



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/R/124/2011  
DECISION DATE: 07/09/2011

Commissioners Heiskanen (Chairperson),  
Vokshi and Wühler

## ORDER

*(1) In each of the 15 (fifteen) claims, identified in parts A, B, C, D and E 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 Claim No. 47676, referred to in part F of the attached Schedule, the Commission*

*decides that*

*The Claimant has established a use right over the ideal part of 1/3 of the claimed property;*

*(3) In each of the 16 (sixteen) claims identified 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 associated land parcel on which the residential property stood;*

- (b) *Any other person 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 be evicted from the property;*
- (4) *In each of the claims identified in the relevant columns of parts A, E and F 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 or use right holder, as the case may be, 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 twenty-fourth session from 5 to 7 September 2011 in Prishtinë/Pristina. A total of 78 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-fourth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. Four residential property claims which had been presented to the Commission were referred by the Commission back to the Executive Secretariat for further verification and one claim was withdrawn by the Executive Secretariat during the session. In sum, a total of 73 residential property claims were resolved by the Commission during the session.

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. With the exception of Claim No. 47676, 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 residential properties, including the associated land. The present decision deals with claims for residential properties which, at the time of their notification, were found not to be entirely destroyed.

8. The present decision applies to the sixteen claims which are listed in parts A, B, C, D, E and F of the attached Schedule. The remaining 57 residential property claims are covered by decisions KPCC/D/R/122/2011 and KPCC/D/R/123/2011.

*1. Contested claim*

9. The claims identified in part E 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,

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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.

or at a later stage during the proceedings, pursuant to section 10.3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

*a. Claim No. 48124*

10. In Claim No. 48124 the Claimant submitted the claim in his capacity of a family household member of the property right holder, namely his father. The Claimant has submitted a possession list listing his father as the property right holder of the claimed property. The Executive Secretariat has verified the document as being valid.

11. The Respondent is the current occupant of the property who asserts that he is using the property with the permission of the Claimant. However, the Claimant states that he has withdrawn the permission and seeks repossession of the property. The Respondent has failed to provide any evidence to show the permission would still be valid. Accordingly the claim stands to be granted.

*b. Claim No. 48285*

12. In Claim No. 48285 the Claimant lodged the claim in her capacity of the property right holder. She has submitted a possession list which shows her as the property right holder. The possession list has been verified by the Executive Secretariat as being valid.

13. The Respondent in this case is the current occupant of the property. The Respondent alleges that he is using the property with the permission of the Claimant. The Claimant denies that she has given any authorization to the Respondent or any another person to use the claimed property. The Respondent has failed to provide any evidence in support of his allegation. Accordingly the claim stands to be granted.

*c. Claim No. 17136*

14. In Claim No. 17136 the Claimant filed the claim in his capacity as the property right holder. The Claimant has produced a possession list listing her as the property right holder. The possession list has been verified by the Executive Secretariat as being valid.

15. The Respondent alleges that he is using the claimed property as a car park in "compensation" for goods that he claims the Claimant allegedly stole from his shop in 1999. The Respondent does not claim a property right. The Respondent's defense, even assuming it were proven (which is not the case), is not a valid defense to the Claimant's claim. Accordingly the claim stands to be granted.

*d. Claim No. 17136*

16. In Claim No. 35624 the Claimant submitted the claim in his capacity of a family household member of the property right holder, namely his father. The Claimant submitted a possession list listing his father as the property right holder of the claimed property. The Executive Secretariat has verified the document as being valid.

17. The Respondent is the current occupant of the property. He asserts that he is using the property with the permission of the Claimant. However, the Claimant states that the permission was granted on a temporary basis only and ended in 2001. He seeks the

repossession of the property. The Respondent has failed to provide any evidence to show that the permission would still be valid. Accordingly the claim stands to be granted.

## 2. *Uncontested claims*

18. The eleven claims identified 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 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.

19. The Commission notes that the claimants have submitted various types of documents in support of their ownership claims, including inheritance decisions and certificates on immovable property rights, purchase contracts, contracts on life long care and contracts on joining of means. The Commission is satisfied that inheritance decisions and certificates of immovable 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. All claims identified in parts A, B, C and D of the attached Schedule are uncontested and 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.

20. In Claim Nos. 21083, 50617 and 51667, referred to 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 19 above, these claims stand to be granted.

21. In Claim Nos. 31060 and 47273, referred to in part B of the attached Schedule, the Claimant has filed the claim in the capacity of a family household member, namely the wife, 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 Claimant falls 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 this claim, as set out above.

22. In Claim Nos. 06738, 53980 and 56750, referred to in part C of the attached Schedule, the Claimant 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 respectively purchase contract. The Claimant 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. Accordingly a decision confirming the property right in favour of the property right holder stands to be granted in this claim.

23. In Claim Nos. 14583, 18398 and 33390, referred to 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. Accordingly a decision confirming the property right in favour of the deceased property right holder stands to be granted in each of these cases.

24. In Claim No. 17136 the Claimant 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 fell outside the above period, the loss of property right 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 and section 3 of Law No. 03/L-079.

25. 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. Use right claim*

26. Claim No. 47676 was initially submitted by the nephew of the Claimant. Since a nephew does not qualify as a family household member according to the definition in section 1 of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079, the Claimant subsequently

issued a power of attorney to the nephew authorizing the nephew to represent his interests in respect of the claimed property.

27. The Executive Secretariat has physically notified the claimed property and found no evidence of illegal occupation or use of the property by any person and 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.

28. The power of attorney holder produced a contract on use dated 3 November 1983 between the Claimant and the Public Housing Enterprise in respect of the claimed property. The Executive Secretariat has verified the document as being valid. The Claimant has also submitted electricity bills showing that the Claimant has paid for utilities during 1998, which implies that he was in possession of the claimed property prior to the conflict. The bills have also verified by the Executive Secretariat to be genuine.

29. In light of the above, the Commission finds that the Claimant has established a use right over the claimed property. Consequently, the claim stands to be granted as set out above.

#### *C. Claims for compensation*

30. In the claims identified in the relevant columns of parts A, E and F 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.

#### *D. Concluding remarks*

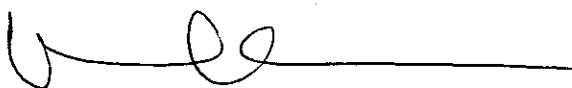
31. In view of the foregoing, the Commission finds that the claims listed in parts A, B, C, D and E of the attached Schedule succeed and directs that an order be made in respect of each claim as set out above.

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

33. 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. In cases where the property right holder dies after filing the claim and there is no family household member claimant, the Commission grants the right to possession in the name of the deceased 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.

The Commission's decision on the entitlement to possession of property by the family household member claimant is without prejudice to the rights of other family household members or other heirs of the property right holder who have not filed claims with the KPA but who may have a joint right to possession of the property 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).

34. 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-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

KPA21083
KPA50617
KPA51667

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

KPA31060
KPA47273

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

KPA06738
KPA53980
KPA56750

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

KPA33390
KPA14583
KPA18398

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

KPA48124
KPA48285
KPA17136
KPA35624

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

KPA47676