

Kosovo Property Claims Commission  
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Komisija Kosovske Agencijeza Imovinu

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## DECISION

PANEL NO: 1

DECISION NO.: KPCC/D/C/132/2011  
DECISION DATE: 26/10/2011

Commissioners Heiskanen (Chairperson),  
Vokshi and Wühler

## ORDER

(1) *In the 9(nine) claims, referred to in parts A and B of the attached Schedule, with the exception of Claim Nos. 00065 and 24486, 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. 00065, referred to in part A of the attached Schedule, the Commission*

*decides that*

*The claimant has established ownership over the claimed commercial premises and a use right over the subjacent land;*

(3) *In Claim No. 24486, 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;*

(4) *In Claim No.01214, referred to in part C of the attached Schedule, the Commission*

*decides that*

*The property right holder has established a use right over the property;*

*(5) In each of the 11 (eleven) claims identified in paragraphs (1), (2), (3) and (4) above, with the exception of Claim No. 13404, the Commission*

*orders that*

- (a) The claimant or the property right holder, as the case may be, be given possession of the associated land parcel on which the residential property stood;*
  - (b) Any other person 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 be evicted from the property.*
- (6) The Commission additionally decides that Claim Nos. 00108, 14549, 24486 and 33371 be dismissed insofar as the Claimant seeks compensation for loss of use of the claimed property.*
- (7) In the 5 (five) claims, referred to in part F of the attached Schedule, the Commission decides that the claim be dismissed.*
- (8) In the 7 (seven) claims, referred to in part D and E 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>

<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.

5. The Commission held its twenty-fifth session from 24 to 26 October 2011 in Prishtinë/Pristina. A total of twenty-two commercial property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-fifth session, together with supporting documentation, claims processing reports, verification reports and other relevant information.

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.

7. The present decision applies to the twenty-two commercial claims submitted to the Commission during the twenty-fifth session. In each of these claims, the Claimant seeks the resolution of an ownership claim, with the exception of Claim Nos. 01214 and 10543, in which the Claimants seek the restitution of a use right. In Claim No. 24486 the Claimant seeks the resolution of an ownership claim for commercial property which, at the time of its notification, was found to be entirely destroyed.

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

#### *A. Claims granted*

10. The Commission notes that in the claims identified in parts A, B and C of the attached Schedule, the claimants have submitted various types of documents in support of the ownership claims, including inheritance decisions, contracts on joining of means, possession lists, contract on use, certificates for immovable property right, contract on sale, allocation decisions and a court decision on the recognition of ownership right. 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.

1. *Claim Nos. 13010, 24476, 33071 and 33371*

11. In Claim Nos. 13010, 24476, 33071 and 33371, referred to in part A of the attached Schedule, the Claimant has filed the claim in the capacity of a property right holder. In light of the Commission's findings in paragraph 11 above, the claims stand to be granted.

2. *Claim Nos. 00108 and 24486*

12. In Claim Nos. 00108 and 24486, referred to in part A of the attached Schedule, the property right holder is represented by an authorized natural person. The Commission has determined that the authorized individual possesses a valid and duly executed power of attorney pursuant to section 5.2 of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. Accordingly a decision confirming the property right in favour of the property right holder stands to be granted in these claims.

3. *Claim No. 00065*

13. In Claim No. 00065, referred to in part B of the attached Schedule, the Claimant submitted the claim in his capacity as the property right holder. The Claimant asserts that he bought the claimed property (a shop) from the Yugoslav National Army in January 1999. Pursuant to the purchase contract, which has been positively verified by the Executive Secretariat, the Claimant acquired ownership over the commercial premises and a permanent use right over the underlying land, while the ownership of the underlying land remains with the Municipality of Mitrovica. The Claimant used the claimed property until September 1999, when he was forced to leave the property by unknown persons.

14. The Respondent to the claim is the Municipal Assembly of Mitrovica. The Respondent claims that ownership over the shop has been transferred in 2003 by an administrative decision taken by the Municipal Assembly from the Yugoslav National Army to the Municipal Assembly, based on Article 3 of the Law on Registration of Real Estate in Social Ownership (Official Gazette of the SAP Kosovo 37/71).

15. Based on the evidence before it, the Commission finds that, while it appears that the Municipality could validly transfer the ownership of the underlying land, it could not validly transfer ownership of the shop as by virtue of the purchase contract dated 29 January 1999 between the Claimant and the Army, the Army was no longer the owner of the claimed property. Nor could the Municipality validly extinguish the Claimant's use right over the subjacent land, which the Claimant had acquired by virtue of the purchase contract. Accordingly, the Commission confirms the Claimant's ownership over the claimed commercial premises (the shop) and his use right over the underlying land.

4. *Claim No. 13404*

16. In Claim No. 13404, referred to in part B of the attached Schedule, the Claimant submitted the claim in his capacity of a property right holder, namely the co-owner of the

claimed commercial premises, which are being utilized as a restaurant. In support of his claim, the Claimant produced a purchase contract between the Claimant, another co-owner of the property and the seller, the construction company "Grading," dated 11 May 1992. The Executive Secretariat has verified the purchase contract as being genuine.

17. The Respondent, who is currently occupying the property, objects to the Commission's jurisdiction, stating that in 2004 the Claimant and the co-owner filed a lawsuit against him seeking repossession. According to the Respondent, these proceedings are still pending with the Municipal Court. The Claimant confirms that the lawsuit is indeed still pending.

18. The Commission notes that, pursuant to section 18 of UNMIK Regulation 2006/50 as adopted by Law No. 03/L-079, claims in respect of which judicial proceedings have been commenced prior to the entry into force of the regulation, i.e., 16 October 2006, are excluded from the Commission's jurisdiction. However, in the present case, even though the judicial proceedings were commenced before the critical date, those proceedings relate merely to repossession and not confirmation of ownership, which is the relief sought in the present claim. The Commission finds that, in these circumstances, the exclusion in section 18 of UNMIK Regulation 2006/50 as adopted by Law No. 03/L-079 does not apply. Accordingly the claim stands to be granted and the Claimant's ownership over the ideal part of ½ of the claimed property be confirmed. However, given that the claim for repossession is pending before the local court, the Commission considers that this element of the Claimant's claim falls outside its jurisdiction and accordingly stands to be dismissed.

#### 5. *Claim No. 44118*

19. In Claim No. 44118, referred to in part B of the attached Schedule, the Claimant filed the claim in his capacity as the property right holder. In support of the claim the Claimant submitted a purchase contract dated 12 February 1992 in respect of the claimed property, concluded between the Claimant and the Yugoslav Ministry of Defense. The Executive Secretariat has verified the contract as being genuine. The Claimant stated that the claimed property was a garage, however, the property has subsequently been converted into a shop.

20. The Respondent, who is the current occupant of the claimed property, claims that he purchased the property as a garage, together with an apartment. The Respondent submitted a purchase contract regarding an apartment dated 9 May 2002 between the Respondent's brother Naim Kuqi and Miodrag Stevanovic as the seller. However, the Commission notes that the purchase contract refers to a residential property different from the claimed commercial property and does not mention the garage.

21. Accordingly a decision confirming the property right in favour of the property right holder stands to be granted, as set out above.

#### 6. *Claim No. 01214*

22. In Claim No. 01214, referred to in part C of the attached Schedule, the Claimant filed the claim in her capacity of a family household member, namely the daughter of the property right holder, seeking the confirmation of her fathers use right over a shop.

23. The Claimant submitted a contract on use in favour of her father with regard to the claimed property dated 1 March 1984. The contract has been verified by the Executive Secretariat to be valid. No responding party has contacted the Executive Secretariat to contest

the Claimant's claim. Accordingly a decision confirming the use right in favour of the property right holder stands to be granted, as set out above.

*B. Claims dismissed or refused*

24. 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.

25. 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.

26. 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.

27. 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.)

28. 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. Claim No 00442*

29. Claim No. 00442 was lodged by an authorized person on behalf of the Claimant who is the alleged property right holder. The Claimant asserts that he purchased the property in 2002 and acknowledges that he has never been in possession of the claimed property, and that he did not lose possession of the property as a result of the armed conflict in 1998/99. In

these circumstances the claim falls outside the jurisdiction of the Commission and stands to be dismissed.

2. *Claim No 00278*

30. The Claimant filed the claim in her capacity as the alleged property right holder. The Claimant alleges that she purchased the property, a shop, in 2005. The Claimant does not allege that she lost possession of the claimed property as a result of the armed conflict in 1998/99, and indeed, give the date of loss, there could be no factual basis for such an allegation. Consequently, the claim falls outside the jurisdiction of the Commission and stands to be dismissed.

3. *Claim Nos. 08655, 10543, 11529, 48050, 48051, 48052 and 49216*

31. In Claim Nos. 08655, 10543, 11529, 48050, 48051, 48052 and 4921, which have been filed by five different Claimants, the Claimants seek various property rights and remedies over six different shops which are located on the same parcel, which belongs to the Municipality of Klinë/Klina.

32. In Claim Nos. 08655 and 10543, the Claimant has submitted the claim in his capacity as property right holder. The Claimant seeks confirmation of a use right and repossession of a shop, which was erected based on a temporary allocation decision issued on 19 February 1996 by the Municipality of Klinë/Klina.

33. The Commission notes that the allocation decision issued by the Municipality was of a temporary character, for a period of two years, and limited to the construction and use of a prefabricated structure on municipal land and as such did not allow the user to construct a permanent (immoveable) object. However, in breach of the permit, the Claimant in Claim Nos. 08655 and 10543 built what appears to be a permanent structure, a shop. As there is no evidence provided by the Claimant which would show that the Claimant's use right had been extended beyond the two-year period fixed in the temporary allocation decision of 1996, the Claimant's use right must be considered to have ceased on 18 February 1998. Accordingly, in the absence of a valid property right, the Claimant's claim stands to be refused.

34. Claim Nos. 48050, 48051 and 48052 are filed by two different Claimants; Claim No. 48050 is submitted by Golub Zivkovic, and Claim Nos. 48051 and 48052 are submitted by Sasa Zivkovic. The Claimants are claiming ownership over commercial premises (shops) located in the same parcel. In support of their claims, the Claimants have produced purchase contracts dated 24 January 1995 between each of them and the enterprise "B.K. Company" relating to the claimed properties. The Claimants acknowledge that the purchase contracts were not certified by the Municipal Court. The Claimants were asked to present further evidence for their claims of ownership, but they both failed to do so. The Commission finds that the Claimants fail to show an ownership right over the claimed properties and the three claims stand to be refused.

35. In Claim No. 49216 the Claimant alleges that he has been given a permanent right to use the municipal land and the permission to construct a permanent structure on the land. In support of his claim the Claimant submitted various documents, including allocation decisions and decisions of the Municipal Assembly. None of the various documents submitted by the Claimant could have been verified as being genuine by the Executive Secretariat. The Commission finds that the Claimant failed to prove his alleged right of ownership over the claimed property and the claim stands to be refused.

36. In Claim No. 11529 the Claimant seeks compensation for not being able to use the commercial premises (shop) that he claims to have a use right to as a result of the conflict. Under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the Commission has no jurisdiction over such compensation claims. Accordingly the claim stands to be dismissed.

4. *Claim No.14499*

37. Claim No. 14499 is submitted by the Claimant in his capacity of alleged property right holder. The Claimant's wife confirms that the property had been sold in 2007 to the Respondent. The fact that the Claimant has been able to sell the property shows that he is able to exercise his property rights and accordingly it cannot be said that he has lost his property right as a result of the conflict. The Commission further notes that the Claimant also seeks compensation for not being able to use the commercial premises (shop) as a result of the conflict. Under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the Commission has no jurisdiction over such compensation claims. Accordingly the claim stands to be dismissed.

5. *Claim No.44635*

38. Claim No. 44635 is submitted the Claimant in his capacity of the alleged property right holder. In support of his claim the Claimant produced a contract on joining of means between himself and the enterprise "Gradjenivar – Kralevo" regarding the construction of the claimed property from 1996. The contract is not certified in court and thus could not be verified by the Executive Secretariat. The Claimant has not produced any evidence on the payment of the purchase price. The Commission finds that the Claimant failed to prove his alleged right of ownership over the claimed property and the claim stands to be refused.

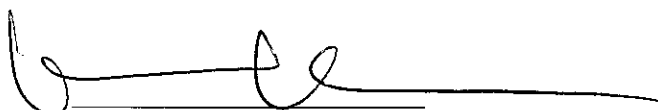
C. *Claims for compensation*

39. In Claim Nos. 00108, 14549, 24486 and 33371, referred to in the relevant columns of parts A and D 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.

D. *Concluding remarks*

40. 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.

41. 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.**