claims relate to moveable property rather than to private immovable property.

26. The Commission notes that pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission's jurisdiction is limited to claims for repossession of private immovable property, including commercial property. Accordingly, Claims Nos. 10006, 10009, 11506, 11510, 11563, 11565, 11573, 11765, 36503, 35350 and 53928 stand to be dismissed as they fall outside the Commission's jurisdiction. The Commission's decision is without prejudice to any right that the Claimants may have to seek compensation before local courts for any investments they may have made in the claimed properties or the resulting increase in their value.

*d. Claim No. 28541*

27. Claim No. 28541 has been submitted by the Claimant in his capacity as a family household member of the property right holder, namely his brother. The Claimant seeks confirmation of his ownership right over the claimed property (a kiosk) and repossession. The Claimant submitted in support of his claim a decision of the Municipality of Mitrovicë/Mitrovica pursuant to which the Claimant's brother was granted the right to register a kiosk for the purpose of selling small consumables for the daily use. The claimed property was placed on a sidewalk.

28. The Commission concludes, on the basis of the evidence before it, that the claim relates to moveable property rather than to private immovable property. The Commission notes that pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission's jurisdiction is limited to claims for repossession of private immovable property, including commercial property. Accordingly, Claim No. 28541 stands to be dismissed.

e. *Claim No. 13244*

29. Claim No. 13244 has been lodged by the Claimant in his capacity as the property right holder. The Claimant seeks confirmation of his ownership right over the claimed property (a kiosk) and repossession. The Claimant submitted in support of the claim various types of documents including an administrative decision from 1996 granting the property right holder the right to register a business for the purpose of selling small consumables for the daily use. The Claimant further submitted purchase bills relating to material used for the construction of a kiosk by the Claimant. The Executive Secretariat has obtained in the course of verification pictures of the claimed property which was subsequently destroyed. The pictures show that the claimed property was a moveable structure.

30. The Commission concludes, on the basis of the evidence before it, that the claim relates to moveable property rather than to private immovable property. The Commission notes that pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission's jurisdiction is limited to claims for repossession of private immovable property, including commercial property. Accordingly, Claim No. 13244 stands to be dismissed.

2. *Claim refused*

31. Claim No. 11559 has been lodged by the Claimant in his capacity as the property right holder. The Claimant seeks confirmation of a use right over the claimed property and repossession. However, the Claimant failed to submit any documentary evidence in support of his claim, explaining that all relevant documents were burnt during the 1998-1999 conflict. The Executive Secretariat has also not been able to obtain *ex officio* any evidence that would support the Claimant's claim.

32. Based on the above, the Commission finds that the Claimant has failed to establish any property right over the claimed property. Consequently the claim stands to be refused.

B. *Compensation claims*

33. In Claim Nos. 00736, 00737, 10009, 11559, 11563, 11565, 11573, 11765 13244 and 35350 the Claimant also seeks, in addition to the confirmation of the respective property right, compensation for physical damage to, or loss of use of, the claimed property. Under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the Commission has no jurisdiction over such claims. Accordingly these claims for compensation must be dismissed.

C. *Concluding remarks*

34. 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.

35. 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.

The Supreme Court of Kosovo may levy court fees for the appeal procedures.

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

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| KPA17540 |
| KPA92710 |

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

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|----------|----------|----------|----------|----------|----------|----------|
| KPA10006 | KPA10009 | KPA11573 | KPA36503 | KPA00736 | KPA00737 | KPA11506 |
| KPA11563 | KPA11565 | KPA11765 | KPA53928 | KPA28541 | KPA13244 | KPA11510 |
| KPA35350 | KPA12012 |          |          |          |          |          |

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

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| KPA11559 |
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