



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/R/150/2012
DECISION DATE: 19/04/2012

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) In the 33 (thirty three) 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 the 11 (eleven) claims, identified in part E of the attached Schedule, the Commission

decides that

The claimant has established the ownership of the deceased property right holder over the claimed property, or such part thereof as specified in the respective individual decision;

(3) In Claim Nos. 14527 and 15405, referred to in part F of the attached Schedule, the Commission

decides that

The property right holder has established a right of use over the claimed property;

(4) In each of the 46 (forty six) claims identified in paragraphs (1), (2) and (3) 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 unlawfully vacate the same within 30 (thirty) days of the delivery of this order; and*
 - (c) *Should any other person occupying the property unlawfully 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 of parts A, B, C, D, 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*
- (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.)¹

5. The Commission held its twenty-eighth session from 17 to 19 April 2012 in Prishtinë/Pristina. A total of 231 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-eighth session, together with supporting documentation, claims processing reports, verification reports and other relevant information. One residential property claim which had been presented to the Commission was referred by the Commission back to the Executive Secretariat for further verification. The Commission suspended the consideration of three residential property claims pending the holding of an oral hearing. In sum, a total of 227 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. The present decision applies to the 46 claims which are listed in parts A, B, C, D, E and F of the attached Schedule. The remaining 181 claims are covered by decisions KPCC/D/R/151/2012 and KPCC/D/R/152/2012.

8. A total of 22 of the 46 claims covered by this decision have not previously been considered by the Commission, while another 24 of these claims were the subject of an earlier Commission decision. However the earlier decisions in these 24 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

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.

Commission decisions are invalid and cannot be used for the purposes of any legal transaction.

9. In the 44 claims which are listed in parts A, B, C, D and E of the attached Schedule the claimants seek the resolution of an ownership claim, whereas in the two claims which are listed in part F of the attached Schedule, namely Claim Nos. 14527 and 15045, the claimants seek restitution of a right of use of the claimed property. All claims covered by the present decision 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, whereas decision KPCC/D/R/151/2012 deals with properties that were found to be entirely destroyed at the time of their notification.

10. All 45 claims referred to in parts A, C, D, E and F except for Claim Nos. 01118, 08873 and 08875 covered by this decision 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, C, D, E and F 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 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. Claim Nos. 01118, 08873 and 08875 referred to in part B and C of the attached Schedule are contested in the sense that the party or parties 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 proceedings, pursuant to section 10.3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

12. The Commission notes that the claimants have submitted various types of documents in support of the ownership claims, including inheritance decisions and certificates on immovable property rights. The Commission is satisfied that inheritance decisions and certificates of immoveable property rights confirming an ownership interest indeed constitute proof of ownership. All claims identified in parts A, C, D, E and F of the attached Schedule, except for Claim Nos. 01118, 08873 and 08875, 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.

13. In the eighteen claims 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 12 above, these claims stand to be granted.

14. In Claim No. 01118 referred to in part B of the attached Schedule, the Claimant submitted the claim in his capacity as the property right holder of the claimed property. The Claimant alleges that he bought the property in 1982 from a private person and subsequently rented it out to his brother-in-law, who is the current occupant of the property and Respondent to the claim. He claims that in 1998 he terminated the rental agreement but the Respondent refuses to vacate the house.

15. The Respondent in Claim No. 01118 alleges that he bought the property together with his brother-in-law, namely the Claimant, in 1982 from a third person and that they both held an ideal part of the $\frac{1}{2}$ of the ownership of the claimed property. He further asserts that in 2005 he bought the Claimant's share from him. In support of his allegation the Respondent submitted an uncertified contract on sale between the Claimant and himself dated 12 October 2005. The Secretariat was unable to verify the contract.

16. The Commission notes that the Claimant filed a lawsuit in the Municipal Court of Ferizaj/Uroševac regarding his right to the claimed property. The Court confirmed the Claimant's sole ownership over the claimed property in its final judgment C.No. 2524/04 dated 14 March 2005. The Commission considers that the judgement does not constitute *res judicata* for the purposes of the present proceeding as the Respondent was not a party to the Court proceedings and he claims to have acquired full ownership of the claimed property subsequent to the Court judgment.

17. According to the judgment of the Municipal Court Ferizaj/Uroševac dated 14 March 2005, the Claimant is the sole owner of the claimed property. The Respondent has failed to provide any evidence to prove his alleged co-ownership, and he has also failed to produce sufficient evidence to show that he has acquired sole ownership right to the claimed property. Consequently, the Claimant's claim stands to be granted.

18. In the eleven claims referred to in part C of the attached Schedule, the claimants have filed the 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 claimants fall within the definition of family household member. Claim Nos. 08873 and 08875 are submitted by the Claimant in his capacity as a family household member of the alleged property right holder, namely his father. The Respondent in Claim Nos. 08873 and 08875 claims to have the Claimant's permission to use the claimed property, however, he has not provided any evidence in support of the allegation. The Commission finds that the Respondent has failed to establish a valid defence to the Claimant's claims. Accordingly a decision confirming the property right in favour of the property right holder stands to be granted in these claims referred to in part B of the attached Schedule, as set out above.

19. In the three claims referred to in part D 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.

20. In the eleven claims identified in part E of the attached Schedule, the claimants were not the property right holder at the date of loss of possession of the claimed property but assert 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. 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 eleven 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. Accordingly a decision confirming the property right in favour of the deceased property right holder stands to be granted in each of these cases.

21. In Claim No. 14527, referred to in part F of the attached Schedule, the Claimant submitted the claim in his capacity as the alleged use right holder of the claimed property. The Claimant bases his claim on a contract on use regarding the claimed property, signed with the Department on Urbanism of the Municipality of Istok/Istog on 4 October 1982.

22. In Claim No. 15045, referred to in part F of the attached Schedule, the Claimant submitted the claim in his capacity as the alleged use right holder of the claimed property. The Claimant bases his claim on an administrative decision issued by the Commission on Housing Issues on 7 May 1998.

23. In light of the Commission's findings in paragraph 12 above, Claim Nos. 14527 and 15045 stand to be granted.

24. 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.

25. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in each of the claims covered by this 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 Nos. 01118, 08873 and 08875, 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.

26. In Claim Nos. 01118, 08873 and 08875, the respective Respondents have failed to establish a valid defence to the Claimant's claims.

B. Claims for compensation

27. In the claims identified in the relevant parts 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 for compensation must be dismissed.

C. Concluding remarks

28. 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.

29. 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.

30. 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).

31. 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

KPA23013	KPA40078	KPA40633	KPA48735	KPA00206	KPA00207	KPA22086
KPA54969	KPA20028	KPA39734	KPA51840	KPA40828	KPA33151	KPA21868
KPA15225	KPA45151	KPA53837	KPA38697			

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

KPA01118

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

KPA25080	KPA30536	KPA48531	KPA51029	KPA08873	KPA08875	KPA56458
KPA00050	KPA26461	KPA34812	KPA33408			

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

KPA23578
KPA47339
KPA15293

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

KPA13060	KPA30756	KPA46063	KPA50469	KPA21732	KPA34710	KPA25694
KPA30631	KPA44150	KPA46114	KPA50613			

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

KPA14527
KPA15045