



Kosovo Property Claims Commission  
Komisioni i Kërkesave Pronësore të Kosovës  
Komisija Kosovske Agencije za Imovinu

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## DECISION

PANEL NO: 1

DECISION NO.: KPCC/D/A/37/2009  
DECISION DATE: 23/04/2009

## ORDER

(1) *In Claim Nos. 35609, 35610 and 35611, the Commission*

*decides that*

*The Claimant has established the ownership of the Property Right Holder over the claimed property, or such part thereof as specified in the respective individual decision;*

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

*orders that*

*(a) The Claimant be given possession of the claimed property;*

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

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

(3) *The Commission additionally decides that the claims referred to in paragraph (1) above be dismissed insofar as the Claimant seeks compensation for physical damage to and for loss of use of the claimed property.*

(4) *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, the Assembly of the Republic of Kosovo (the "Assembly") enacted 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. 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 under Article 142 of the Kosovo Constitution 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 of the Republic of Kosovo.

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.

3. Pursuant to Article 10 of Law No. 03/L-079, which amended section 7.1 of UNMIK/REG/2006/50, the Property Claims Commission (the “Commission”) shall be appointed by the Assembly upon nomination by the President of the Supreme Court, with the proviso that until the end of international supervision of the implementation of the Comprehensive Proposal for the Kosovo Status Settlement of 26 March 2007, two of the three members, including its Chairperson, shall be appointed by the International Civilian Representative. The two international members of the Commission were appointed by the International Civilian Representative by decision dated 6 March 2009. The national Commissioner was appointed by decision of the Assembly dated 12 March 2009.

4. In light of the above, the Commission considers that it is duly constituted and competent to exercise its functions pursuant to Law No. 03/L-079 and the relevant implementing directions and legislation.

### **REASONS FOR THE DECISION**

5. 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.)

6. 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>

7. The Commission held its eleventh session from 21 to 24 April 2009 in Prishtinë/Pristina. A total of 443 agricultural property claims were submitted by the Executive Secretariat of the Kosovo Property Agency (the “Executive Secretariat” and “KPA,” respectively) to the Commission at its eleventh session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information.

8. 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. Ownership claims*

9. 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 circumstances directly relating to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

10. The present decision applies to Claim Nos. 35609, 35610 and 35611, each of which has been brought by the same Claimant in his capacity as a family household member of the same deceased property right holder (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. The Claimant is the son of the property right holder and thus falls within the definition of family household member. Claim Nos. 35609 and 35610 relate to a part of the same parcel of land, while Claim No. 35611 relates to a separate parcel. In each of the claims, the Claimant seeks the resolution of an ownership claim, and all of them relate to agricultural properties.

11. The Claimant has submitted in each of the claims a possession list in support of the Property Right Holder’s claim to ownership. The Commission is satisfied that

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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 its all 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.

these documents indeed constitute proof of ownership. All of these documents have been verified as being valid by the Executive Secretariat.

12. All of the claims are contested in the sense that the party occupying the claimed 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. The Respondent in each of the three claims is the same individual.

13. The Respondent has made representations or submitted documents in each of the claims purporting to show ownership or use rights over the claimed property. In each of the claims, the Respondent alleges that he has the Claimant’s permission to use the land. The Respondent contends that his agreement with the Claimant was that he would purchase the land from the Claimant if he did not return to Kosovo, but would vacate the land if the Claimant did return. However, the Respondent has not produced any documents in support of a legal right to either usage or ownership of the land in any of the claimed parcels.

14. The Claimant denies that permission has been provided to the Respondent to use the land. He states that he met with the Respondent several years ago to discuss the possible sale of the land to the Respondent, but that as the Respondent had insufficient funds to purchase the property, the sale did not proceed.

15. In these circumstances, and the Claimant having demonstrated the Property Right Holder’s ownership of the claimed property as stated above, the claims stand to be granted. While the Claimant states that the Property Right Holder has died, he has not produced any documents proving the death. Accordingly the claim is granted in the name of the deceased Property Right Holder.

16. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in Claim Nos. 35609, 35610 and 35611:

- (a) the Property Right Holder has an ownership right in respect of the claimed property, or such part thereof as specified in the respective individual decision;
- (c) the Claimant in each case is not now able to exercise his rights to the property; and
- (d) the claim in each case involves circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

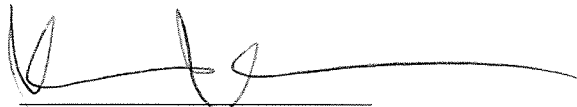
*B. Claim for compensation*

17. In all three claims, namely Claim Nos. 35609, 35610 and 35610, the Claimant also seeks, in addition to ownership, compensation for physical damage to and 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 this claim must be dismissed.

C. *Concluding remarks*

18. 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.

19. Section 8.8 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 allow 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 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.**