



Kosovo Property Claims Commission
Komisioni i Kërkesave Pronësore të Kosovës
Komisija Kosovske Agencije za 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/182/2012
DECISION DATE: 14/12/2012

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) In each of the 40 (forty) 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 the associated land parcel, or such part thereof as specified in the respective individual decision;

(2) In each of the 20 (twenty) 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. 00189, 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 61 (sixty-one) claims referred to 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 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 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.

A. Claims covered by the present decision

7. In a total of 60 claims of the 61 claims that are covered by the present decision the claimants seek the resolution of an ownership claim, and in one claim (Claim No. 00189) 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 61 claims which are listed in parts A, B, C, D, E and F of the attached Schedule. The remaining 82 claims are covered by decisions KPCC/D/R/181/2012 and KPCC/D/R/183/2012.

9. A total of 44 of the 61 claims covered by this decision have not previously been decided by the Commission, while another seventeen of these claims were the subject of an earlier Commission decision. However the earlier decisions in these seventeen 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

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.

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. The 58 claims identified in parts A, B, C and D of the Schedule attached to this decision are uncontested ownership claims. Claim No. 00189, 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 Nos. 13648 and 33931, referred to in part E of the attached Schedule, are 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 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 thirteen 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 eleven 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 fourteen 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 twenty claims identified in part D 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 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.

17. In Claim No. 00189, referred to in part F of the attached Schedule, the Claimant submitted the claim in her capacity as alleged use right holder. In support of her claim, the Claimant submitted a contract on use from 1981 whereby the Claimant was granted a use right over the claimed property for an indefinite period. The contract has been verified by the Executive Secretariat as being genuine. Based on the evidence before it, the Commission finds that the claim stands to be granted.

2. *Contested claims*

18. The two claims identified 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 UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

19. Based on its review of the evidence before it, finds that the two claims identified in part E of the attached Schedule stand to be granted for the reasons set out below.

a. Claim No. 13648

20. In Claim No. 13648, the Claimant initially filed the claim in his capacity as family household member of the alleged property rights holder, namely his deceased mother. In support of his claim, the Claimant submitted several documents including a possession list from 1992 identifying the Claimant's mother as sole owner of the claimed property and a positively verified inheritance decision issued by the Municipal Court of Pejë/Peć in 2008 pursuant to which the Claimant became the sole heir of the claimed property.

21. The Respondent, who is the Claimant's sister argues to be the co-owner with an ideal part of $\frac{1}{4}$ of the claimed property. She states that she had filed a lawsuit after the inheritance against the Claimant before the Municipal Court of Pejë/Peć seeking confirmation of her co-ownership. In May 2011 the Municipal Court issued a judgment by which the Respondent was indeed recognized as co-owner with an ideal part of $\frac{1}{4}$ of the claimed property.

22. Confronted with this judgment, the Claimant stated that it had received it and confirmed he only claimed an ideal part of $\frac{3}{4}$ of the claimed property. The Executive Secretariat *ex officio* located a certificate of immovable property rights from 2012 showing the Claimant and the Respondent as co-owners, the Claimant with an ideal part of $\frac{3}{4}$ and the Respondent with an ideal part of $\frac{1}{4}$ of the claimed property.

23. The Commission concludes, based on the evidence before it, that the Claimant's claim for ownership of an ideal part of $\frac{3}{4}$ of the claimed property be granted.

b. Claim No. 33931

24. Claim No. 33931 has been submitted by the Claimant in her capacity as property right holder. The Claimant submitted an inheritance decision from 1981, according to which the Claimant inherited an ideal part of $\frac{1}{4}$ of the claimed property from her deceased mother. This decision has been verified as being genuine by the Executive Secretariat. The Executive Secretariat furthermore *ex officio* located a possession list from 2009 which confirms the ownership of the deceased mother of the Claimant over the claimed property.

25. The Respondent states that he has been living on the claimed property since 1976 when he purchased it from a third party. However, the Respondent failed to submit any evidence to support his allegation.

26. Based on the evidence before it, the Commission concludes that the Claimant's claim for ownership of an ideal part of $\frac{1}{4}$ of the claimed property be granted.

27. 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.

28. In Claim No. 51178 the Claimant seeks confirmation of the property right over the claimed property and repossession. However, the property claimed is destroyed and no ownership right over the associated land has been established. In these circumstances, an order confirming the property right in favour of the deceased property right holder stands to be granted without an eviction order or any other form of ancillary relief as set out above.

29. 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 Nos. 13648 and 33931, are uncontested in that no person has contested the validity of the claim;
- (c) the claimant or the property right holder, as the case may be, in each case is not now able to exercise his or her ownership right; and
- (d) the claim in each case involves circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

30. 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 No. 51178 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

31. 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

32. 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.

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 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.

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 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).

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

KPA07867	KPA11644	KPA13156	KPA25896 REP	KPA37070 REP	KPA08997 REP	KPA10011
KPA15587 REP	KPA25437 REP	KPA33541 REP	KPA43287	KPA90467 REP	KPA92311	

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

KPA25486	KPA31018	KPA34028	KPA44182 REP	KPA91496	KPA21082	KPA34029
KPA39306	KPA54889	KPA14887	KPA39223			

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

KPA07762 REP	KPA17815	KPA43171	KPA46028	KPA50637	KPA54068	KPA92797
KPA92828	KPA92829	KPA92830	KPA92831	KPA92832	KPA23514	KPA26021

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

KPA07463	KPA08570	KPA15973 REP	KPA40133	KPA54170	KPA91489	KPA21958
KPA29140	KPA45396	KPA51178	KPA92564	KPA11389	KPA27897 REP	KPA40294
KPA48015 REP	KPA48315	KPA90034	KPA91140	KPA91142	KPA37244	

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

KPA33931
KPA13648

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

KPA00189
