



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/189/2013

DECISION DATE:

13/02/2013

Commissioners Heiskanen (Chairperson),  
Vokshi and Wühler

## ORDER

*(1) In the 19 (nineteen) claims, identified in parts A, B, C and E of the attached Schedule, the Commission,*

*decides that*

*The claimant or the property right holder, as the case may be, has established ownership over the claimed property, or such part thereof as specified in the respective individual decision;*

*(2) In the 5 (five) claims, identified in part D of the attached Schedule, the Commission*

*decides that*

*The claimant has established the ownership of the deceased property right holder over the claimed property, or such part thereof as specified in the respective individual decision;*

*(3) In Claim Nos. 01258, 06434 and 11687, 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 27 (twenty-seven) claims identified in paragraphs (1), (2) and (3) above, except for Claim Nos. 38039, 53969 and 92760, 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, C 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.)<sup>1</sup>

5. The Commission held its thirty-third session from 11 to 13 February 2013 in Prishtinë/Pristina. A total of 169 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its thirty-third session, together with supporting documentation, claims processing reports, verification reports and other relevant information. The Commission suspended the consideration of two 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 169 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. The present decision applies to the 27 claims which are listed in parts A, B, C, D, E and F of the attached Schedule. The remaining 142 claims are covered by decisions KPCC/D/R/190/2013 and KPCC/D/R/191/2013.

8. A total of 24 of the 27 claims covered by this decision have not previously been decided by the Commission, while the remaining three of these claims were the subject of an earlier Commission decision. However the earlier decisions in these three 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

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<sup>1</sup>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.

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

9. In 24 of the total of 27 claims covered by the present decision the claimants seek the resolution of an ownership claim. In the remaining three claims, Claim Nos. 01258, 06434 and 11687, 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 22 claims referred to in parts A, B, C and D of the Schedule attached to this decision are uncontested ownership claims. Claim Nos. 01258, 06434 and 11687, referred to in part F of the Schedule, are uncontested claims 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 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.

## *B. Claims granted*

### *1. Uncontested ownership claims*

12. The Commission notes that the claimants have submitted various types of documents in support of the ownership claims, including inheritance decisions and certificates of immovable property rights. The Commission is satisfied that inheritance decisions and certificates of immovable property rights indeed constitute proof of ownership of 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 nine ownership claims identified 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 three claims identified 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 stand to be granted in these claims, as set out above.

15. In the five claims referred to in part C of the attached Schedule, the claimants were not 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 five claims identified in part D of the attached Schedule, the claimants were not the property right holder at the date of loss of possession of the claimed property but assert to having succeeded to the property right. In each of these claims the claimant has established that she or he is a family household member of the deceased property right holder. However, no valid inheritance decision or other documentary evidence has been submitted by the claimants that would establish any of the claimants as being an heir to the claimed property, nor has the Executive Secretariat been able to locate any such documents. Accordingly a decision confirming the property right in favor of the deceased property right holder 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 five 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. *Uncontested use right claims*

### a. *Claim No. 01258*

17. Claim No. 01258 has been submitted by the Claimant in her capacity as the alleged property right holder. The Claimant seeks confirmation of the use right over the claimed property. In support of the claim, the Claimant submitted a contract on use from 1974 according to which the Claimant was granted a use right over the claimed property for an unlimited period of time. The contract has been positively verified by the Executive Secretariat.

18. In these circumstances, the Commission finds that the claim stands to be granted in favor of the Claimant.

*b. Claim No. 06434*

19. Claim No. 06434 has been submitted by the Claimant in his capacity as a family household member of the alleged property right holder, namely his deceased father. The Claimant seeks confirmation of the property right holder's use right over the claimed property and repossession. In support of the claim, the Claimant submitted a contract on use from 1986 according to which the alleged property right holder was granted a use right over the claimed property for an unlimited period of time. The contract has been positively verified by the Executive Secretariat.

20. In these circumstances, the Commission finds that the claim stands to be granted in favor of the property right holder.

*c. Claim No. 11687*

21. Claim No. 11687 has been submitted by the Claimant in her capacity as a legal guardian of her minor son, Florent Sinani, who is a family household member of the property right holder, namely his deceased grandfather. The alleged property right holder is the father-in-law of the Claimant. The Claimant seeks confirmation of the property right holder's use right over the claimed property. In support of the claim, the Claimant submitted an allocation decision from 1983 and a contract on use from 1984 according to which the property right holder was granted a use right over the claimed property. Both documents have been positively verified by the Executive Secretariat.

22. In these circumstances, the Commission finds that the claimed use right stands to be granted in favor of the property right holder.

*3. Contested claims*

23. Claim Nos. 50592 and 95004, 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.

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

25. Claim Nos. 50592 and 95004 have been submitted by the Claimant in his capacity as the property right holder. The Claimant seeks confirmation of ownership and repossession. In support of his claims, the Claimant submitted an allocation decision from 1992 issued by the Socially Owned Enterprise "Ballkan" and a lease agreement from 1992. The Claimant also submitted a purchase contract from 1993, concluded between the Claimant as buyer of the claimed property and the Socially Owned Enterprise "Ballkan" as seller. All three documents have been positively verified by the Executive Secretariat.

26. The Respondent claims to be the rightful owner of the claimed property. However, he submitted in support of his allegation only an allocation decision from 1989 issued by the Socially Owned Enterprise "Ballkan," but failed to submit any further documentary evidence; in particular there is no evidence that the Respondent ever concluded a contract on lease or

use with the Social Owned Enterprise. The Respondent also admitted that he never took possession over the claimed property on the basis of the aforementioned allocation decision. The Commission notes that a mere allocation decision, without a valid contract on use and taking of possession over the claimed property, does not constitute evidence of a property right.

27. Based on the evidence before it, and since the Respondent has failed to establish a valid defence, the Commission concludes that the claims stand to be granted in favor of the Claimant.

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28. 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.

29. In Claim Nos. 38039 and 92760, referred to in the respective column in the attached Schedule, the Claimants state that they do not seek an eviction order, as the current occupants are using the claimed property with their permission. In Claim No. 53969, referred to in the respective column in the attached Schedule, the Claimant does not seek repossession as he has been living in the claimed property since 2010. 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.

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 as the case may be 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 their property 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.

### *C. 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.

D. *Concluding remarks*

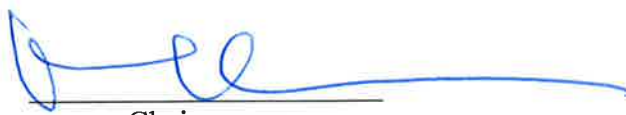
32. In view of the foregoing, the Commission finds that the claims listed in parts A, B, C, D, E and F of the attached Schedule succeed and directs that an order be made in respect of each claim as set out above.

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 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

KPA00753 REP	KPA00952	KPA19285	KPA23103	KPA26047	KPA27034	KPA92795
KPA38039	KPA92760					

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

KPA52688	KPA92849	KPA92923				
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Spreadsheet /Lista /Prilog  
Part C/Pjesa C/Deo C

KPA24182	KPA27202	KPA92919	KPA92920	KPA31887		
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Spreadsheet /Lista /Prilog  
Part D/Pjesa D/Deo D

KPA28111	KPA50039	KPA53723	KPA53969 REP	KPA25600		
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Spreadsheet /Lista /Prilog  
Part E/Pjesa E/Deo E

KPA50592						
KPA95004						

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

KPA01258	KPA06434	KPA11687				
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