

## DECISION

PANEL NO: 1

DECISION NO.: KPCC/D/A/92/2010  
DECISION DATE: 28/10/2010

## ORDER

- (1) *In each of the 926 (nine hundred and twenty six) claims identified in parts A, B, C and D 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 285 (two hundred and eighty five) claims identified in part E 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 1,211 (one thousand two hundred and eleven) claims referred to in paragraphs (1) and (2) above, 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) *Any person occupying the property vacate the same within 30 (thirty) days of the delivery of this order; and*
  - (c) *Should the any person 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, D and E 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*
- (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, 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 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.)<sup>1</sup>

5. The Commission held its nineteenth session from 26 to 28 October 2010 in Prishtinë/Pristina. A total of 1,241 agricultural property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its nineteenth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. The Commission also finalized the adjudication of two 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 notification of claims over the properties. In sum, a total of 1,243 agricultural property claims were considered by the Commission during the nineteenth session.

6. A total of 318 of the 1,243 claims presented to the Commission at its nineteenth session had not previously been considered by the Commission, while 925 of the claims had been the subject of an earlier Commission decision. However the earlier decisions in these claims were overturned by the Commission on account of an incorrect notification of the claimed properties during claims processing by the Executive Secretariat. These claims consequently stand to be re-determined following correct notification of the claimed property and taking into account the information provided by any respondents to the claim or any current occupants of the properties. In the claims in which previous decisions have been overturned by the Commission, the Executive Secretariat has written to each claimant advising them of the notification error and informing them that their claims will be re-determined following correct notification of the claimed property. The claimants, as well as the relevant cadastral authorities, have been advised that the previous Commission decisions are invalid and cannot be used for the purposes of any legal transaction.

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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 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.

7. At the Commission's nineteenth 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*

8. 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.

9. The present decision deals with the 1,211 agricultural property claims which are listed in parts A, B, C, D and E of the attached Schedule. The remaining 32 claims for agricultural property dealt with by the Commission during the session are covered by two other decisions, namely decision KPCC/D/A/93/2010 and decision KPCC/D/A/94/2010.

10. The Commission notes that all of the claims listed in parts A, B, C, D and E 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. Nine hundred and twenty five claims covered by this decision concern claims which were initially incorrectly notified by the Executive Secretariat and in which decisions were subsequently made by the Commission in reliance upon those notifications. Decisions taken in such claims have been overturned by the Commission to ensure correct notification of the property and provide any persons who may have a legal interest in the property with an opportunity to respond to the claim pursuant to section 10.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. These claims are identified in the relevant columns in parts A, B, C, D and E of the Schedule to this decision. The Executive Secretariat has notified claims in a variety of ways including through the physical notification of the property and/or through notification of the property via publication in gazette and newspapers, through local municipal authorities, municipal courts, local village leaders and through other relevant institutions in Kosovo and Serbia. 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, D and E 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 final court decisions and certificates of

immoveable property rights confirming an ownership interest indeed constitute proof of ownership. The other documents submitted by claimants, including possession lists and contracts involving property transactions, create a rebuttable presumption of ownership. The claims covered by this decision are uncontested and no evidence has been received or obtained by the Secretariat *ex officio* that 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. Many claimants have also submitted additional supporting documents, including tax decisions, witness statements, copies of plans and cadastral decisions.

12. In the 561 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 11 above, all of these claims stand to be granted. In Claim Nos. 15474&15434, the Commission notes that, while the two claims relate to the same property, the Claimants are claiming only for their own respective parts of the property such that the two claims do not overlap. The Commission is satisfied that the Claimants have each established ownership to the respective parts of the claimed property, in such parts as specified in the respective individual decision.

13. In the 231 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, grandchildren, great-grandparents and great-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.

14. In the 15 claims listed in part C 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. In Claim No. 28262 the individual filing the claim has been

issued a power of attorney by the property right holder, although she is the sister of the property right holder and therefore would also have been in a position to file the claim as a family household member. The Commission considers that the power of attorney is the more specific authorization and accordingly the claim is to be considered as having been filed by a holder of a power of attorney rather than by a family household member of the property right holder.

15. In the 119 claims identified in part D 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 whether as a co-owner or a sole owner of the property pursuant to the verified document that proves such succession specified in ideal part of the claimed parcel, including the right to claim for confirmation of ownership or co-ownership as the case may be, 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 D 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. In Claim Nos. 06582, 06583, 06585, 06586, 06587, 06588, 06589, 06590, 06591, 06593, 06598 and 06599, the claims were originally submitted by the cousin of the current Property Right Holder as the Claimant. Since the Claimant was not a family household member of the property right holder, he was asked to provide a power of attorney authorizing his representation by the property right holder. However the Claimant indicated to the Executive Secretariat that he did not wish to submit a power of attorney and did not wish to be contacted about the claims any more. Nor did he wish to withdraw the claims. In the circumstances the Executive Secretariat contacted the current property right holder directly who advised that he wished to continue with the claims in his own right. As the current property right holder was the owner of the property at the time of lodgement of the claims in 2007, and as the claims were filed on his behalf, the Commission considers that he has the requisite capacity to continue with the claims in his own name. In Claim No. 27360, the individual filing the claim has been issued a power of attorney by the property right holder, although he is the son of the property right holder and would also have been in a position to file the claim as a family household member. The Commission considers that the power of attorney is the more specific authorization and accordingly the claim is to be considered as having been filed by a holder of a power of attorney rather than by a family household member of the property right holder.

16. In the 285 claims identified in part E 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 E 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 E 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. 34744 the Commission notes that there is a mill with a surface area of 12 square metres on the property. The Claimant advises that the mill is used for personal and not commercial purposes and accordingly the Commission considers that the claim relates to agricultural property.

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

18. 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.

19. In some cases a 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.

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, D and E 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 directs that 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. Accordingly the decisions of HPCC do not necessarily constitute *res judicata* before the present Commission, although in certain circumstances this may be the case. 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.

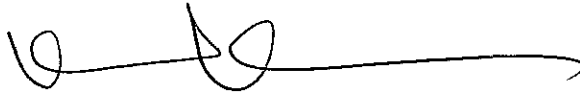
24. The Commission's above decisions and order also apply, where appropriate, to any associated property, *i.e.* any buildings or other constructions owned or used by the claimant or the property right holder, as the case may be, which form a unit with the claimed property.

25. Pursuant to section 8.5 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079, the Commission may in its decision determine any property right in the name of the property right holder and make an order for possession in favour of the claimant. When the property right holder is alive, the Commission grants the right of



possession in the name of the property right holder. When the property right holder is deceased and the death is proven but no valid inheritance decision has been provided, the Commission grants possession to the claimant as a family household member of the property right holder. The right to possession is granted pursuant to the applicable provisions of the law governing family relations in Kosovo, which includes the administration of family property, as well as by reference to the applicable law on inheritance. The Commission's decision on the entitlement to possession by the family household member claimant is without prejudice to the rights of other family household members or heirs of the property right holder who have not filed claims with the KPA but who may have a joint right to possession pursuant to the applicable law or as a consequence of future inheritance proceedings (section 8.5 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079).

26. 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

KPA14034	KPA14545	KPA14554	KPA25629	KPA26025	KPA26026	KPA38152
KPA44441	KPA47040	KPA47041	KPA47044	KPA47045	KPA47046	KPA48214
KPA48419	KPA48423	KPA48429	KPA50157	KPA52396	KPA56721	KPA24495
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KPA90729	KPA90730	KPA90731	KPA90732	KPA90733	KPA15460	KPA15472
KPA18246	KPA36259	KPA42441	KPA42446	KPA42447	KPA42448	KPA56328
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KPA16247	KPA38276	KPA38275	KPA38273	KPA38272	KPA38271	KPA38270
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KPA16290						

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

KPA08491	KPA08493	KPA08497	KPA08499	KPA08500	KPA22698	KPA28237
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KPA08501	KPA15554	KPA26257	KPA26645	KPA27458	KPA28610	KPA29138
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KPA48609	KPA48611	KPA48612	KPA48613	KPA48614	KPA48615	KPA48616
KPA48617	KPA32457	KPA32458	KPA32459	KPA32466	KPA32469	KPA08297
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KPA06204	KPA14444	KPA08422	KPA08429	KPA14446	KPA14443	KPA16295

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Part C/Pjesa C/Deo C

KPA28262	KPA00414	KPA00415	KPA00416	KPA36582	KPA36584	KPA36586
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KPA38561						

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

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KPA55185	KPA25384	KPA25388	KPA14822	KPA06863	KPA06017	KPA31626
KPA06006	KPA33506	KPA33493	KPA00097	KPA08420	KPA08418	KPA21034
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KPA19176	KPA19170	KPA35918	KPA13934	KPA08216	KPA08220	KPA08218
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KPA15414	KPA07125	KPA13182	KPA16194	KPA16193	KPA18217	KPA21202

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Part E/Pjesa E/Deo E

KPA27332	KPA37434	KPA37450	KPA37451	KPA41085	KPA41086	KPA42229
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KPA27333	KPA27334	KPA27344	KPA31985	KPA34744	KPA37438	KPA37439
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KPA37449	KPA42224	KPA50631	KPA50633	KPA50634	KPA50638	KPA50639
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