



Kosovo Property Claims Commission
Komisioni 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/192/2013

DECISION DATE:

13/02/2013

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) In the 8 (eight) claims identified 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 Nos. 13176 and 44318, referred to in part B of the attached Schedule, the Commission

decides that

The claimant has established a right of use over the claimed property, or such part thereof as specified in the respective individual decision;

(3) In Claim No. 10017, referred to in part G of the attached Schedule, the Commission

decides that

The claimant has established ownership over the claimed property and a use right over of the underlying land as specified in the respective individual decision;

(4) In each of the 11 (eleven) claims identified in paragraphs 1, 2 and 3, the Commission

orders that

(a) The claimant or the property right holder, as the case may be, be given possession of the claimed property or be given possession of the associated land parcel on which the commercial property stood, as the case may be;

- (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 occupying the property fail to comply with the order to vacate within the time stated, they shall be evicted from the property.*
- (5) *In the 17 (seventeen) claims identified in parts C and D of the attached Schedule, the Commission decides that the claim be dismissed;*
- (6) *In Claim Nos. 01194, 11558 and 16099, referred to in parts E and F of the attached Schedule, the Commission decides that the claim be refused;*
- (7) *The Commission additionally decides that Claim Nos. 01241, 10017, 01320, 11498, 11558, 22507 and 22899 be dismissed insofar as the Claimant seeks compensation for damage to, or for loss of use of, the claimed property;*
- (8) *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.)¹

5. The Commission held its thirty-third session from 11 to 13 February 2013 in Prishtinë/Priština. A total of 47 commercial property claims were submitted by the Executive Secretariat of the KPA (the “Executive Secretariat”) to the Commission at its thirty-third 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 46 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 covers the 31 claims for commercial property identified in parts A, B, C, D, E, F and G of the attached Schedule. The remaining sixteen commercial property claims are covered by decision KPCC/D/C/193/2013. The present decision deals with claims for commercial properties which, at the time of their notification, were not damaged or, even if damaged, were capable of repair, whereas decision KPCC/D/C/193/2013 deals with claims for commercial properties which were found to be entirely destroyed.

8. In each of these claims, except for Claim Nos. 01194, 01241, 10017, 11498, 11538, 11558, 13176, 13944, 17735, 17736, 22507, 22899, 30745, 44318 and 50057, the claimant seeks the resolution of an ownership claim. In Claim Nos. 01194, 01241, 10017, 11498, 11538, 11558, 13176, 13944, 17735, 17736, 22507, 22899, 30745, 44318 and 50057, the Claimant seeks confirmation of a use right over the claimed property.

¹There 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.

9. The Commission notes that the 25 claims identified in parts A, C, E and G 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 six claims identified in parts B, D and F 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 evidence and 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.

I. Uncontested claims – granted

11. The Commission notes that in the eight claims identified in part A 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 and allocation decisions. 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. Many claimants have also submitted additional supporting documents, including tax decisions, witness statements, copies of plans and cadastral decisions.

12. In Claim Nos. 01320, 11520, 27517, 50720 and 92870, referred to in part A of the attached Schedule, the Claimants have filed the claim in the capacity of the property right holder. In light of the Commission’s findings in paragraph 11 above, all of these claims stand to be granted.

13. In Claim Nos. 00130, 00133 and 21013, referred to in part A of the attached Schedule, the Claimants have filed the claims in their capacity of a family household

member of the property right holder pursuant to section 1.2 of Annex II of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. Section 1 of the Administrative Direction as adopted by Law No. 03/L-079 defines “Member of Family Household” to include “the spouse, children (born in and out of wedlock or adopted) and other persons whom the property right holder is obliged to support in accordance with the applicable law, or the persons who are obliged to support the property right holder in accordance with the applicable law, regardless of whether or not that person resided in the property together with the property right holder.” The Commission has determined that, under the applicable law, this definition covers, in addition to spouses and children, parents, brothers, sisters, grandparents and grandchildren of the property right holder. All of the claimants fall within the definition of family household member. Accordingly a decision confirming the property right in favour of the property right holder also stands to be granted in each of these claims as set out above.

14. In Claim No. 10017, referred to in part G of the attached Schedule, the Claimant submitted the claim in his capacity as the alleged property right holder. The claim is uncontested. The Claimant seeks confirmation of ownership and repossession of the claimed property, a commercial structure located on land parcel 872 in the Municipality of Mitrovicë/ Mitrovica.

15. In support of his claim, the Claimant submitted a positively verified contract on use of construction land from 1990, according to which the Claimant was allocated a use right over land parcel 872 for construction of a commercial structure on the parcel, whereas the underlying land remained in social ownership. In further support of his claim, the Claimant submitted a building permit from 1991 based on the Law on Construction of Investing Objects pursuant to which the Claimant was conferred with the right to build the claimed property on land parcel 872 and to acquire ownership over it.

16. Based on the evidence before it, the Commission considers that there is sufficient evidence to grant ownership over the claimed property and a use right over the underlying land.

II. Contested claims – granted

17. Claim Nos. 13176 and 44318, referred to in part B of the attached Schedule, have been filed by the Claimant in his capacity as the property right holder. The Claimant seeks confirmation of a use right over the claimed property, a commercial structure located on land parcel 3416/1 in the Municipality Peje/Pec. In support of the claims, the Claimant has submitted *inter alia* an administrative decision issued by the Municipality of Peje/Pec in 1997 pursuant to which the Claimant was permitted to use an existing structure located on land parcel 3416/1 and to convert and reconstruct it into a commercial structure of a temporary nature. The Municipality of Peje/Pec subsequently granted the Claimant by two further decisions issued in 1998 and 1999 a permanent use right over the reconstructed commercial structure as well as a use right over the underlying land. The three decisions issued by the Municipality Peje/Pec have been all positively verified by the Executive Secretariat as being genuine.

18. The Respondent claims a legal right over the claimed property. However, he has failed to submit any evidence in support of his allegation.

19. Based on the evidence before it, and in the absence of any valid defense on the part of the Respondent, the Commission finds that the claims stand to be granted.

III. *Claims dismissed*

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. 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).

22. 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.

1. *No claim over immoveable property*

23. In the fourteen claims identified in part C of the attached Schedule, the claims 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.

24. In all of these 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 immoveable property. 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, these claims stand to be dismissed. 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.

2. *No loss of possession as a result of the conflict*

25. In the four claims identified in parts C and D of the attached Schedule, the claims 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. In all of these claims the claimants initially claimed that they or their families lost the claimed properties as a result of the 1998–99 conflict. However, the Commission considers that, on the basis of the various documents submitted by the claimants, which have been verified by the Executive Secretariat, or documents obtained by the Executive Secretariat *ex officio* or based on the claimant's own statements, in all these claims the claimants failed to show that their claims involve circumstances directly related to or resulting from the 1998–99 conflict. Accordingly, the claims fall outside the mandate of the Commission and stand to be dismissed.

IV. *Claims refused*

1. *Claim No. 01194*

26. Claim No. 01194, referred to in part E of the attached Schedule, has been filed by the Claimant in his capacity as the alleged property right holder. The Claimant seeks confirmation of a use right over the claimed property and repossession.

27. In support of his claim, the Claimant has submitted an allocation decision issued in 1981 by the Municipal Office in Mitrovicë/Mitrovica. The Commission notes that, pursuant to the decision, the Claimant was only granted a use right over the claimed property for a limited period of time, from February 1981 to December 1981. The Claimant has also submitted a contract on use concluded in 1988 with the Municipal Office of Mitrovicë/ Mitrovica pursuant to which the Claimant was granted a use right over the claimed property for a limited period of time, from November 1988 to November 1990. The Commission finds that such temporary rights of use over the claimed property fall short of establishing a right of use over the claimed property that is capable of restitution under section 3.1 of UNMIK Regulation 2006/50 as amended and adopted by Law No. 03/L-07.

28. In further support of the claim, the Claimant also submitted a permit issued in 1967 by the Municipal Office of Mitrovicë/Mitrovica pursuant to which the Claimant was granted the right to open a tailoring shop. In the Commission's view, such a commercial permit is insufficient to prove a permanent use right over the claimed property.

29. In the absence of any valid evidence in support of the claim, the Claimant has failed to establish a property right over the claimed property. Accordingly the claim stands to be refused.

2. *Claim No. 11558*

30. Claim No. 11558, referred to in part E of the attached Schedule, has been filed by the Claimant in his capacity as a family household member of the alleged property right holder, namely his brother. The Claimant seeks confirmation of a use right over the claimed property and repossession.

31. The Commission notes that the Claimant has failed to submit any evidence in support of his claim. Accordingly the claim stands to be refused.

3. *Claim No.16099*

32. Claim No. 16099, referred to in part F of the attached Schedule, has been filed by the Claimant in his capacity as the alleged property right holder. The claim is contested and the Respondent has expressed a legal interest in the claimed property.

33. In support of his claim, the Claimant has submitted a purchase contract concluded between the socially owned enterprise “Morava e Binces” as seller and the Claimant as buyer of the claimed property. The Claimant has also submitted several payment receipts related to this purchases contract. However, the Executive Secretariat was unable to verify the purchase contract and the payment receipts as being genuine.

34. In further support of his claim, the Claimant submitted a certificate showing that in 2001 the Claimant offered to sell the claimed property to the Municipality of Gjilan/Gnjilane. However, in the Commission’s view such offer to sell is in itself insufficient prove of the alleged property right holder’s ownership right over the claimed property.

35. In the absence of any valid evidence in support of the claim, the Claimant has failed to establish a property right over the claimed property. Accordingly the claim stands to be refused.

B. Claims for compensation

36. In the claims identified in the relevant columns of parts A, C, E and G of the attached Schedule, the claimants also seek, in addition to ownership, compensation for physical damage to, or for 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 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. In a number of claims, the claimant had filed a claim for repossession of the same property with the Housing and Property Directorate, which claim had subsequently been granted by the Housing and Property Claims Commission (“HPCC”). The Commission notes that the causes of action available for claimants before the present Commission and the HPCC, respectively, and accordingly the jurisdiction of the two Commissions, are not identical. Accordingly the decisions of the HPCC do not necessarily constitute *res judicata* before the present Commission, although in certain circumstances this may be the case. Moreover, in cases where the HPCC granted an eviction order in favour of the claimant, the Commission does not consider that such an order constitutes a bar for this Commission to issue a fresh eviction order in cases where the property is unlawfully occupied.

39. 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

KPA01320	KPA11520	KPA21013	KPA27517	KPA00130	KPA00133	KPA50720
KPA92870	KPA10017					

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

KPA13176	KPA44318					
----------	----------	--	--	--	--	--

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

KPA11498	KPA11538	KPA13009	KPA22507	KPA30745	KPA01241	KPA17735
KPA17736	KPA00213	KPA11532	KPA13944	KPA26338	KPA22899	KPA50057

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

KPA11526	KPA11587	KPA28195				
----------	----------	----------	--	--	--	--

Spreadsheet /Lista /Prilog
Part E/Pjesa E/Deo E

KPA01194	KPA11558	KPA16099				
----------	----------	----------	--	--	--	--