



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/165/2012
DECISION DATE: 05/09/2012

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) *In the 35 (thirty-five) 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 19 (nineteen) 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 Claims Nos. 00719 and 01234, referred to in part F of the attached Schedule, the Commission*

decides that

The claimant has established a use right over the claimed property, or such part thereof as specified in the respective individual decision;

(4) *In the 56 (fifty-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 unlawfully occupying the property vacate the same within 30 (thirty) days of the delivery of this order;*
 - (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;*
- (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 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 thirtieth session from 3 to 5 September 2012 in Prishtinë/Pristina. A total of 334 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its thirtieth session, together with supporting documentation, claims processing reports, verification reports and other relevant information. One residential property claim which had been presented to the Commission was referred by the Commission back to the Executive Secretariat during the session, and one residential property claim which had been presented to the Commission was withdrawn by the Executive Secretariat during the session. The Commission suspended the consideration of five residential property claims pending the holding of an oral hearing. In addition, the Commission resolved two claims which had previously been suspended pending the holding of an oral hearing. In sum, a total of 329 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.

7. The present decision applies to the 56 claims which are listed in parts A, B, C, D, E and F of the attached Schedule. The remaining 273 claims are covered by decisions KPCC/D/R/166/2012 and KPCC/D/R/167/2012.

8. A total of 37 of the 56 claims covered by this decision have not previously been decided 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

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.

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

9. In a total of 54 claims that are covered by the present decision the claimants seek the resolution of an ownership claim, and in two claims the claimants seek the resolution of a use right claim over the claimed property. All of these claims relate to residential properties, including, as the case may be, 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.

10. All 45 claims referred to in parts A, B, C and D of the Schedule as well as Claim No. 01234, referred to in part F of the Schedule attached to this decision, are uncontested ownership claims or, as the case may be, use right claims 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 attached Schedule, except for Claim No. 01234, which is referred to in part F of the attached Schedule. 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, and 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. All nine claims referred to in part E of the attached Schedule as well as Claim No. 00719, referred to in part F of the attached Schedule, are contested ownership claims or, as the case may be, use right claims in the sense that the party or the 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. Claims granted

1. Uncontested claims

12. The Commission notes that the claimants have submitted various types of documents in support of the ownership claims or as the case may be use right 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 respectively of a use right over the claimed property. All claims identified in parts A, B, C and D of the attached Schedule as

well as Claim No. 01234 referred to in part F of the Schedule are uncontested and no evidence has been received or obtained by the Secretariat *ex officio* which would rebut the presumption of ownership or the existence of the claimed property use right as the case may be. 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 eleven ownership 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 twelve above, these claims stand to be granted.

14. In the seven 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 eight 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 nineteen 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 over the claimed property stands to be granted in each of these cases, as set out above. The Commission's decision with respect to all nineteen claims identified in part D of the attached Schedule is without prejudice to the determination by the competent court as to how heirs will succeed to the property right of the deceased.

17. Claim No. 01234, referred to in part F of the attached Schedule, has been lodged by the Claimant in his capacity as the property right holder. The Claimant bases his claim on a contract on use regarding the claimed property (apartment) dated 2 March 1977. The contract was concluded for an unlimited period of time and has been verified by the Executive Secretariat as being valid. The Commission is satisfied that this constitutes proof of a use right over the claimed property and accordingly the claim stands to be granted.

2. *Contested claims: Simple defense*

18. The nine claims identified in part E of the attached Schedule as well as Claim No. 00719, referred to in part F of the attached Schedule, are contested in the sense that the party or the 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 UNMIKD/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.

19. In Claim Nos. 00879, 06118, 10007, 10008, 11535, 25715 and 36813, referred to in part E of the attached Schedule, as well as in Claim No. 00719, referred to in part F of the attached Schedule, the Respondents have either not submitted any legally valid defense in response to the claim or have 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.

a. *Claim No. 00879*

20. Claim No. 00879 has been lodged by the Claimant in his capacity as property right holder. The Claimant asserts to have purchased the claimed property (an apartment) in June 1993 from the allocation right holder, the Municipality of Kacanik. In support of his claim, the Claimant has submitted an allocation decision dated 5 July 1982, which the Executive Secretariat has verified as being genuine. The further documentary evidence, which includes a decision of the allocation right holder of 17 June 1993 expressing its consent to the sale, the purchase contract of June 1993 itself and a payment receipt dated 25 June 1993, was obtained by the Executive Secretariat *ex officio*. The Commission notes that the purchase contract has not been signed by the Claimant. However, the payment receipt proves that the Claimant had fulfilled his contractual obligation and that the transaction was indeed completed.

21. The Respondent alleges that in 1996, he began to negotiate a purchase contract with the Claimant over the claimed property, and that he paid a first deposit sum of DM 5,000.00 to the Claimant. However, the Respondent failed to submit any evidence to substantiate his allegations.

22. In the absence of any valid defense on the part of the Respondent, the Commission concludes that the claim stands to be granted.

b. *Claim No. 06118*

23. Claim No. 06118 has been submitted by the Claimant in his capacity as property right holder. The Claimant purchased the claimed property (apartment) in January 1999 from the "Yugoslav National Army." The purchase contract, which refers to a prior allocation decision submitted by the Claimant, has been positively verified by the Executive Secretariat and identifies the Claimant as owner of the claimed property.

24. The Respondent alleges that he is entitled to use the claimed property based on humanitarian grounds. However, the Respondent failed to explain what such humanitarian grounds might be. He also failed to produce any evidence in support thereof. In the absence of any valid defense on the part of the Respondent, the Commission finds that the claim stands to be granted.

c. Claim Nos. 10007 and 10008

25. Claim Nos. 10007 and 10008 have been submitted by the Claimant in his capacity as a family household member of the property right holder, namely his mother. Both claims concern the same property and consequently are adjudicated together. The Claimant seeks confirmation of ownership over the claimed property (two commercial structures). The claimed property is physically attached to a residential property which has been built on the same land parcel. The possession list dated 21 February 2008 and obtained ex officio by the Executive Secretary lists the property right holder as owner of the respective parcel comprising the residential property and a yard. The Commission notes that the commercial structures do not appear in the possession list. However, they form a unit with the residential property and therefore must be considered as being associated with it. The Commission therefore finds the property right holder to be owner of all properties built on the parcel.

26. The Respondent claims to have a rental agreement with the property right holder over the claimed property. However, the Respondent failed to produce evidence to substantiate his allegation.

27. In light of the Commission's findings as set out above, Claim Nos. 10007 and 10008 stand to be granted in favor of the property right holder.

d. Claim No. 11535

28. Claim No. 11535 has been lodged by the Claimant in his capacity as property right holder. The Claimant is listed as co-owner of $\frac{1}{4}$ ideal part of the claimed property in the possession list dated 30 January 2006. The Executive Secretariat has verified the possession list as being genuine.

29. The Respondent, who is the current occupant of the claimed property, claims to have a right of use over the claimed property together with his neighbor based on an agreement with the Claimant. However, the Respondent failed to submit any supporting evidence.

30. Accordingly a decision confirming the property right in favor of the property right holder stands to be granted.

e. Claim 25715

31. Claim No. 25715 has been lodged by the Claimant in his capacity as a family household member of the property right holder, namely his deceased grandfather. The property right holder is listed as owner of the claimed property in possession list 22 dated 24 May 2004. The Executive Secretariat has verified the possession list as being genuine.

32. The Respondent claims that his family used to be the owner of the claimed property since 1945, but was forced to leave Kosovo, allegedly as a result of pressure by the Serbian government. According to the Respondent, the family returned to Kosovo in 1999 and has later built a new house on the claimed property. However the Respondent failed to submit any evidence to substantiate his allegations.

33. Consequently, a decision confirming the property right in favor of the property right holder stands to be granted.

34. The Claimant also requests the demolition of the unlawful new structure. However, the Commission does not consider it appropriate to order demolition of this structure. The Commission notes that, pursuant to section 22.3 of UNMIK/ADM/DIR/2007/5 as amended by Law 03/L-079, the Executive Secretariat may, in coordination with the Chairperson of the Commission or the Presiding Judge of the Supreme Court panel respectively, delay the execution of an eviction order for a reasonable period of time when it considers that circumstances so warrant. The Executive Secretariat may consider exercising its authority in the present case, in order to allow an amicable resolution of the dispute.

f. Claim No. 36813

35. Claim No. 36813 has been lodged by the Claimant in his capacity as a family household member of the property right holder, namely his brother. The property right holder is listed as owner of the claimed property in possession list dated 3 August 2008. The Executive Secretariat has verified the possession list as being genuine.

36. The Respondent acknowledges the ownership right of the property right holder, but claims to have permission from the property right holder to use the claimed property. This is disputed by the Claimant, and in any event the Respondent has failed to submit any evidence to substantiate his allegation.

37. Accordingly a decision confirming the property right in favor of the property right holder stands to be granted.

g. Claim No. 00719

38. Claim No. 00719, referred to in part F of the attached Schedule, has been lodged by the Claimant in her capacity as property right holder.

39. By decision dated 24 April 1998 the socially-owned enterprise "Trepan" allocated a use right over the claimed property (apartment) to the Claimant's husband. On the basis of this allocation decision, the Claimant's husband on 22 May 1998 concluded a lease contract over the claimed property with the Public Housing Enterprise for an unlimited time period of time. The Claimant's husband also used the claimed property as evidenced by utility bills submitted by the Claimant. The Executive Secretariat has verified the allocation decision, the contract on lease and the utility bills as being genuine.

40. The Respondent contests the Claimant's use right and claims to be the owner of the claimed property. However, the Respondent failed to produce any evidence to substantiate his allegations.

41. The Commission notes that, while Claimant has submitted the claim in her capacity as property right holder, all the documents submitted by the Claimant list the Claimant's husband as the use right holder of the claimed property. Accordingly the Commission finds that the claim stands to be granted to in favor of the Claimant's husband, the proven property right holder.

2. Contested claims: Other

42. In Claim Nos. 00153 and 47406, referred to in part E of the attached Schedule, the Respondent has contested the validity of the claim. However, based on its review of the evidence before it, the Commission finds that these claims stand to be granted for the reasons set out below.

a. Claim No. 00153

43. Claim No. 00153 has been lodged by the Claimant in his capacity as property right holder. The Claimant seeks confirmation of ownership and repossession of the claimed property (apartment). The Claimant has submitted various documents in support of his claim, including an allocation decision related to the claimed property, dated 8 March 1995, and a court decision dated 26 May 1997, confirming the purchase of the claimed property by the Claimant on the basis of the aforementioned allocation decision.

44. The Executive Secretariat has been unable to verify the allocation decision, however, it was able to verify the court decision dated 26 May 1997. In light of the court decision, which in turn refers to the allocation decision as the legal basis of the decision, the Commission finds that the existence of the allocation decision has also been proven.

45. The Respondent claims to have acquired the claimed property. In support of his allegation, the Respondent submitted a court judgment dated 28 June 2002 confirming the ownership of a third party over the claimed property. This third party later allegedly sold the claimed property to the Respondent, respectively to the Respondent's husband.

46. In the Commission's view, the judgment from 2002 cannot be considered as sufficient evidence that the Respondent acquired ownership over the claimed property on the basis of the purchase contract with the third party. The court procedure confirming the ownership of the third party was undertaken without considering the complete factual background, particularly, that the Claimant had already established ownership over same the property in 1997. Consequently, the court decision is obviously erroneous and based on an incomplete determination of the relevant facts and cannot determine the outcome of the present decision.

47. In light of the evidence before it, the Commission finds that the Respondent has failed to prove any legal right to the claimed property and the claim stands to be granted in favor of the property right holder. This decision is without prejudice to the Respondent's right to seek reimbursement of any purchase price that the Respondent, respectively the husband of the Respondent, may have paid for the claimed property to the third party on the basis of the purchase contract.

b. Claim No. 47406

48. In Claim No. 47406 the Claimant filed the claim in his capacity as a family household member of the property right holder, namely his great grandfather. The Claimant submitted a possession list dated 29 May 2002, listing the claimed property in the name of the property right holder. The possession list has been verified by the Executive Secretariat as being genuine.

49. The Respondent alleges to have purchased the claimed parcel from the property right holder's son in 1983. In support of his allegation, the Respondent submitted a purchase contract over a land parcel dated 25 April 1981 and a confirming court decision dated 12 May 1981. However, this evidence does not refer to the claimed property, and neither the alleged property right holder nor any other family member was party to this purchase contract.

50. The Respondent also identified a number of witnesses who could confirm the alleged sale. During its 28th session held April 2012, and again during its 29th session held in June 2012, the Commission ordered that an oral hearing be held in this claim by one of its members pursuant to section 5.4 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by

Law No. 03/L-079. Accordingly, pursuant to the Commission's decision, the Claimant Tihomir Stefanovic, the Respondent Bajram Bytyqi and the Respondent's witnesses were invited to attend the oral hearing on 25 May 2012 and also on 23 July 2012 in the KPA premises in Prishtinë/Pristina. However, neither the duly invited Claimant, nor the Respondent, nor the three witnesses named by the Respondent, Rifkin Shale, Shafer Byte and Vllaznim Bardheci, attended either one of the two hearings. Only in respect of the second hearing scheduled for 23 July in 2012, the Claimant and the Respondent informed the Executive Secretariat that they would not attend the hearing. The Parties did not provide any reasons for their refusal. As to the three witnesses, Refki Shala excused his non-appearance by referring to financial hardship, whereas Shefqet Bytypi and Vllaznim Bardheci invoked health-related reasons.

51. The Commission notes that, since conducting a hearing in this claim failed twice, the claim must be decided on the basis of the evidence submitted by the Claimant and obtained *ex officio* by the Executive Secretariat. Based on this evidence, the Commission is satisfied that the claim for the claimed parcel stands to be granted in the name of the Claimant's deceased great grandfather.

52. 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.

53. 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 or use right in respect of the claimed property, or such part thereof as specified in the respective individual decision;
- (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
- (c) 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. *Claims for compensation*

54. 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*

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

56. 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.

57. 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.

58. 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).

59. 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.

The Supreme Court of Kosovo may levy court fees for the appeal procedures.

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

KPA13746 REP	KPA17041	KPA31048	KPA39348	KPA51097	KPA92708	KPA10693
KPA13158	KPA19329	KPA22362	KPA45381			

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

KPA14167	KPA92658	KPA92659	KPA92660	KPA28030	KPA34571	KPA47272
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Spreadsheet /Lista /Prilog
Part C/Pjesa C/Deo C

KPA06022	KPA47055	KPA49463	KPA92527	KPA92528	KPA92529	KPA21027
KPA34457						

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

KPA08936	KPA25543	KPA33891	KPA48950	KPA52362	KPA52382	KPA30058
KPA37104	KPA39785	KPA50970	KPA32365 REP	KPA07973	KPA08743	KPA16170
KPA21184	KPA21948	KPA30854	KPA44593	KPA48744		

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

KPA00879	KPA11535	KPA25715	KPA36813	KPA00153	KPA10007	KPA10008
KPA06118	KPA47406					

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

KPA00719
KPA01234