



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/52/2009  
DECISION DATE: 19/8/2009

Commissioners Heiskanen (Chairperson),  
Vokshi and Wühler

## ORDER

*In each of the 26 (twenty six) claims identified in the attached Schedule, the Commission decides that the claims be dismissed.*

## 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 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.)<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 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 thirteenth session from 17 to 19 August 2009 in Prishtinë/Pristina. A total of 1,036 agricultural property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its thirteenth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. The Executive Secretariat advised the Commission during the session that in 204 of those claims the claimed properties had been incorrectly physically notified. The Commission has suspended the determination of these claims pending their re-notification by the Executive Secretariat.

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. 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 eight claims were referred by the Commission back to the Executive Secretariat during the session for additional review and verification, or were withdrawn by the Executive Secretariat. Moreover, during the session one agricultural claim was recategorized as a residential property claim.

10. The present decision deals with the 26 agricultural claims listed in the attached Schedule. 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. A further 797 claims, which were granted by the Commission, are covered by decision KPCC/D/A/51/2009.

11. 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.

12. 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

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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.

be directly related to or result from the conflict, it must be satisfied that there is some evidence indicating that the property loss involved circumstances surrounding the conflict.

13. In Claim Nos. 26370, 26371, 26372, 26373, 26374, 26375, 26378, 26379, 26380, 26381, 31212, 31213, 31219 and 31221, the Claimant, who filed the claims in his capacity as property right holder, states that he left Kosovo in 1970 for Serbia and has continued to use his properties since that time. He states that he was never displaced by the conflict and has never lost possession of his properties. He has filed his claim for the purposes of confirmation of his property right and to ensure the legal security of his title.

14. In Claim No. 41153, 41155, 41156, 41157, 41158, 41160, 42189, 42190, 42191, 42192 and 42193, the Executive Secretariat has verified the Claimant's father as the property right holder through the displaced cadastral archives in Serbia. The Commission consequently deems that the Claimant has filed the claims in his capacity as family household member of the property right holder. The Claimant advised the Executive Secretariat that his father died 15 years ago. The Claimant confirms that he was not displaced by the conflict in Kosovo and never lost possession of his father's properties. He states that he left Kosovo in 2002 on account of the difficult situation and lack of opportunities in the village, and that he was not forced to leave the village and could return to the claimed properties without problem at any time. In the meantime, he had given permission to his nephew to use the properties. The Claimant states that he lodged a claim for the purpose of obtaining confirmation of his legal right over the properties.

15. In Claim No 07942, the Claimant acknowledges that he lost possession of the claimed property as a result of a family dispute in or about 1992. The Commission has previously dismissed a number of other claims lodged by the same Claimant on the basis that they were unrelated to the 1998-1999 conflict (see the Commission decisions KPCC/D/A/17/2008 of 30 April 2008 and KPCC/D/A/30/1998 of 19 December 2008).

16. There is no evidence available to the Commission in any of the claims referred to in paragraphs 13, 14 and 15 above to indicate that the claimants or the property right holders, as the case may be, have been displaced from the claimed property, or have lost possession or control over such property, temporarily or otherwise, as a consequence of the conflict. Accordingly the Commission finds that these claims stand to be dismissed and an order be made as set out above. The Commission's decision is without prejudice to the right of the claimants or the property right holders, as the case may be, to seek confirmation of their property right over the claimed properties before the competent local authorities, in accordance with the applicable law.

#### *B. Compensation*

17. In the claims identified in the relevant column 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 also stand to be dismissed.

C. *Concluding remarks*

18. 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.

Further information on the appeals procedure 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

KPA07942	KPA26370	KPA26371	KPA26372	KPA26373	KPA26374	KPA26375
KPA26378	KPA26379	KPA26380	KPA26381	KPA31212	KPA31213	KPA31219
KPA41153	KPA41155	KPA41156	KPA41157	KPA41158	KPA41160	KPA31221
KPA42189	KPA42190	KPA42191	KPA42192	KPA42193		