



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/36/2009
DECISION DATE: 23/04/2009

ORDER

(1) In each of the 297 (two hundred and ninety seven) claims identified in parts A, B and C 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, or such part thereof as specified in the respective individual decision;

(2) In each of the 141 (one hundred and forty one) claims identified in part D of the attached Schedule, the Commission

decides that

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

(3) In each of the 438 (four hundred and thirty eight) claims referred to in paragraphs (1) and (2) above, except Claim Nos. 06617, 25073, 38936 and 53834, the Commission

orders that

(a) The claimant or the property right holder, as the case may be, 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;*
- (4) *In Claim Nos. 06160 and 31883, where the claimed property is currently occupied by KFOR which enjoys immunity from legal process, the Commission orders that*
- (a) *The claimant or the property right holder, as the case may be, be given possession of the claimed property upon its vacation by KFOR;*
- (b) *Any person other than KFOR occupying the property after its vacation by KFOR, vacate the same within 30 (thirty) days of the delivery of this order, or immediately after its vacation by KFOR if this is later; and*
- (c) *Should any person other than KFOR occupying the property fail to comply with the order to vacate within the time stated, they be evicted from the property;*
- (5) *In each of the claims identified in the relevant columns in parts A, B, C and D of the attached Schedules the Commission additionally decides that the claims be dismissed insofar as the claimants seek compensation for physical 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, 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 the 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 or the property right holder, as the case may be, 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.)¹

¹ 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

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 KPA (the "Executive Secretariat") 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 all of the claims covered by the present decision the claimants seek the resolution of an ownership claim, and all of them relate to agricultural properties, including agricultural land, pasture and forests. Based on its review of the claims and of the supporting documentation, and of the information provided and the verification conducted by the Executive Secretariat, a total of three claims were referred by the Commission back to the Executive Secretariat for additional review and verification, or were withdrawn by the Executive Secretariat. These claims, which are listed in part F ("Claims referred back") and part G ("Claims withdrawn") of the attached Schedule, will be considered by the Commission in due course. During the session, one residential property claim was recategorized as an agricultural property claim. The present decision applies to the 438 claims which are listed in parts A, B, C and D of the attached Schedule. The remaining three claims are covered by another decision, namely KPCC/D/A/37/2008.

10. The Commission notes that all of the claims listed in parts A, B, 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, use or cultivation 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. 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 as adopted by Law No. 03/L-079. Accordingly these claims must be considered uncontested.

11. In the claims identified in parts A, B, C and D of the attached Schedule, the Commission notes that the claimants have submitted various types of documents in support of the ownership claims, including possession lists, purchase contracts, contracts on gift, contracts on division of property, inheritance decisions, court decisions

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.

recognizing ownership, contracts on long life care and certificates of immovable property rights. The Commission is satisfied that these documents indeed constitute proof of ownership. All of these 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 the 117 claims identified 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, all of these claims stand to be granted. In Claim No. 54743, the Claimant is the property right holder of an ideal part of an uncategorized road.

13. In the 100 claims identified in part B of the attached Schedule, the claimants have filed the claim in the 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 in the claims identified in part B of the attached Schedule fall within the definition of family household member. Accordingly a decision confirming the property right in favour of the property right holder stands to be granted in each of the claims identified in part B of the attached Schedule, as set out above. In the claims identified in column 5 of this part B of the Schedule, the claimant alleges that the property right holder has died but no acceptable evidence has been submitted by the claimant that would establish death, nor has the Executive Secretariat been able to locate any such documents. 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 the 80 claims identified in part C of the attached Schedule, the claimant or the current property right holder, as the case may be, was not the property right holder at the date of loss of possession of the claimed property, but has adduced evidence of having subsequently succeeded to the respective ownership right by virtue of inheritance, contract on gift or purchase contract, as the case may be. The claimant or the current property right holder, as the case may be, must be considered as having succeeded to all the rights belonging to an owner, including the right to claim for confirmation of ownership and for repossession in the present proceedings. These claims therefore stand to be granted, as set out above. In the claims identified in column 4 of this part C of the Schedule, the claimants have filed the claim as a family household member or authorized representative of a property right holder who has adduced evidence of having succeeded subsequent to the date of loss of possession of the claimed property to the respective ownership right. The Commission determines that the claimants in these cases are either family household members of the current property right holder within the meaning of

section 1 of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 or possess 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, and thus are entitled to bring a claim on behalf of the current property right holder.

15. In the 141 claims identified in part D of the attached Schedule, the claimant was not the property right holder at the date of loss of possession of the claimed property but asserts to having succeeded to the property. In each of these claims the claimant has established that she or he is a family household member of the deceased property right holder. However, no valid inheritance decision or other documentary evidence has been submitted by the claimants that would establish any of the claimants as being an heir to the claimed property, nor has the Executive Secretariat been able to locate any such documents. Some claimants have submitted as evidence "inheritance decisions" purportedly issued by parallel courts in Serbia. The Commission does not consider that such documents establish entitlement to inheritance. The Commission itself has no jurisdiction to resolve issues relating to inheritance. Accordingly a decision confirming the property right in favour of the deceased property right holder stands to be granted in each of these cases, as set out above. The Commission's decision with respect to all of the claims identified in this part D of the attached Schedule is without prejudice to the determination by the competent court as to how the heirs will succeed to the property right of the deceased. In the claims identified in column 4 of this part D of the attached Schedule, the family household member of the deceased property right holder is represented by an authorized natural person with a power of attorney. The Commission has determined that in each of these claims the authorized natural person possesses a valid and duly executed power of attorney from the family household member of the deceased property right holder 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 deceased property right holder stands to be granted in each of these cases.

16. The various types of documents relied upon by the claimants in support of the claims referred to in paragraphs 12, 13, 14 and 15 above are listed in the relevant column of parts A, B, C and D of the attached Schedule.

17. In a number of claims the claimants or the property right holders, as the case may be, left the property outside the period 27 February 1998 and 20 June 1999, referred to in section 3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. The Commission has determined that, even though the date of loss in these claims fell outside the above period, the loss of property right in each case occurred in circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999, as required by section 3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

18. In Claim Nos. 25073, 38936 and 53834 (listed in column 4 of the attached Schedules), the Claimants seek confirmation of ownership right over the claimed properties without an eviction order as permission has been granted to a named individual to use the claimed property. In Claim No. 06617, the Claimant states that he has granted his brother the right to use the property for one year and requests that no eviction order be issued for that period of time. In these circumstances, an order confirming the property

right in favour of the claimant or the property right holder, as the case may be, stands to be granted, without any other form of ancillary relief, as set out above.

19. In Claim Nos. 06160 and 31883, the claimed properties are currently occupied by KFOR, which under UNMIK/REG/2000/47 enjoys immunity from legal process. The Commission considers that these claims, to the extent that they seek confirmation of ownership, are *in rem* and that, accordingly, their granting does not infringe upon the immunity enjoyed by KFOR. The Executive Secretariat has informally consulted KFOR, which, it appears, does not disagree with this view. However, the immunity enjoyed by KFOR prevents the Commission from issuing an eviction order against KFOR as the current occupant of the claimed properties. Accordingly, the eviction order in the above claims applies only to any third parties who may illegally occupy the claimed properties after their vacation by KFOR.

20. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that:

- (a) the claimant or the property right holder, as the case may be, had an ownership right in respect of the claimed property, or such part thereof as specified in the respective individual decision;
- (b) each claim is uncontested in that no person has contested the validity of the claim;
- (c) the claimant or the property right holder, as the case may be, in each case is not now able to exercise his or her ownership right; 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. Claims for compensation

21. In the claims identified in the relevant columns of parts A, B, C 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.

C. Concluding remarks

22. In view of the foregoing, the Commission finds that the claims listed in parts A, B, C, D and E of the attached Schedule succeed and an order be made in respect of each claim as set out above.

23. 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 HPCC, respectively, and accordingly the jurisdiction of the two Commissions, are not identical in that, unlike HPCC, the present Commission has jurisdiction to confirm ownership. Thus the decisions of HPCC do not constitute *res judicata* before the present Commission. Moreover, in cases where 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.

24. The Commission's above 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.

25. 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-079 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.

Spreadsheet /Lista /Prilog
Part A/Pjesa A/Deo A

KPA08847	KPA10577	KPA11050	KPA11051	KPA11053	KPA19164	KPA19367
KPA21766	KPA25263	KPA26334	KPA27066	KPA28327	KPA32335	KPA32338
KPA42021	KPA43254	KPA47715	KPA54743	KPA56533	KPA06911	KPA13743
KPA13744	KPA15558	KPA21370	KPA21785	KPA21786	KPA21790	KPA22360
KPA23231	KPA26336	KPA35279	KPA35283	KPA49045	KPA50298	KPA50301
KPA50302	KPA50585	KPA53133	KPA53137	KPA08324	KPA21784	KPA21788
KPA23232	KPA23234	KPA23399	KPA26293	KPA26294	KPA26303	KPA26304
KPA27662	KPA27701	KPA30970	KPA30971	KPA37297	KPA37298	KPA38806
KPA45216	KPA45218	KPA06617	KPA07697	KPA17546	KPA23233	KPA23235
KPA23236	KPA23489	KPA26289	KPA27742	KPA38288	KPA38953	KPA40283
KPA42383	KPA49270	KPA49283	KPA50927	KPA50936	KPA53850	KPA54116
KPA54535	KPA00631	KPA01297	KPA26297	KPA26305	KPA26673	KPA27220
KPA27900	KPA35235	KPA38808	KPA41029	KPA41508	KPA42023	KPA46049
KPA47712	KPA47713	KPA47716	KPA52278	KPA52280	KPA54316	KPA10320
KPA14574	KPA22928	KPA23057	KPA27768	KPA28425	KPA28654	KPA33650
KPA33654	KPA38678	KPA44715	KPA44724	KPA45332	KPA45333	KPA47621
KPA48993	KPA48995	KPA48996	KPA50285	KPA53834		

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

KPA16266	KPA21255	KPA23197	KPA37527	KPA38936	KPA39067	KPA40716
KPA40937	KPA41143	KPA41147	KPA42036	KPA46065	KPA47561	KPA50270
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KPA28722	KPA28723	KPA28727	KPA28729	KPA29635	KPA30894	KPA32020
KPA32027	KPA38052	KPA38613	KPA41225	KPA41227	KPA41228	KPA42472
KPA42473	KPA42475	KPA48143	KPA49578	KPA52246	KPA06160	KPA10560
KPA10561	KPA11280	KPA21194	KPA27084	KPA33592	KPA39372	KPA39373
KPA39377	KPA39378	KPA39380	KPA39382	KPA39388	KPA47033	KPA47034
KPA47035	KPA47036	KPA50940	KPA56445	KPA08957	KPA08958	KPA14276
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KPA44093	KPA47563					

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

KPA11639	KPA13761	KPA17025	KPA25625	KPA28079	KPA31644	KPA31647
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KPA13783	KPA16529	KPA23521	KPA23542	KPA25627	KPA28583	KPA36150
KPA39237	KPA50217	KPA51814	KPA51819	KPA51821	KPA51823	KPA51824
KPA51825	KPA52257	KPA52609	KPA52610	KPA06798	KPA21408	KPA11638
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KPA48259	KPA49590	KPA51820	KPA51822	KPA53772	KPA53773	KPA53775
KPA53778	KPA53784	KPA53785	KPA10032	KPA10033	KPA24368	KPA24370
KPA25464	KPA34036	KPA34038	KPA50062	KPA50063	KPA50064	KPA50065
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KPA56151	KPA56152	KPA21333				

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KPA33176	KPA33180	KPA33184	KPA33194	KPA33942	KPA33949	KPA40789
KPA42263	KPA42265	KPA48359	KPA48361	KPA48364	KPA48365	KPA48377
KPA49104	KPA49109	KPA49110	KPA49112	KPA49114	KPA10217	KPA10735
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KPA33188	KPA33191	KPA33193	KPA33398	KPA37380	KPA40858	KPA42267
KPA43181	KPA48363	KPA48372	KPA52681	KPA54031	KPA54260	KPA54271
KPA54272	KPA54273	KPA54276	KPA38193	KPA41181	KPA41182	KPA42262
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KPA11229	KPA11230	KPA16112	KPA31918	KPA33742	KPA33751	KPA38015
KPA38194	KPA38198	KPA38199	KPA38200	KPA38201	KPA41200	KPA47798
KPA47799	KPA08890	KPA08892	KPA31896	KPA31898	KPA31902	KPA31904
KPA31906	KPA31907	KPA31913	KPA33745	KPA39578	KPA40085	KPA40087
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KPA54603						