

On 20 November 2008, the Special Chamber requested the Claimant to submit within 15 (fifteen) days from acknowledgment of the service of the order:

- “1. The most recent excerpts from the Immovable Property Rights Register (“Register”) in regard to the property rights of the parcels of land mentioned in their claim. The requested excerpts issued by the competent Municipal Cadastral Office must show the legal basis (Court Decision, Administrative Decision, Sale Contract etc) on which these property rights were entered in the Register.*
- 2. Precise details of the Law on the basis of which the contested sale contract (by which the relevant parcels were taken from the possession of the Claimant’s legal predecessors) was entered into by the parties, with indication of what remedies such Law provided.*
- 3. Precise details as to whether the taking of the land was contested at the time and if so, before which organs and at what time.*
- 4. Precise details of the evidence which the Claimant intend to provide during the hearing of the case to prove her allegation.”*

The Claimant was duly warned that failure to comply with this order could result in the dismissal of the claim as inadmissible. The Claimant confirmed receipt of this order on 2 December 2008.

On 12 December 2008, the Claimant filed a submission in which he claimed not to be able to obtain the requested possession list, because the Directorate for Cadastre, Geodesy and Property of the Prishtinë/Priština Municipality had refused to provide the documents. The Claimant requested the Special Chamber to obtain such documents directly from the Directorate for Cadastre, Geodesy and Property of the Prishtinë/Priština Municipality. Furthermore, the Claimant claimed that no special law on contracts regarding the purchase or sale of immovable property existed. The Claimant instead referred to general contractual principles and Article 8a of the Law on Circulation/Transfer of Immovable Property (Official Gazette of the Socialist Republic of Serbia No. 28/87) as well as to Article 110 of the Law on Contractual Relations. The Claimant requested the Special Chamber to hear [REDACTED] and [REDACTED] both from Laplje Selo. The Claimant proposed the Special Chamber to appoint two experts, one who identifies the disputed parcels and one who estimates the real price.

On 23 December 2009, the Special Chamber issued two orders. One order was sent to the Directorate for Cadastre, Geodesy and Property of Prishtinë/Priština Municipality requiring it to submit to the Special Chamber the most recent excerpts from the Immovable Property Rights Register in regard to the parcels mentioned above within 7 (seven) days from the date of service of the order. Another order was sent to the Claimant’s Representative [REDACTED] requesting the Claimant to submit within 14 (fourteen) days from the receipt of the order: the original proof of power of attorney (not a copy) including the date the power of attorney was issued together with English translation and proof that notice has been given to the Agency in due time pursuant to Sections 29.1 and 30.2 of UNMIK REG 2002/12 together with English translation.

The Claimant was advised that should he fail to submit the required documents within 14 (fourteen) days from acknowledgement of service of this order, the Special Chamber would reject the claim on the grounds of admissibility. The Claimant’s lawyer received this order on 6 January 2010.

On 13 January 2010 the Special Chamber received a submission from the Claimant with a copy of a power of attorney dated 22 September 2008 and a copy of a notification to the Privatization Agency of Kosovo (PAK), logged by the PAK on 27 October 2008.

Legal Reasoning

According to Section 28.2 (e) of UMMIK AD 2008/6 a claim shall only be admissible, if the Claimant has given notice to the Agency of his/her/its intention to file a claim against an Enterprise or the Agency within the prescribed period pursuant to Sections 29.1 or 30.2 of UNMIK REG 2002/12.

Section 29.1 of UNMIK REG 2002/12 stipulates that *“no legal proceedings against an Enterprise shall take place in a court without the claimant providing proof that written notice of intention to file an action was submitted to the Agency”*. This requires the Claimant to notify the Agency before initiation of legal proceedings, as this stipulation refers to the Claimant’s intention to file an action.

Since the Claimant has not filed proof of any such notice with his claim, the Special Chamber, in its order issued on 23 December 2009, requested the Claimant pursuant to Section 28.4 of UNMIK AD 2008/6 to submit proof that notice has been given to the Agency in due time pursuant to Sections 29.1 of UNMIK REG 2002/12.

However, the notification filed with the Special Chamber thereafter was logged by the PAK on 27 October 2008, well after initiation of the proceedings before the Special Chamber on 10 October 2008. The Claimant has therefore not complied with the order issued on 23 December 2009, which requires proof of a notice pursuant to Sections 29.1 of UNMIK REG 2002/12.

Therefore, the Claim is rejected as inadmissible pursuant to Section 28.4 as read in conjunction with Section 28.2 (e) of UNMIK AD 2008/6.

Since the Special Chamber did not render a Decision on the merits of the claim the Claimant may file a completed or corrected claim pursuant to the law.

Pursuant to Section 9.5 of UNMIK REG 2008/4 an Appeal against this Decision can be submitted in writing to the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters within 30 (thirty) days from the receipt of this decision.

Laura Plesa, Presiding Judge EULEX	signed
Anna Bednarek, Judge Rapporteur EULEX	signed
Gyltene Sylejmani, Judge	signed
Tobias Lapke, Registrar EULEX	signed