



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/157/2012
DECISION DATE: 06/06/2012

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) In the 38 (thirty eight) claims, identified in parts A, B, C 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 the 5 (five) claims, identified in part D 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 the 43 (forty three) claims identified in paragraphs (1) and (2) above, except for Claim Nos. 07136, 44178 and 51103, 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 unlawfully occupying the property vacate the same within 30 (thirty) days of the delivery of this order; and

(c) Should any other person unlawfully 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 favor 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-ninth session from 4 to 6 June 2012 in Prishtinë/Pristina. A total of 210 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-ninth session, together with supporting documentation, claims processing reports, verification reports and other relevant information. Two residential property claims which had been presented to the Commission were withdrawn by the Executive Secretariat during the session. The Commission suspended the consideration of one residential property claim pending the holding of an oral hearing. In sum, a total of 207 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 43 claims which are listed in parts A, B, C, D and E of the attached Schedule. The remaining 164 claims are covered by decisions KPCC/D/R/158/2012 and KPCC/D/R/159/2012.

8. A total of 24 of the 43 claims covered by this decision have not previously been considered by the Commission, while another nineteen of these claims were the subject of an earlier Commission decision. However the earlier decisions in these nineteen 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.

9. In all 43 claims which that are subject to the present decision the claimants seek the resolution of an ownership claim and all claims 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

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.

KPCC/D/R/158/2012 deals with properties that were found to be entirely destroyed at the time of their notification.

10. All 37 claims referred to in parts A, B, C and D of the Schedule to 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, 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 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. The six claims referred to in part E 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.

1. Uncontested claims

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 immovable property rights confirming an ownership interest indeed constitute proof 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.

13. In the 23 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. In Claim No. 25332 the claimed property has not been physically notified as the villagers and leadership of Mala Krusa/Krushe e Vogel refused to cooperate with the staff of the Executive Secretariat and physically threatened the Secretariat's notification officials should they attempt to conduct the physical notification. Consequently, the claimed property has been notified via publication in a gazette and in newspapers, through local municipal authorities and municipal courts. The Commission is satisfied that the claimed property has been adequately notified in the circumstances.

14. In the three claims referred to in part B of the attached Schedule, the claimants have filed the claim in the capacity of a family household member of the property right holder pursuant to section 1.2 of Annex II of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. Section 1 of the Administrative Direction as adopted by Law No. 03/L-079 defines "Member of Family Household" to include "the spouse, children (born in and out of wedlock or adopted) and other persons whom the property right holder is obliged to support in accordance with the applicable law, or the persons who are obliged to support the property right holder in accordance with the applicable law, regardless of whether or not that person resided in the property together with the property right holder." The claimants fall within the definition of family household member. Accordingly a decision confirming the property right in favor of the property right holder stands to be granted in these claims, as set out above.

15. In the six claims referred to 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.

16. In the five claims identified 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 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 favor 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 five 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.

2. *Contested claims*

17. The six claims identified in part E 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.

a. Claim Nos. 07508 and 07509

18. In Claim Nos. 07508 and 07509 the claim was submitted by the Claimant in her capacity of a family household member of the property right holder, namely her deceased husband. Her sister in law filed two claims with the KPA in respect of the same properties under Claim Nos. 17534 and 91402, in her capacity as a family household member of the alleged property right holder, namely her and the Claimant's deceased husband's father. Claim Nos. 17534 and 91402 are dealt with in KPCC/D/R/159/2012, which is also issued on today's date.

19. The Claimant states that her mother-in-law inherited the claimed properties from her husband after his death. Subsequently, on 15 December 1993, she entered into a contract on life-long care with her son and the now deceased husband of the Claimant. In support of her claim the Claimant submitted, among other documents, the inheritance decision dated 4 October 1933 and the contract on life-long care. Both documents have been verified by the Executive Secretariat as being genuine. The Claimant further submitted a possession list dating from 1998 listing her mother-in-law as the owner of the claimed properties. This document has also been verified.

20. The Claimant's sister-in-law and the Claimant of Claim Nos. 17534 and 91402 challenges the Claimant's claim, stating that she and her sister are the legal heirs of the Claimant's mother-in-law and are the rightful owners of the claimed properties. She suggests that the documentation submitted by the Claimant is forged and therefore invalid.

21. The Commission is satisfied, based on the verified evidence before it, that the Claimant's deceased husband became co-owner of the claimed property based on the contract on life-long care with his mother. This is also reflected in the fact that the claimed properties were not included in the mother's inheritance when she died. As noted above, the Executive Secretariat has verified the contract on life-long care, as well as the inheritance decision dated 4 October 1933 in favor of the Claimant's mother-in-law and the possession list of 1998, which all support the co-ownership of the Claimant's deceased husband.

22. In light of the Commission's findings as set out above, Claim Nos. 07508 and 07509 stand to be granted.

b. Claim Nos. 44178, 50440, 50441 and 92428

23. In Claim Nos. 44178, 50440, 50441 and 92428, referred to in part E 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 either not submitted any legally valid defense in response to the claim or has merely claimed to have the claimant's permission to use the property, without providing any evidence in support of the allegation. In the absence of any valid defense on the part of the respondents, the Commission finds that the claims stand to be granted.

24. In Claim No. 44178 the Claimant filed the claim in his capacity as a family household member of the property right holder, namely his mother. The claimed property was initially incorrectly notified and was found to be occupied by the Respondent, who challenged the claim based on the incorrect notification. The Respondent has not withdrawn his challenge after the second, correct notification of the claimed property.

25. Claim No. 50440 has been lodged by the Claimant in her capacity as a family member of the property right holder, namely her brother. Claim Nos. 50551 and 92428 have been filed by the same Claimant in her capacity as the property right holder. Claim Nos. 50440 and 92428 are submitted for the same property. The Respondent to all three claims, who is currently occupying the claimed properties, alleges that he has reached an agreement with the Claimant on a purchase price, however, he acknowledges that a sales contract has never been concluded and no money has been paid.

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 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. 07508, 07509, 44178, 50440, 50441 and 92428, 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. In Claim Nos. 07508, 07509, 44178, 50440, 50441 and 92428, the respective Respondents or any other party challenging the claims have failed to establish a valid defense to the Claimants' claims.

B. Claims for compensation

29. 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

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. 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.

32. 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 favor 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).

33. 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

KPA13046	KPA22026	KPA25332	KPA53832	KPA54601	KPA91450	KPA91310
KPA01006	KPA06754	KPA07319	KPA10689	KPA13049	KPA14720	KPA14802
KPA19275	KPA23389	KPA24426	KPA28662	KPA30975	KPA39623	KPA44366
KPA44919	KPA51839					

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

KPA56494
KPA40779
KPA10200

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

KPA14569	KPA14570	KPA51103	KPA41440	KPA44180	KPA15289	
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Spreadsheet /Lista /Prilog
Part D/Pjesa D/Deo D

KPA07136	KPA13722	KPA56584	KPA56586	KPA29127		
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Spreadsheet /Lista /Prilog
Part E/Pjesa E/Deo E

KPA44178	KPA50440	KPA50441	KPA92428	KPA07508	KPA07509	
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