



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/71/2010  
DECISION DATE: 21/04/2010

## ORDER

*(1) In each of the 7 (seven) claims identified in parts A, B and C 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 Claim No. 34376, referred to in part D of the attached Schedule, the Commission*

*decides that*

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

*(3) In each of the 8 (eight) claims referred to in paragraphs (1) and (2) above, except Claim Nos. 16018 and 47116, 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 occupying the property vacate the same within 30 (thirty) days of the delivery of this order; and*

*(c) Should any person occupying the property fail to comply with the order to vacate within the time stated, they be evicted from the property;*

*(4) In Claim No. 16018, the Commission,*

*orders that*

*(a) The property right holder be given possession of the claimed property subject to the provision of sixty (60) days notice to the current occupant as required by the rental agreement between the Kosovo Property Agency and the current occupant;*

*(b) Any person occupying the property without the permission of the property right holder, or of the Kosovo Property Agency in accordance with the Rental Agreement in relation to the property, vacate the property upon the expiry of the notice period referred to in paragraph 4(a) of this order; and*

*(c) Should any person 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 and D 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.)<sup>1</sup>

5. The Commission held its sixteenth session from 20 to 21 April 2010 in Prishtinë/Pristina. A total of 34 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its sixteenth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. One additional commercial property claim presented to the session was re-categorized as a residential property claim during the session. The Commission also finalized the adjudication of three claims which had been presented to the Commission by the Executive Secretariat in the thirteenth session but in which the Commission had suspended deliberations pending confirmation of the physical notification of the claimed property. In sum, a total of 38

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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.

residential property claims were considered by the Commission during the sixteenth 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. Ownership claims*

7. In all of the claims covered by the present decision the claimants seek the resolution of an ownership claim, and all of them relate to residential property, including the associated land. This decision deals with claims for residential properties which, at the time of their notification, were not damaged or, even if damaged, were still standing and potentially capable of repair or reconstruction. Claims for residential properties which turned out to be, at the time of their notification, entirely destroyed are covered by another decision (KPCC/D/R/72/2010).

8. The present decision applies to the eight claims which are listed in parts A, B, C and D of the attached Schedule. Based on its review of the claims and of the supporting documentation during the session, and of the information provided and the verification conducted by the Executive Secretariat, a total of three agricultural claims were withdrawn by the Executive Secretariat. These claims, which are listed in part E ("Claims withdrawn") of the attached Schedule to this decision will be considered by the Commission in due course. The remaining 27 claims are covered by two further decisions, namely KPCC/D/R/72/2010 and KPCC/D/R/73/2010.

9. The Commission notes that all of the claims listed in parts A, B, C and D of the attached Schedule are uncontested in the sense that at the time the claimed properties were notified there was no evidence of illegal occupation, use or cultivation 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. 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 and section 10.1 of Law No. 03/L-079. Accordingly these claims must be considered uncontested.

10. 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 the ownership claims, including possession lists, purchase contracts, contracts on gift, contracts on division of property, inheritance decisions, court decisions recognizing ownership, contracts on long life care and certificates of immovable property rights. The Commission is satisfied that these documents indeed constitute proof of ownership. All of these relevant documents have been verified as being valid by the

Executive Secretariat, as relevant. Many claimants have also submitted additional supporting documents, such as tax decisions, witness statements, copies of plans and cadastral decisions.

11. In the three 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 findings in paragraph 10 above, all of these claims stand to be granted. In Claim No. 00975 the property is a garage attached to a residential property. It is used for a private vehicle and has never been rented out or used for business purposes. Consequently the property must be characterized as associated residential property. Claim No. 16018 relates to a property that has been administered by the Executive Secretariat as an abandoned property and that was subsequently occupied by a third person pursuant to a rental agreement with the Executive Secretariat. The current occupant has been paying rent for the previous two years. Accordingly, the claim stands to be granted and an eviction order issued, subject to the provision of a 60 days notice to the current lawful occupant as required by the rental agreement.

12. In the three claims identified in part B of the attached Schedule, the claimants have filed claims 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 define "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. Claim No. 47116 is occupied by the uncle of the Claimant with the property right holder's permission. Consequently, no eviction order is issued in this claim. The Commission also notes that, although the structure on the land parcel resembles a stable, the Claimant contends that the structure has been used for residential purposes. In the circumstances, the Commission considers that the claimed property may be characterized as residential.

13. In Claim No. 06062, referred to 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 an inheritance decision. The Claimant must therefore be considered as

having succeeded to all the rights belonging to the previous owner, including the right to claim for confirmation of ownership and for repossession in the present proceedings. Accordingly the claim stands to be granted, as set out above.

14. In Claim No. 34376, referred to 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. The Claimant has established that he is a family household member, namely the son, of the deceased property right holder. However, no valid inheritance decision or other documentary evidence has been submitted by the Claimant that would establish his right to inheritance in relation to the claimed property. While the Claimant has submitted an "inheritance decision" issued by the municipal court of Kurshumlija in Serbia, this court cannot be considered competent to issue an inheritance decision since the property right holder died in 1999 in Podujevë/ Podujevo in Kosovo. Consequently the Commission is unable to consider that this document establishes an entitlement to inheritance. The Commission itself has no jurisdiction to resolve issues relating to inheritance. Accordingly a decision confirming the property right in favour of the deceased property right holder stands to be granted in this case. The Commission's decision is without prejudice to the determination by the competent court as to how any heirs will succeed to the property right of the deceased.

15. The various types of documents relied upon by the claimants in support of the claims referred to in paragraphs 10, 11, 12, 13 and 14 above are listed in the relevant column of parts A, B, C and D of the attached Schedule.

16. 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.

17. 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 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.

*B. Claims for compensation*

18. In the claims identified in the relevant columns of parts A, B, C and D 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 these claims must be dismissed.

*C. Concluding remarks*

19. 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 directs that an order be made in respect of each claim as set out above.

20. 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 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. Thus the decisions of HPCC do not 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.

21. 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.

22. 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. In situations in which the property right holder is alive, the approach of the Commission is to grant in the name of the property right holder. In situations in which the property right holder is deceased and the death is proven but no valid inheritance decision has been provided, the approach of the Commission is to grant possession to the claimant who is a family household member of the 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).

23. Section 8.8 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 allow 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.

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

KPA16018
KPA52355
KPA00975

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

KPA22386
KPA47116
KPA52414

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

KPA06062

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

KPA34376