



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

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## DECISION

PANEL NO: 1

DECISION NO.: KPCC/D/C/209/2013  
DECISION DATE: 11/06/2013

Commissioners Heiskanen (Chairperson),  
Vokshi and Wühler

## ORDER

*(1) In Claim No. 29693, 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 an ideal part of 1/4 of the claimed property and a use right over the underlying land as specified in the respective individual decision;*

*(2) In Claim No. 29693, 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 6 (six) claims identified in parts B and C of the attached Schedule, the Commission decides that the claim be dismissed;*

*(4) In Claim Nos. 06516, 06563 and 22369, referred to in part D of the attached Schedule, the Commission decides that the claim be refused;*

*(5) The Commission additionally decides that Claim Nos. 11307, 11562 and 22369 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>

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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,

5. The Commission held its thirty-fifth session from 10 to 11 June 2013 in Prishtinë/Priština. A total of 37 commercial property claims were submitted by the Executive Secretariat of the KPA (the “Executive Secretariat”) to the Commission at its thirty-fifth session, together with supporting documentation, claims processing reports, verification reports and other relevant information. One commercial property claim which had been presented to the Commission was referred back by the Commission to the Executive Secretariat. In sum, a total of 36 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 ten claims out of the 36 claims for commercial property resolved by the Commission during its thirty-fifth session. The remaining 26 claims are dealt with in decision KPCC/D/C/208/2013.

8. In five 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 nine claims covered by the present decision, referred to in parts A, B and D 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 notes that Claim No. 11576, referred to in part C of the attached Schedule, is contested in the sense that a party that has expressed a legal interest in such property (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. Pursuant to section 10 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Respondent has been provided with a copy of the claim submitted by the Claimant. In accordance with section 3.5 of Annex II to UNMIK/AD/2007/5 as adopted by Law No. 03/L-

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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.

079, the Claimant has been provided with a copy of the documents submitted by the Respondent in response to the claim. Both parties 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.

### *I. Claim granted*

11. 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 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.

12. In Claim No. 29693, referred to in part A of the attached Schedule, the Claimant submitted the claim in his capacity as a family household member of the alleged property right holder, namely his brother. The Claimant seeks confirmation of ownership over the claimed property, a commercial structure located on land parcel No. 2135/2. The Executive Secretariat obtained *ex officio* a possession list from 2009 listing the brother of the Claimant as the rightful co-user with an ideal part of  $\frac{1}{4}$  of land parcel No. 2135/2. The possession list classifies land parcel No. 2135/2 as socially-owned urban construction land. It follows from this classification that the Claimant has been permitted to build the claimed structure with other third parties on the allocated land parcel and to own it in co-ownership, whereas the Claimant's brother only obtained a co-use right over the land underlying this structure.

13. Based on the evidence before it, the Commission finds that the alleged property right holder enjoyed co-ownership over the claimed property and a use right over the associated land.

### *II. Claims dismissed or refused*

14. 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.

15. 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.

16. 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.)

17. 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.

18. 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. No claim over immovable property*

19. Claim Nos. 11307, 11562 and 28552, 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 that there is no evidence of illegal occupation or use of these properties by any person or, even if there were 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.

20. In each 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 property. Accordingly, all of these claims relate to moveable property rather than to private immovable property.

21. 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 Nos. 011307, 11562 and 28552 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.

*b. Voluntary disposal or ability to exercise property right*

22. Claim No. 53035, referred to in part B of the attached Schedule, has been filed by the Claimant in his capacity as the alleged property right holder. The Claimant seeks confirmation of ownership rights over the claimed property and repossession. The Claimant initially claimed that he lost the claimed property as a result of the 1998–1999 conflict. However, the

Claimant subsequently advised the Executive Secretariat that he had sold the claimed property to a third party in 2010. In these circumstances, the Commission finds that, while the alleged property right holder may have lost possession as a result of the 1998-1999 conflict, the voluntary sales transaction the Claimant entered into after the conflict shows that he is now able to exercise his property rights. Consequently, the claim falls outside the Commission's jurisdiction and stands to be dismissed.

*c. Claim for compensation only*

23. Claim Nos. 11561 and 11576 have been filed by the Claimant in his capacity as a family household member of the alleged property right holder, namely his brother. The Commission notes that the Claimant only seeks compensation for the allegedly destroyed inventory of a commercial structure that he had rented during the armed conflict. The Commission has no jurisdiction under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 over such compensation claims. Accordingly the claims stand to be dismissed.

*2. Claims refused – lack of evidence of ownership right*

*a. Claim Nos. 06516 and 06563*

24. Claim Nos. 06516 and 06563 have been filed by the Claimants in their capacity as the alleged property right holders. The Claimants seek confirmation of ownership rights over the claimed properties and repossession. The claims are uncontested. However, none of the documentary evidence submitted by the Claimants could be verified by the Executive Secretariat as being genuine. When invited by the Executive Secretariat, the Claimants failed to submit any further evidence in support of their claims. The Executive Secretariat has also not been able to obtain *ex officio* any evidence that would support the claims.

25. Based on the above, the Commission finds that the Claimants have failed to establish ownership or any other property right over the claimed properties immediately prior to or during the 1998-99 conflict. Consequently, the claims stand to be refused.

*b. Claim No. 22369*

26. Claim No. 22369 has been filed by the Claimant in his capacity as the alleged property right holder. The Claimant seeks confirmation of ownership rights over the claimed property and repossession. In support of the claim, the Claimant submitted *inter alia* a permit issued in 1991 by the Municipal Office of Lipjan pursuant to which the Claimant was granted the right to open a fast food restaurant. In the Commission's view, such a document is insufficient to prove an ownership right over the claimed property. When invited by the Executive Secretariat, the Claimant failed to submit any other evidence in support of his claim. The Executive Secretariat has also not been able to obtain *ex officio* any evidence that would support the Claimant's claim.

27. Based on the above, the Commission finds that the Claimant has failed to establish ownership or any other property right over the claimed property immediately prior to or during the 1998-99 conflict. Consequently, the claim stands to be refused.

*B. Compensation claims*

28. In Claim Nos. 11307, 11562 and 22369 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*

29. 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.

30. 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

KPA29693						
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Spreadsheet /Lista /Prilog  
Part B/Pjesa B/Deo B

KPA28552	KPA11561	KPA11307	KPA11562	KPA53035		

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

KPA11576						
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Spreadsheet /Lista /Prilog  
Part D/Pjesa D/Deo D

KPA06563	KPA22369	KPA06516				
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