



Kosovo Property Claims Commission
Komisioni i Kërkesave Pronësorete Kosovës
Komisija Kosovske Agencijeza Imovinu

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

DECISION

PANEL NO: 1

DECISION NO: KPCC/D/R/181/2012
DECISION DATE: 14/12/2012

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) In the 22 (twenty-two) 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 6 (six) 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 28 (twenty-eight) claims, identified in paragraphs (1) and (2) above, except for Claim Nos. 06903 and 27192, 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 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*
- (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 thirty-second session from 12 to 14 December 2012 in Prishtinë/Pristina. A total of 143 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its thirty-second session, together with supporting documentation, claims processing reports, verification reports and other relevant information. The Commission suspended the consideration of one residential property claim pending the holding of an oral hearing. In addition, the Commission resolved one claim which had previously been suspended pending the holding of an oral hearing. In sum, a total of 143 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 28 claims which are listed in parts A, B, C, D and E of the attached Schedule. The remaining 115 claims are covered by decisions KPCC/D/R/182/2012 and KPCC/D/R/183/2012.

8. A total of 22 of the 28 claims covered by this decision have not previously been decided by the Commission, while another six of these claims were the subject of an earlier Commission decision. However the earlier decisions in these six 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 28 claims which are subject to the present decision the claimants seek the resolution of an ownership claim and all 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.

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

10. All 26 claims referred to in parts A, B, C and D 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 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. The two claims referred to in part E of the attached Schedule are contested ownership 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 their claims, including inheritance decisions and certificates on immovable property rights. The Commission is satisfied that inheritance decisions and certificates of immovable property rights indeed constitute proof of ownership over the claimed property. The 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. 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 12 above, these claims stand to be granted.

14. In the seven claims referred to 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 claimant falls 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 two claims referred to in part C of the attached Schedule, the claimants were not the property right holders 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 six 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 six 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.

2. *Contested claims*

17. Claim Nos. 00651 and 34556, referred to in part E 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 UNMIKD/REG/2006/50 as adopted by Law No. 03/L-079.

a. Claim No. 00651

18. Claim No. 00651 has been submitted by the Claimant in her capacity as property right holder. The Claimant alleges that her father-in-law purchased the claimed property from the third party Slavica Kizic in the 1990s, but that he left Kosovo in 1999 and subsequently lost possession of the claimed property to the Respondent. The Executive Secretariat located *ex officio* a certificate for immovable property rights from 2007, which lists the Respondent as the property right holder of the claimed property.

19. The Respondent claims to be the rightful owner of the claimed property. He submitted in support of this allegation a court certified purchase contract from 2003, concluded between the Respondent and the third party Slavica Kizic. The purchase contract was signed on behalf of Slavica Kizic by Muharrem Maxhuni who allegedly was conferred a court certified power of attorney by Slavica Kizic. Both documents have been verified as genuine by the Executive Secretariat. However, the Commission notes that the purchase contract does not relate to the claimed property.

20. The third party, Slavica Kizic, submitted a statement to the KPA explaining that she had indeed sold the claimed property to the Claimant's family in 1991 but that, due to the discriminatory legislation applicable in the 1990s, the property remained listed in her name in the cadastral records. She further stated that she had filed a lawsuit against the Respondent before the Municipal Court of Klinë/Klina on the basis that the alleged power of attorney has been forged.

21. During its 31st session held October 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 Lika Garaj and the Respondent Milazim Maxhuni were invited to attend the oral hearing on 9 November 2011 in the KPA premises in Prishtinë/Priština. However, only the Claimant, accompanied by his lawyer, appeared at the scheduled hearing. In addition, Slavica Kizic was heard as a witness.

22. At the hearing, the Claimant and the witness stated that Slavica Kizic's father sold the claimed property to the Claimant's father-in-law in the 1990s. After the conflict, Slavica Kizic's father sold another property, which is not subject to this claim, to Bashor Buzhala; the latter prepared a power of attorney that authorized Muharrem Maxhuni to formalize the transaction. Slavica Kizic signed the authorization without paying attention to the fact that it also included a power of attorney for the sale of the claimed property, which had, however, already been sold to the Claimant's family. The Claimant and the witness further stated that apparently the Respondent purchased the claimed property from Muharrem Maxhuni, who misused the power of attorney for this transaction. The witness also reiterated that she had filed a lawsuit against Muharrem Maxhuni, and that these proceedings were pending.

23. The Commission notes that the Respondent's purchase contract refers to a property which is not subject to the present claim. In contrast, the certificate for immovable property rights located by Executive Secretariat lists the Respondent as the property rights holder of the claimed property.

24. The Commission considers that there is sufficient evidence to recognize the ownership right of the Claimant over the claimed property. This conclusion is based *inter alia* on the witness statement given by Slavica Kizic confirming that the claimed property was sold to the Claimant's father-in-law in the 1990s, and that the Claimant took possession of the claimed property. Consequently, Slavica Kizic, irrespective of the existence of the power of attorney given to Muharrem Maxhuni, could not dispose of the claimed property which had already been sold to the Claimant's father-in-law. It follows that the certificate for immovable property rights listing the Respondent as the owner of the claimed property is obviously erroneous and based on an incomplete determination of the relevant facts. Accordingly, it cannot be taken into consideration for purposes of the present decision. Therefore, based on the evidence before it, and since the Respondent has failed to establish a valid defence, the Commission concludes that the claim stands to be granted in the name of the Claimant.

b. Claim No. 34556

25. Claim No. 34556 has been filed the Claimant in his capacity as property right holder. The Claimant submitted in support of his claim an inheritance decision issued by the Municipal Court of Kurshumlia/Kuršumlja in 2007, according to which he had inherited the claimed property from his aunt Ikonija Darmanović. This decision was verified by the Executive Secretariat as being genuine.

26. The Claimant furthermore submitted an allocation decision from 1969 through which Ikonija Darmanović had been allocated the claimed property, as well as a purchase contract from 1993 according to which Ikonija Darmanović had purchased the claimed apartment in 1993. She used the claimed property until 1999. Both documents have been verified as being genuine by the Executive Secretariat.

27. The Respondent states that he has been using the claimed property since 1999 with the permission of the Municipality of Podujevë/Podujevo. However, the Respondent submitted only a bill in the name of the Respondent issued by the Public Housing Enterprise Podujevë/Podujevo and an electricity bill issued by KEK dated March 2011. These documents only confirm that the Respondent has been using the claimed property, but do not establish that he acquired a legally valid use right or ownership over the claimed property.

28. In these circumstances, the Commission concludes that the claim stands to be granted in the name of the Claimant.

29. 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.

30. 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;
- (b) 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

31. 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


32. 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.

33. 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.

34. 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.

35. 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).

36. 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

KPA10555	KPA14832	KPA16448	KPA23579	KPA27050	KPA27473	KPA42016
KPA90574	KPA91862	KPA92299	KPA92683			

Spreadsheet /Lista /Prilog

Part B/Pjesa B/Deo B

KPA14040	KPA20077	KPA20122	KPA47017	KPA50052	KPA00091	KPA44565
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Spreadsheet /Lista /Prilog

Part C/Pjesa C/Deo C

KPA13014
KPA56752

Spreadsheet /Lista /Prilog

Part D/Pjesa D/Deo D

KPA06903	KPA01267	KPA20083	KPA27192	KPA38552	KPA53975	
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Spreadsheet /Lista /Prilog

Part E/Pjesa E/Deo E

KPA34556
KPA00651