



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

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DECISION

PANEL NO: 1

DECISION NO: KPCC/D/R/166/2012
DECISION DATE: 05/09/2012

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) *In each of the 116 (one hundred and sixteen) 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, except for Claim No. 90497, the associated land parcel, or such part thereof as specified in the respective individual decision;

(2) *In each of the 53 (fifty three) 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 Claim No. 50847, referred to in part F 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 a use right of the deceased property right holder over the claimed property;

(4) *In each of the 169 (one hundred and sixty nine) claims referred to in paragraphs (1) and (2) above, except Claim No. 90497, the Commission*

orders that

- (a) *The claimant or the property right holder, as the case may be, be given possession of the associated land parcel on which the residential property stood;*
 - (b) *Any other person 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;*
- (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 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.

A. Claims covered by the present decision

7. In 169 claims of the 170 claims that are covered by the present decision the claimants seek the resolution of an ownership claim, and in one claim (Claim No. 50847) the claimant seeks the confirmation of a use right over the claimed property. All of the claims covered by the present decision 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 to be entirely destroyed.

8. The present decision applies to the 170 claims which are listed in parts A, B, C, D, E and F of the attached Schedule. The remaining 159 claims are covered by decisions KPCC/D/R/165/2012 and KPCC/D/R/167/2012.

9. A total of 93 of the 170 claims covered by this decision have not previously been decided by the Commission, while another 77 of these claims were the subject of an earlier Commission decision. However the earlier decisions in these 77 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

¹ There appears to be a technical error in Annex I. While Annex I clearly appears to be intended to replace UNMIK/ADM/DIR/2007/5 in its entirety, including its all three annexes, Article 26 of Annex I provides that the title of Annex III of UNMIK/ADM/DIR/2007/5 shall be replaced by a title referring to Annex II. However, there is neither specific provision nor any other indication in Law 03/L-079 or its Annexes that the intention of this particular amendment was to delete Annex I or Annex II of UNMIK/ADM/DIR/2007/5. Accordingly the Commission considers that all three Annexes of UNMIK/ADM/DIR/2007/5 are included in the legislative package and will be referred to by the Commission in this decision as Sub-Annexes I, II and III, respectively.

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.

10. All 168 claims referred to in parts A, B, C and D of the Schedule attached to this decision are uncontested ownership claims. Claim No. 50847, referred to in part F of the Schedule, is an uncontested claim for a use right. These claims 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, D and F 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, 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. Claim No. 90497, referred to in part E of the attached Schedule, is contested in the sense that the party occupying the claimed property (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.

B. Claims granted

1. Uncontested claims

12. In the claims identified in parts A, B, C, D and F of the attached Schedule, 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 possession lists, contracts on division of property, inheritance decisions, court decisions recognizing ownership and certificates of immovable property rights. The Commission is satisfied that final court decisions and certificates of immovable property rights confirming an ownership interest indeed constitute proof of ownership. The other documents submitted by claimants, including possession lists, create a rebuttable presumption of ownership. The claims identified in 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.

13. In the 61 claims identified in parts A of the attached Schedule, the claimant has filed the claim in the capacity of a property right holder. In light of the Commission's findings in paragraph 12 above, these claims stand to be granted.

14. In the 31 claims identified in part B of the attached Schedule, the claimant has 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 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 the claims, as set out above. In the claims identified in the relevant column of part B of the Schedule, the claimant alleges that the property right holder has died but no acceptable evidence has been submitted by the claimant that would establish death, nor has the Executive Secretariat been able to locate any such documents. Accordingly a decision confirming the property right in favour of the property right holder also stands to be granted in each of these claims, as set out above.

15. In the 23 claims identified in part C of the attached Schedule, the claimant was not the property right holder at the date of loss of possession of the claimed property, but has adduced evidence of having subsequently succeeded to the respective ownership right by virtue of inheritance. The claimant must be considered as having succeeded to all the rights belonging to an owner, including the right to claim for confirmation of ownership and for repossession in the present proceedings. The claims therefore stand to be granted, as set out above.

16. In the 53 claims identified in part D of the attached Schedule, and in Claim No. 50847, referred to in part F 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 and with respect to Claim No. 50847, referred to in part F

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 claim

17. In Claim No. 90497 the Claimant submitted the claim in his capacity as the property right holder. The Claimant seeks confirmation of his ownership right over the claimed property (an apartment). The Claimant has produced in support of his claim a purchase contract dated 5 April 1993, concluded with the socially-owned enterprise "Lux" and certified by the Municipal Court of Mitrovica/Mitrovicë on 31 April 1994. The purchase contract has been verified by the Executive Secretariat as being genuine.

18. The Respondent through his authorized representative contests the claim and alleges that he has lawfully purchased the claimed property from the previous owner on 23 September 2005, and that he subsequently destroyed the claimed property and built a new business structure on the land. In support of his allegation the Respondent submitted as evidence an inheritance decision dated 5 September 2005, confirming the ownership of a third party over the claimed property. This third party had allegedly sold the claimed property to the Respondent. Both the inheritance decision and the purchase contract have been verified by the Executive Secretariat as being valid.

19. The Commission considers that the inheritance decision submitted by the Respondent cannot be considered as sufficient evidence to support the Respondent's defense. It is apparent that the inheritance decision submitted by the Respondent has been undertaken without considering the complete factual background, in particular the fact that the Claimant had acquired ownership over the claimed property already in 1993. In these circumstances, the inheritance decision is obviously erroneous and based on an incomplete determination of the relevant facts and cannot be taken into consideration for purposes of the present decision. Consequently, in the absence of any valid defense on the part of the Respondent, the Commission concludes that the claim stands to be granted. This decision on Claim No. 90497 has been taken by two Members of the Commission, as one Commissioner recused himself from the proceeding citing a possible conflict of interest.

20. The Commission's decision is without prejudice to the Respondent's right to seek reimbursement of any purchase price the Respondent may have paid for the claimed property to the third party on the basis of the aforementioned purchase contract.

21. 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.

22. In Claim Nos. 50847 and 90497 the Claimant seeks confirmation of the property right over the claimed property and repossession. However, the properties claimed in these claims are destroyed and no ownership right or use right over the associated land has been established. In these circumstances, an order confirming the property right in favour of the Claimant or the property right holder, as the case maybe, stands to be granted without an eviction order or any other form of ancillary relief as set out above.

23. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that:

- (a) the claimant or the property right holder, as the case may be, had an ownership right or as the case may be use right in respect of the claimed property, or such part thereof as specified in the respective individual decision;
- (b) each claim, except for Claim No. 90497 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;
- (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.

24. Accordingly the claimants or the property right holders, as the case may be, have shown that they satisfied the requirements for an order establishing ownership or as the case may be a use right over the claimed property and except for Claim Nos. 90497 and 50847 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.

C. Claims for compensation

25. 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.

D. Concluding remarks

26. 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.

27. 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.

28. 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.

29. 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).

30. 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

KPA17857	KPA22563	KPA41427	KPA41429	KPA41430	KPA51578	KPA90509
KPA11125	KPA27516	KPA28508	KPA33799	KPA34189	KPA45010	KPA53021
KPA53108	KPA90510	KPA92558	KPA31354	KPA51036	KPA51037	KPA51063
KPA53033	KPA54557	KPA92493	KPA10536	KPA27258	KPA28873	KPA38777
KPA41602	KPA44907	KPA08788	KPA11172	KPA11479	KPA13254	KPA14874
KPA18252	KPA21141	KPA22169	KPA23707	KPA23825	KPA23827	KPA24537
KPA25193	KPA26196	KPA27174	KPA33134	KPA33236	KPA33546	KPA33580
KPA36164	KPA36609	KPA43105	KPA44080	KPA44406	KPA44926	KPA45048
KPA47679	KPA47911	KPA48037	KPA48809	KPA52637		

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

KPA28653	KPA34144	KPA41497	KPA44509	KPA54213	KPA56769	KPA92560
KPA07219	KPA16179	KPA25838	KPA26415	KPA35657	KPA35660	KPA50944
KPA16235	KPA33469	KPA48237	KPA07514	KPA07909	KPA07911	KPA14601
KPA14603	KPA16455	KPA21318	KPA21382	KPA24951	KPA26314	KPA36808
KPA38048	KPA38716	KPA42474				

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

KPA10624	KPA42355	KPA90456	KPA90914	KPA91504	KPA91607	KPA08822
KPA34177	KPA35074	KPA91700	KPA92397	KPA92686	KPA92687	KPA08944
KPA27723	KPA43269	KPA92707	KPA07231	KPA07242	KPA10242	KPA25126
KPA27729	KPA51593					

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

KPA18061	KPA18070	KPA26476	KPA32114	KPA32115	KPA47700	KPA54810
KPA92504	KPA00962	KPA01259	KPA06749	KPA17656	KPA43125	KPA44170
KPA54217	KPA90036	KPA90808	KPA92559	KPA00743	KPA37321	KPA39405
KPA44773	KPA48108	KPA11293	KPA29717	KPA48110	KPA48514	KPA50251
KPA51157	KPA06018	KPA33726	KPA45233	KPA45234	KPA47507	KPA91491
KPA91659	KPA13806	KPA14006	KPA14457	KPA19383	KPA21262	KPA21263
KPA21364	KPA21874	KPA23811	KPA29899	KPA33658	KPA34143	KPA34391
KPA45160	KPA45330	KPA47947	KPA54922			

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

KPA90497

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

KPA50847