



Kosovo Property Claims Commission
Komisioni i Kërkesave Pronësorete Kosovës
Komisija Kosovske Agencijeza Imovinu

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DECISION

PANEL NO: 1

DECISION NO.: KPCC/D/C/168/2012
DECISION DATE: 05/09/2012

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) In the 11 (eleven) claims identified in parts A and B 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;

(2) In each of the 11 (eleven) claims identified in paragraph (1) except for Claim Nos. 28288 and 34220, 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 other person unlawfully occupying the property vacate the same within 30 (thirty) days of the delivery of this order; and

(c) Should any other person occupying the property fail to comply with the order to vacate within the time stated, they shall be evicted from the property.

(3) The Commission additionally decides that Claim Nos. 07765, 11047, 28288, 34220, 92704 be dismissed insofar as the Claimant seeks compensation for damage, or for loss of use of to the claimed property.

(4) In the 17 (seventeen) claims identified in parts C and D of the attached Schedule, the Commission decides that the claim be dismissed.

- (5) *In the 3 (three) claims identified in parts E and F of the attached Schedule, the Commission decides that the claim be refused.*

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 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

¹There 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 all its 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,

5. The Commission held its thirtieth session from 3 to 5 September 2012 in Prishtinë/Priština. A total of 38 commercial property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its thirtieth session, together with supporting documentation, claims processing reports, verification reports and other relevant information. One commercial property claim which had been presented to the Commission was referred by the Commission back to the Executive Secretariat during the session. In sum, a total of 37 commercial property claims were resolved by the Commission during the session. Thirty one claims are dealt with in the present decision and the remaining six are dealt with in decision KPCC/D/C/169/2012.

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. Claims covered by the present decision

7. The present decision covers the 31 claims for commercial property listed in parts A, B, C, D, E and F of the attached Schedule. The remaining six commercial property claims are covered by KPCC/D/C/169/2012. The present decision deals with claims for commercial properties which, at the time of their notification, were not damaged or, even if damaged, capable of repair, whereas decision KPCC/D/C/169/2012 deals with claims for commercial properties which found to be entirely destroyed.

8. In each of the 31 claims covered by the present decision, except for Claim Nos. 00287, 01324, 21582, 26046, 31922, 46040 and 55234, the claimant seeks the resolution of an ownership claim. In Claim Nos. 00287, 01324, 21582, 26046, 31922, 46040 and 55234, the Claimant seeks confirmation of a use right to the claimed property.

9. The Commission notes that the seventeen claims identified in parts A, C 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 or use 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 and section 10.1 of Law No. 03/L-079. Accordingly these claims must be considered uncontested.

10. The Commission further notes that the fourteen claims identified in parts B, D and F of the attached Schedule, are contested in the sense that the party occupying the claimed properties, or a party that has expressed a legal interest in such properties (the "Respondent"), 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 a later stage during the

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.

proceedings, pursuant to section 10.3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. Pursuant to section 10 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, each of the Respondents has been provided with a copy of the claim submitted by the respective claimant. In accordance with section 3.5 of Annex II to UNMIK/AD/2007/5 as adopted by Law No. 03/L-079, the claimants have been provided with a copy of the documents submitted by the respective Respondent in response to the claim. Both parties in each case have thus been given an opportunity to comment on the information provided by the other party, and any such comment or information has been taken into account during the processing and adjudication of the claim.

1. Uncontested claims granted

11. The Commission notes that in the nine claims identified in part A of the attached Schedule, the claimants have submitted various types of documents in support of the ownership claims, including inheritance decisions, possession lists, certificates for immovable property right, contracts on sale and allocation decisions. The Commission is satisfied that inheritance decisions confirming an ownership interest indeed constitute proof of ownership. The other documents submitted by claimants including contracts involving property transactions, create a rebuttable presumption of ownership. No evidence has been received or obtained by the Secretariat *ex officio* which 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 Claims Nos. 07765, 08513, 08992, 20180 and 50230, referred to in part A of the attached Schedule, the Claimants have filed the claim in the capacity of the property right holder. In light of the Commission's findings in paragraph eleven above, all of these claims stand to be granted.

13. In Claims Nos. 11047, 16052, 25544 and 92704, referred to in part A 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 fall within the definition of family household member. 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.

2. Contested claims granted

14. In the two claims identified in part B of the attached Schedule, the party occupying the claimed property, or a party that has expressed a legal interest in such property (the "Respondent"), has contested the validity of the claim, however, the Commission has reached the conclusion that the claims stand to be granted for the reason set out below.

a. *Claim No. 28288*

15. In Claim No. 28288, the Claimant filed the claim through an authorized representative in his capacity as the family household member of the property right holder, namely his father. In support of the claim, the Claimant submitted inter alia a purchase contract from 1998 concluded between the socially owned enterprise "Klina" as seller and the alleged property right holder as purchaser. The contract has been verified by the Executive Secretariat as being genuine.

16. The Respondent alleges that she is permitted to use the claimed property on the basis of a contract on lease dated 1994 with the socially owned enterprise "Klina," issued on the basis of an earlier allocation decision. The Respondent asserts that he has been in possession of the claimed property since 1994, however, he failed to submit the contract on lease or the allocation decision. While the minutes and payment receipts submitted by the Respondent show that the claimed property was allocated to her in 1994, they are insufficient as the Claimant has been able to prove a more recent property right over the claimed property. Consequently the claim stands to be granted.

b. *Claim No. 34220*

17. In Claim No. 34220, the Claimant filed the claim in his capacity as a family household member of the property right holder, namely his father. The Claimant states that the alleged property right holder was forced to sell the claimed property in 1961 to the socially owned enterprise "Zvezda," but that the purchase contract was subsequently declared null and void by a final judgment of the Supreme Court in Belgrade in 1998. The Executive Secretariat has verified this judgment as being genuine and further obtained *ex officio* a possession list dated 2009 in the name of the alleged property right holder.

18. The Respondent asserts that he has been given permission to use the claimed property by the socially owned enterprise "17 Nentori," which is the legal successor of the socially owned enterprise "Zvezda." In support of his assertion the Respondent submitted a judgment issued by the Municipal Court in Pejë/Peć dated 2011. Pursuant to the judgment, the Respondent was given the permission to use the claimed property on the basis of an allocation decision issued by the socially owned enterprise "17 Nentori" in 1995.

19. The Commission notes that the judgement of the Municipal Court in Pejë/Peć does not purport to grant a use right to the Respondent. Moreover, it is apparent that the Municipal Court did not have all the relevant facts before it, including in particular the decision of the Supreme Court in Belgrade declaring the purchase contract between the Claimant's father and socially owned enterprise "Zvezda" null and void. Taking into account the decision of the Supreme Court, the claim stands to be granted.

20. Claim Nos. 28288 and 34220 are to be granted without an eviction order or any other form of ancillary relief as set out above. In both claims the claimed property is in possession of a socially owned enterprise which is currently under liquidation process before the Privatization Agency of Kosovo. The Claimants are therefore referred to the Privatization Agency of Kosovo as the competent body to deal with the implementation of their property rights as confirmed above.

3. *Claims dismissed*

21. Pursuant to section 11.4 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission shall dismiss the whole or part of a claim where:

- (a) The claimant has failed to file a complete claim in accordance with the procedures set out in the Regulation;
- (b) The claim is not within the scope of jurisdiction of the KPA; and
- (c) The claim has previously been considered and decided in a final administrative or judicial decision.

22. Claims which are dismissed as falling outside the Commission's jurisdiction or for procedural reasons and not on account of the merits of the claim, may be capable of resolution through the local courts, subject to the applicable law. In such claims the Commission's decision does not constitute a *res judicata*. Section 3.2 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 confirms the claimants' right to pursue before courts of competent jurisdiction claims that do not fall within the mandate of the Commission, as set out in section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. (See also section 8.1 of Annex III of UNMIK/ADM/DIR/2007/5 concerning the Commission's authority to refer issues arising in connection with a claim which are not within its jurisdiction, to a competent local court or administrative board or tribunal).

23. 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 or not 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.

- a. 00287, 01324, 13038, 14510, 16006, 16007, 21582, 26046, 25456, 31922, 46040 and 55234

24. Claim Nos. 00287, 01324, 21582, 26046, 31922 and 55234, referred to in part C of the attached Schedule, and Claim Nos. 13038, 14510, 16006, 16007, 25456 and 46040, referred to in part D of the attached Schedule, have been filed by the Claimant in his or her capacity as the alleged property right holder either in person or through an authorized natural person or as the case may be in his or her capacity as a family household member of the property right holder. The claims in part C of the attached Schedule are uncontested. The claims in part D of the attached Schedule are contested in the sense that the party occupying the claimed property, or a party that has expressed a legal interest in such property, submitted a defense in response to the claim.

25. In all of these claims the Commission finds, on the basis of the evidence before it, that the respective property right holder acquired only a temporary use right over the claimed property and was therefore only authorized to build a moveable structure on the claimed properties. Accordingly, all of these claims relate to moveable property rather than to private immovable property. Pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission's jurisdiction is limited to claims for repossession of private immovable property, including commercial property. Accordingly, the claims stand to be

dismissed. The Commission's decision is without prejudice to any right that the Claimants may have to seek compensation before local courts for any investments they may have made in the claimed properties or the resulting increase in their value.

b. Claim Nos. 10297 and 10153

26. Claim No. 10297 has been filed by the Claimant in his capacity as the alleged property right holder, and Claim 10153 has been filed by the Claimant in his capacity as a family household member of the property right holder. Both claims are contested in the sense that the party occupying the claimed property or a party that has expressed a legal interest in such property submitted a defense in response to the claim. In support of their claims, the Claimants have submitted various types of documents.

27. The Commission notes however that in both claims evidence was either submitted by the Claimant and was obtained by the Executive Secretariat *ex officio*, showing that the alleged property right holder filed prior to 16 October 2006 a lawsuit with a competent court seeking the confirmation of his ownership over the claimed property. Pursuant to Section 18 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission's jurisdiction is excluded if judicial proceedings in respect of the claim have been commenced prior to 16 October 2006, the date on which UNMIK/REG/2006/50 entered into force. Accordingly, the claims stand to be dismissed.

c. Claim No. 37860

28. Claim No. 37860 has been filed by the Claimant in her capacity as a family household member of the alleged property right holder, namely her father.

29. The Respondent alleges that he has been permitted by the Claimant to use the claimed property on the basis of a lease agreement concluded in 2004. This was later confirmed by the Claimant.

30. The Commission finds that the Claimant is now able to exercise his property rights and has voluntarily exercised her property rights by concluding a lease agreement with the Respondent. (See section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.) Consequently, the claim falls outside the Commission's jurisdiction and stand to be dismissed.

d. Claim No. 44996

31. Claim No. 44996 has been lodged by the Claimant in his capacity as the property right holder. The Claimant seeks the confirmation of the co-ownership right of the alleged property right holder over the claimed property and repossession, however, he subsequently confirmed that he sold the property after the 1998-1999 conflict.

32. In these circumstances, the Commission finds the alleged property right holders did not lose possession or control over the claimed property as a result of the 1998-1999 conflict, and has been able to voluntarily exercise his property rights. (See section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.) Consequently, the claim falls outside the Commission's jurisdiction and stands to be dismissed.

e. Claim No. 10554

33. Claim No. 10554 has been lodged by the Claimant in his capacity as a family household member of the alleged property right holder, namely his father. The Claimant his father is co-owner of the claimed property, but that he lost possession of the property when it was unlawfully occupied by Jugo Petrol, a state-owned company, in 1970.

34. The Commission finds that the Claimant's alleged loss does not involve circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Consequently, the claim falls outside the Commission's jurisdiction and stands to be dismissed.

5. Claims refused

35. Section 8.6 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 provides the Commission with the power to dismiss or refuse a claim on any ground, including those set down in section 11.4 of UNMIK Regulation 2006/50 as adopted by Law No. 03/L-079. Claims may be refused by the Commission if the claimant or the property right holder, as the case may be, has been unable to prove their ownership or use right over the claimed property.

36. Pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission has jurisdiction to determine ownership or use right claims over private immovable property. In reaching its decisions, the Commission may consider any reliable evidence which it considers relevant to a claim, including evidence presented by the Executive Secretariat concerning the reliability of any public record (section 6.2 of Annex III to UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079). The Commission may also require that the Executive Secretariat obtain more information from a party or conduct additional investigations in relation to any claim (section 6.3 of Annex III to UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079). In making its determinations, the Commission may be guided but is not bound by the rules of evidence applied in the local courts in Kosovo (section 6.1 of Annex III to UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079).

a. Claim No. 00880

37. Claim No. 00880 has been lodged by the Claimant in his capacity as the property right holder. The Claimant seeks the confirmation of the ownership right and repossession. However, the Claimant failed to submit any evidence in support of his claim. Consequently, the Claimant has failed to establish a property right over the claimed property and the claim stands to be refused.

b. Claim No. 14799

38. Claim No. 14799 has been filed by the Claimant in her capacity as a family household member of the alleged property right holder, namely her father. The Claimant submitted in support of her claim an administrative decision by the Municipality of Pejë/Peć pursuant to which the alleged property right holder was granted a permanent use right over the land on which the claimed property was subsequently constructed. However the Executive Secretariat has been unable to verify the administrative decision.

39. The Respondent challenges the claim stating that the Claimant has forged the administrative decision. The Executive Secretariat has obtained *ex officio* a possession list from 2006 listing the Municipality in Pejë/Peć as the owner of the claimed property.

40. In the absence of any valid evidence in support of the claim, the Claimant has failed to establish a property right over the claimed property. Accordingly the claim stands to be refused.

c. Claim No.10553

41. Claim No.10553 has been filed by the Claimant in his capacity as a family member of the property right holder, namely his father. In support of his claim, the Claimant submitted a possession list which, however, does not list the alleged property right holder as the owner. The Executive Secretariat obtained *ex officio* a certificate for immovable property rights from 2011 which shows a third party, Xhavit Collaku, as the property right holder over the claimed property.

42. In the absence of any valid evidence in support of the claim, the Claimant has failed to establish a property right over the claimed property. Accordingly the claim stands to be refused.

B. Claims for compensation

43. 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

44. The Commission's 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.

45. 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 the HPCC, respectively, and accordingly the jurisdiction of the two Commissions, are not identical. Accordingly the decisions of the HPCC do not necessarily constitute *res judicata* before the present Commission, although in certain circumstances this may be the case. Moreover, in cases where the 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.

46. Section 8.8 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 allows 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-79 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 Supreme Court of Kosovo may levy court fees for the appeal procedures.

Information on the appeals procedures 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

KPA07765	KPA08513	KPA25544	KPA50230	KPA11047	KPA20180	KPA92704
KPA16052	KPA08992					

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

KPA34220
KPA28288

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

KPA10554	KPA44996	KPA00287	KPA21582	KPA31922	KPA55234	KPA01324
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Spreadsheet /Lista /Prilog
Part D/Pjesa D/Deo D

KPA16006	KPA16007	KPA46040	KPA13038	KPA14510	KPA25456	KPA10153
KPA10297	KPA26046	KPA37860				

Spreadsheet /Lista /Prilog
Part E/Pjesa E/Deo E

KPA10553

Spreadsheet /Lista /Prilog
Part F/Pjesa F/Deo F

KPA00880
KPA14799