



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/60/2010/CORR 1
DECISION DATE: 25/02/2010
DATE OF CORRECTION: 15/09/2010

ORDER

(1) In each of the 478 (four hundred and seventy eight) 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 389 (three hundred and eighty nine) 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 867 (eight hundred and sixty seven) claims referred to in paragraphs (1) and (2) above, except Claim Nos. 37857, 37834, 43146, 47121, 47122 and 47124, 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 each of the claims identified in the relevant columns in parts A, B, C and D of the attached Schedule, 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*
- (5) *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.

REASONS FOR THE DECISION

3. 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.)

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.)¹

5. The Commission held its fifteenth session from 22 to 25 February 2010 in Prishtinë/Pristina. A total of 1,084 agricultural property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its fifteenth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. A further two residential property claims presented to the Commission were re-categorized by the Commission as agricultural property claims during the session. The Commission also finalized the adjudication of an additional sixteen claims which had been presented to the Commission by the Executive Secretariat in the thirteenth session but in which the Commission had suspended deliberations pending confirmation of the physical notification of the claimed properties.

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.

A. *Ownership claims*

7. 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.

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 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.

8. The present decision deals with the 867 agricultural property claims which are listed in parts A, B, C and D of the attached Schedule. Based on its review of the claims and of the supporting documentation during the session, and of the information provided and the verification conducted by the Executive Secretariat, a total of nineteen agricultural 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 E (“Claims referred back”) and part F (“Claims withdrawn”) of the attached Schedule to this decision will be considered by the Commission in due course. A further 216 agricultural property claims are covered by two other decisions, namely KPCC/D/A/61/2010 and KPCC/D/A/62/2010.

9. 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, 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 as adopted by Law No. 03/L-079. Accordingly these claims must be considered uncontested.

10. 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 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.

11. In the 105 claims identified in part A of the attached Schedule, the claimants have filed the claim in the capacity of a property right holder. In light of the Commission’s findings in paragraph 10 above, all of these claims stand to be granted.

12. In the 199 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 the relevant column of 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.

13. In the 174 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 the relevant column of this part C of the Schedule, the claims have been filed either by a family household member or by an authorized representative acting on behalf of the property right holder. 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 are current property right holders who have authorized representatives pursuant to 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, to bring a claim on their behalf. The Commission notes that, while the property right holder in Claim No. 47015 has provided a power of attorney authorizing the holder of the power of attorney to claim compensation for damages caused by KFOR in relation to the property, he has also confirmed his authorization for the power of attorney holder to lodge a claim for confirmation of ownership. (The claim for compensation is dealt with in paragraph 20 below.)

14. In the 389 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 right. 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 the relevant column 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. In Claim No. 24183 both the property right holder at the time of loss as well as the current property right holder have died. The claim is filed by the sister of the deceased property right holder who asserts to having succeeded to the property, however no valid inheritance decision has been provided in relation to the deceased current property right holder. Consequently the claim stands to be granted in the name of the deceased current property right holder.

15. The various types of documents relied upon by the claimants in support of the claims referred to in paragraphs 10, 11, 12, 13 and 14 above are listed in the relevant column of parts A, B, C and D of the attached Schedule.

16. 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.

17. In Claim Nos. 37857, 37834, 43146, 47121, 47122 and 47124 (listed in the relevant column of the attached Schedule), the claimants seek confirmation of ownership rights over the claimed properties without an eviction order as permission has been granted to a named individual to use the claimed property. 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.

18. In Claim No. 13190, the Claimant has died after filing the claim. The Commission considers that a claimant's death during the proceedings cannot affect the validity of the claim. Accordingly a decision confirming the property right in favour of the property right holder therefore stands to be granted, as set out above. This decision is without prejudice to the determination by the competent court as to how the heirs will succeed to the property right of the deceased.

19. 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

20. 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

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

22. 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.

23. 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.

24. 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

KPA44559	KPA00632	KPA00633	KPA00634	KPA06040	KPA06907	KPA06915
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Part B/Pjesa B/Deo B

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Part C/Pjesa C/Deo C

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Spreadsheet /Lista /Prilog
Part D/Pjesa D/Deo D

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KPA35517	KPA37315	KPA37624	KPA38897	KPA38898	KPA38900	KPA44885
KPA47704	KPA47783	KPA51565	KPA53692	KPA06175	KPA25696	KPA32092
KPA32106	KPA34024	KPA37316	KPA37319	KPA38190	KPA48978	KPA49236
KPA49240	KPA50028	KPA50030	KPA50041	KPA50048	KPA50106	KPA53696
KPA26145	KPA30947	KPA32104	KPA37639	KPA38891	KPA38892	KPA44107
KPA44109	KPA44886	KPA48973	KPA48980	KPA49239	KPA50031	KPA50035
KPA50036	KPA50038	KPA50108	KPA53239	KPA52608	KPA17074	KPA25918
KPA30945	KPA30948	KPA30949	KPA31229	KPA32084	KPA32094	KPA32099
KPA32100	KPA32101	KPA32105	KPA32107	KPA38903	KPA38905	KPA50032
KPA50841	KPA50045	KPA01290	KPA21717	KPA30942	KPA30943	KPA30950
KPA30958	KPA30959	KPA30960	KPA34034	KPA36490	KPA36960	KPA38277
KPA38895	KPA38896	KPA38910	KPA38967	KPA39218	KPA47835	KPA48972
KPA56546	KPA14401	KPA14410	KPA16167	KPA16347	KPA16367	KPA25374
KPA37313	KPA37314	KPA38893	KPA38904	KPA44882	KPA50040	KPA50056
KPA50058	KPA50114	KPA50122	KPA50123	KPA50124	KPA56539	KPA50055
KPA07094	KPA15272	KPA15278	KPA15279	KPA19133	KPA24318	KPA27688

KPA27693	KPA30946	KPA32117	KPA38890	KPA38899	KPA38909	KPA50044
KPA50046	KPA50049	KPA50050	KPA50051	KPA50053	KPA56777	KPA07123
KPA11471	KPA11472	KPA15280	KPA24336	KPA26452	KPA40365	KPA40369
KPA40374	KPA40375	KPA40377	KPA44883	KPA50110	KPA50503	KPA52306
KPA55146	KPA56773	KPA56774	KPA56776	KPA56772	KPA37834	KPA06130
KPA07111	KPA24353	KPA11258	KPA24471	KPA37311	KPA40288	KPA40366
KPA40367	KPA40368	KPA40370	KPA40371	KPA40372	KPA40373	KPA41590
KPA45142	KPA51864	KPA52495	KPA53242	KPA15284	KPA07103	KPA07104
KPA11259	KPA13681	KPA24327	KPA24337	KPA31440	KPA33415	KPA36181
KPA36191	KPA37312	KPA38663	KPA38907	KPA38908	KPA47941	KPA51859
KPA51860	KPA52305	KPA52603	KPA06234	KPA06238	KPA06244	KPA10427
KPA16353	KPA37820	KPA39562	KPA39773	KPA41105	KPA42273	KPA46219
KPA47702	KPA47706	KPA47707	KPA49675	KPA50043	KPA50111	KPA50133
KPA52067	KPA48902	KPA24183	KPA27094	KPA01008	KPA01009	KPA01010
KPA06949	KPA25776	KPA34716	KPA47781	KPA38811	KPA29094	KPA29130
KPA46145	KPA49232	KPA54235	KPA47622			