

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/21/2008
DECISION DATE: 20/06/2008

ORDER

- (1) *In each of the 99 (ninety nine) claims identified in parts A, B and C 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 52 (fifty two) 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 each of the 151 (one hundred and fifty one) claims referred to in paragraphs (1) and (2) 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) *The respondent and any other person occupying the associated land parcel vacate the same within 30 (thirty) days of the delivery of this order; and*

- (c) *Should the respondent or any other person occupying the property fail to comply with the order to vacate within the time stated, they be evicted from the property;*
- (4) *In each of the 56 (fifty six) claims identified in Part E of the attached Schedule the Commission additionally decides that the claims be dismissed insofar as the claimants seek compensation for destruction of the claimed property; and*
- (5) *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.*

REASONS FOR THE DECISION

1. A claimant 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 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.)

2. Where the claimant makes an ownership claim pursuant to section 3.1(a) of UNMIK/REG/2006/50, the Commission must resolve the issue of ownership and, if ownership is proven to the satisfaction of the Commission, make an order for repossession in favour of the claimant. Where the claimant makes a claim for a property use right pursuant to section 3.1(b) of UNMIK/REG/2006/50, 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/DIR/2007/5.)

3. The Commission held its seventh session on 16-20 June 2008 in Pristinë/Pristina. A total of 196 claims for residential property were submitted by the Executive Secretariat of the Kosovo Property Agency (the "Executive Secretariat" and "KPA," respectively) to the Commission at its seventh session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information.

4. 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. *Ownership claims*

5. The present decision applies to the 151 claims referred to in the operative part of the decision; the remaining 45 claims are the subject of another decision (KPCC/D/R/20/2008).

6. In all of the 151 claims covered by this decision the claimants seek the resolution of an ownership claim, and all of them relate to destroyed residential property, namely houses. In each of these claims the residential property in respect of which the claim has been filed was destroyed after the claimant lost possession of the property.

7. The Commission notes that all of the 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. 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. Accordingly these claims must be considered uncontested.

8. In the claims identified in parts A, B, C and D of the attached Schedule, the Commission notes that the claimants have submitted various types of documents in support of their ownership claims, including possession lists, purchase contracts, contracts on gift, contracts on division and inheritance decisions. The Commission is satisfied that these documents indeed constitute proof of ownership. All of these documents have been verified as being valid by the Executive Secretariat.

9. In the 61 claims identified in part 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 finding in paragraph 8 above, all of these claims stand to be granted, as set out above. In Claim Nos. 39615&39619 and 39621& 39623, the Claimants have filed both a residential claim and an agricultural property claim in relation to the same or wholly overlapping land parcels, and the Commission has directed the Executive Secretariat to consolidate these claims and to issue one individual decision for each such consolidated claim, confirming the claimant's property right over the residential and associated agricultural property.

10. In the 27 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/DIR/2007/5. Section 1 of the Administrative Direction 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 the claimants in the claims identified in Part B of the attached Schedule fall within this definition and accordingly in each of these claims a decision confirming the property right in favour of the property right holder stands to be granted. In each of the claims identified and highlighted in column 5 of this Schedule, the claimant alleges that the property right holder died but no 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 stands to be granted in each of these claims, as set out above. In Claim No. 40928 the property right holder is a missing person. The Commission considers that such status of the property right holder cannot affect the validity of the claim, or the right of the family household member to obtain a decision confirming the ownership of the said property right holder

11. In the eleven 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 or contract on gift, as the case may be. These 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. These claims therefore stand to be granted, as set out above.

12. In the 52 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. No valid inheritance decision or other documentary evidence has been submitted by the claimant that would establish the claimant as being an heir to the claimed property, nor has the Executive Secretariat been able to locate any such documents. 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 therefore stands to be granted, as set out above. This decision is without prejudice to the determination by the competent court as to how the heirs will succeed to the property right of the deceased property right holder. In Claim Nos. 40781&40782, the Claimant has filed both a residential and an agricultural property claim, and the Commission has directed the Executive Secretariat to consolidate these claims and issue one individual decision for such a consolidated claim, confirming the claimant's property right over the residential and associated agricultural property.

13. The various types of documents relied upon by the claimants in support of the claims referred to in paragraphs 9, 10, 11 and 12 above are listed in the relevant column of parts A, B, C and D of the attached Schedule.

14. In a number of claims the claimants left the property outside the period 27 February 1998 and 20 June 1999, referred to in section 3 of UNMIK/REG/2006/50. The Commission has determined that, even though the date of departure 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.

15. 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 in respect of the claimed property, or such part thereof as specified in the respective individual decision;
- (b) each claim is uncontested in that no person has contested the validity of the claim;
- (c) the claimant 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.

15. 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 over the claimed property and the associated land parcel as at the date of the 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 the destruction of the property, ownership over the land parcel on which the property stood.

B. Claims for compensation

16. In the 56 claims identified in part 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 the Commission has no jurisdiction over such claims. Accordingly these claims must be dismissed.

C. Concluding remarks

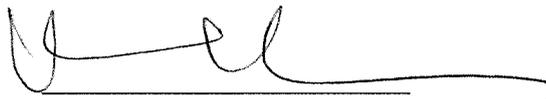
17. In view of the foregoing, the Commission finds that the claims listed in parts A, B, C and D of the attached Schedule succeed and an order be made in respect of each claim as set out above.

18. In a number 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 HPCC, respectively, and, accordingly, the jurisdiction of the two Commissions, are not identical in that, unlike HPCC, the present Commission has jurisdiction to confirm ownership. Accordingly, the decisions of HPCC cannot constitute *res judicata* before the present Commission. Moreover, in cases where 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.

19. The Commission's above decision and order also apply, where appropriate, to any associated property, *i.e.* any land or buildings owned or used by the claimant, which form a unit with the residential property.

20. Section 8.8 of Annex III of UNMIK/DIR/2007/5 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 provides 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 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 D/Pjesa D/Deo D

KPA00735	KPA10109	KPA13806	KPA13822	KPA19067	KPA21356	KPA24010
KPA24865	KPA24980	KPA28136	KPA30030	KPA31159	KPA32451	KPA33705
KPA36652	KPA38580	KPA40702	KPA44359	KPA47938	KPA06211	KPA19145
KPA23501	KPA23777	KPA24027	KPA28197	KPA31254	KPA31948	KPA34391
KPA34392	KPA36333	KPA36335	KPA36770	KPA39035	KPA45345	KPA46070
KPA51551	KPA20199	KPA23128	KPA24169	KPA26629	KPA33658	KPA34421
KPA36334	KPA36859	KPA37609	KPA48320	KPA50772	KPA54033	KPA45330
KPA40781	KPA40782	KPA13300				