



Kosovo Property Claims Commission
Komisioni i Kërkesave Pronësore të Kosovës
Komisija Kosovske Agencije za Imovinu

Perandori Justininan 5
Pristina
Tel: +381 (0) 38 249-918
Fax: +381 (0) 38 249-919
E-mail: mailbox@kpaonline.org

DECISION

PANEL NO: 1

DECISION NO: KPCC/D/R/143/2012
DECISION DATE: 29/02/2012

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) In each of the 61(sixty one) claims identified in parts A, B, C and E of the attached Schedule, the Commission

decides that

As at the date of the destruction of the residential property, the claimant or the property right holder, as the case may be, satisfied the requirements for establishing ownership over the claimed property and the associated land parcel, or such part thereof as specified in the respective individual decision;

(2) In the 25 (twenty five) claims identified in part D of the attached Schedule, the Commission

decides that

As at the date of the destruction of the residential property, the claimant satisfied the requirements for establishing ownership of the deceased property right holder over the claimed property and the associated land parcel, or such part thereof as specified in the respective individual decision;

(3) In each of the 86(eighty six) claims referred to in paragraphs (1) and (2) above, except for Claim Nos. 39912, 91864, 91865 and 91866, 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 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 be evicted from the property;*
- (4) *In each of the claims identified in the relevant columns of 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*
- (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, 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.)¹

5. The Commission held its twenty-seventh session from 27 to 29 February 2012 in Prishtinë/Pristina. A total of 160 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-seventh session, together with supporting documentation, claims processing reports, verification reports and other relevant information. A total of 27 residential property claims which had been presented to the Commission were referred by the Commission back to the Executive Secretariat for further verification. The Commission suspended the consideration of one residential property claim pending the holding of an oral hearing. In sum, a total of 132 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. 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 to be entirely destroyed.

8. The present decision applies to the 86 claims which are listed in parts A, B, C, D and E of the attached Schedule. The remaining 46 residential property claims are covered by KPCC/D/R/144/2012 and KPCC/D/R/145/2012.

9. A total of 33 of the 86 claims covered by this decision have not previously been considered by the Commission, while 53 of these claims were the subject of an earlier Commission decision. However the earlier decisions in these 53 claims were overturned by the Commission either on account of an incorrect notification of the claimed properties during claims processing by the Executive Secretariat or on account of other processing errors by the Executive Secretariat which were identified after the decision had been taken. These claims consequently stand to be re-determined following correct notification of the claimed property and correction of the other processing errors. Evidence and information provided by any respondents to the claim or any current occupants of the claimed properties is taken into account by the Commission in the re-determination of the claims. 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.

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 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.

10. The claims covered by this decision, except for Claim No. 13998 referred to in part 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. Decisions taken in claims that were incorrectly notified 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 and D 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 a gazette and in 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. The Commission notes that the claimants have submitted various types of documents in support of the ownership claims, including possession lists, contracts on gift, inheritance decisions, and certificates of immovable property rights. The Commission is satisfied that the certificates of immovable property rights confirming an ownership interest and inheritance decisions 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. Many claimants have also submitted additional supporting documents, including tax decisions, witness statements, copies of plans and cadastral decisions.

12. The Commission further notes that Claim Nos. 13998, 30044, 49570 and 92326 referred to in part E of the attached Schedule, are contested in the sense that the party occupying the claimed property (the "Respondent"), has contested the validity of the respective 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 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, the Respondent 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 Claimant has been provided with a copy of the Respondent's response to the claim. Both parties 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.

13. In the 31 claims identified 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 paragraphs 10 and 11 above, these claims stand to be granted.

14. In the eighteen claims identified in part B of the attached Schedule, the claimants have filed claims 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 these claims, as set out above.

15. In the eight claims identified in part C of the attached Schedule, the claimants were not the property right holder at the date of loss of possession of the claimed property, but have adduced evidence of having subsequently succeeded to the respective ownership right by virtue of inheritance. The claimants 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. The claims therefore stand to be granted, as set out above.

16. In the 25 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 by virtue of inheritance. 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 has no jurisdiction to resolve issues relating to inheritance. A decision confirming the property right in favour of the deceased property right holder stands to be granted in these claims, 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.

17. In Claim No. 13998 the Claimant submitted the claim in his capacity as the property right holder. He submitted in support of his claim a possession list which lists the Claimant as the property right holder of the claimed property. The document has been verified by the Executive Secretariat as being genuine. The Respondent asserted in his initial response that he claims a legal right to the property, however he did not substantiate his allegation and has not submitted any evidence in support of his alleged legal right.

18. Claim No. 92326 was filed by Senka Scepanovic in her capacity as a family household member, namely the daughter of the deceased property right holder Radusa Lalovic. Claim No. 49570 was filed by Milovan Lalovic in his capacity as a family household member, namely the son of the deceased property right holder Radusa Lalovic. Claim No. 30044 was filed by Jovanka Vukovic, also daughter of Radusa Lalovic, in her capacity as a family

household member, namely the sister of the alleged property right holder Miladin Lalovic, who is the son of deceased property right holder Radusa Lalovic. All three Claimants are siblings and the claims cover the same areal unit.

19. Claim No. 30044 is submitted by Jovanka Vukovic for her brother Miladin Lalovic as the alleged property right holder pursuant to an "inheritance decision" purportedly issued by a parallel court in Serbia. The Commission does not consider that such a document establishes entitlement to inheritance. The Commission itself has no jurisdiction to resolve issues relating to inheritance. Accordingly the claim is to be processed on behalf of the deceased property right holder, in this case the mother of the Claimant and of the initially alleged property right holder Miladin Lalovic, namely Radusa Lalovic. The Claimant agreed to process the claim in the name of her mother Radusa Lalovic.

20. The Respondent to the claims referred to in paragraph 18 above alleges that he purchased the claimed property in 2004 from Milena Djuric, the alleged authorized representative of Radusa Lalovic. The Respondent submitted as evidence a contract on sale concluded in 2004 with the alleged power of attorney holder, Milena Djuric. The cadastral recordis updated in the name of the Respondent.

21. The Claimants allege that the power of attorney presented by Milena Djuric, which was allegedly issued to her by the property right holder Radusa Lalovic, is a forgery. The Commission notes that the power of attorney was purportedly issued by Radusa Lalovic in 2001. However, the death certificate produced by the Claimants shows that Radusa Lalovic passed away on 22 January 1997. The Claimants also state that their mother was illiterate and that the signature in the power of attorney document is forged. The Executive Secretariat was unable to verify the power of attorney.

22. The Executive Secretariat contacted the Respondent, who stated that he does not wish to cooperate with the KPA as he considers himself an owner of the claimed properties and has also sold the property to a third party. This further sale was confirmed by an official from the Department of Cadastre in Deçan/Decani Municipality. According to him, the claimed property was transferred from the Respondent, Ismet Maloku to Fatmir Maloku in 2005.

23. The Commission considers that it cannot rely on the power of attorney presented by the Respondent as it bears a date subsequent to the death of its purported issuer. Consequently, there cannot have been any valid transaction of the claimed property from Radusa Lalovic to the Respondent.

24. In Claim Nos. 39912, 91864, 91865 and 91866, referred to 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.

25. The various types of documents relied upon by the claimants in support of the claims referred to in paragraphs 13 to 24 above are listed in the relevant parts of the attached Schedule.

26. 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 and section 3 of Law No. 03/L-079.

27. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in each of the claims covered by the present decision:

- (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) with the exception of Claim No. 13998, 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.

28. The Commission concludes that the claimants or the property right holders in all claims identified in parts A, B, C, D and E of the attached Schedule, as the case may be, have shown that they satisfied the requirements for an order establishing ownership over the claimed property and the associated land parcel as at the date of destruction of the residential property. The fact that the property has been destroyed does not affect the claimants' right to obtain a declaratory decision from the Commission, confirming, as at the date of destruction of the claimed property, the claimants' ownership over such property.

B. Claims for compensation

29. 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 this aspect of the claims must be dismissed.

C. Concluding remarks

30. 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.

31. 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. Thus 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.

32. The Commission's above decisions and order 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

KPA07778	KPA21602	KPA38290	KPA45025	KPA40756	KPA23355	KPA50532
KPA40657	KPA07238	KPA08224	KPA10714	KPA13376	KPA15578	KPA21782
KPA22753	KPA28715	KPA32265	KPA33274	KPA33370	KPA35442	KPA37191
KPA38805	KPA40821	KPA42047	KPA50597	KPA51624	KPA51689	KPA53856
KPA54164	KPA55220	KPA43222				

Spreadsheet /Lista /Prilog

Part B/Pjesa B/Deo B

KPA40928	KPA91864	KPA91865	KPA91866	KPA48936	KPA19118	KPA29171
KPA30003	KPA00222	KPA27692	KPA31752	KPA33645	KPA38976	KPA50822
KPA52686	KPA53859	KPA53941	KPA53954			

Spreadsheet /Lista /Prilog

Part C/Pjesa C/Deo C

KPA08450	KPA38183	KPA50739	KPA92094	KPA92095	KPA91317	KPA54002
KPA54005						

Spreadsheet /Lista /Prilog

Part D/Pjesa D/Deo D

KPA31446	KPA34628	KPA36182	KPA39912	KPA07116	KPA07441	KPA24352
KPA28254	KPA48756	KPA36920	KPA15196	KPA24847	KPA29957	KPA31921
KPA34394	KPA35490	KPA40245	KPA40477	KPA48004	KPA51607	KPA51869
KPA53981	KPA55173	KPA56505	KPA35687			

Spreadsheet /Lista /Prilog

Part E/Pjesa E/Deo E

KPA13998
KPA30044
KPA49570
KPA92326