



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/95/2010  
DECISION DATE: 28/10/2010

## ORDER

*(1) In Claim Nos. 00980 and 34743, referred to respectively in parts A and B 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 each of the two claims referred to in paragraph (1) above, 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;*

*(3) 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 nineteenth session from 26 to 28 October 2010 in Prishtinë/Pristina. A total of 25 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its nineteenth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information.

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 the two claims covered by the present decision the claimants seek the resolution of an ownership claim and both 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/96/2010).

8. The present decision covers the two claims which are listed in parts A and B 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 seventeen residential claims were referred back to the Executive Secretariat for further review and verification. These claims, which are listed in part C ("Claims referred back") of the attached Schedule, will be considered by the Commission in due course. The remaining six claims are covered by KPCC/D/R/96/2010.

9. Of the two claims covered by the present decision, Claim No. 34743 has been the subject of an earlier Commission decision. However the earlier decision in this claim was overturned by the Commission on account of an incorrect notification of the claimed property during claims processing by the Executive Secretariat. This claim consequently stands to be re-determined following correct notification of the claimed property and

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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.

taking into account information provided by any respondents to the claim or any current occupants of the claimed property. In each claim in which an earlier decision has been overturned by the Commission, the Executive Secretariat has written to the claimant advising them of the notification error and informing them that their claims will be re-determined following correct notification of the claimed property. 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 Commission notes that the two claims covered by the present decision are both 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. 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.

11. The Commission notes that both Claimants have submitted various types of documents in support of the ownership claims, including possession lists, contracts on gift and certificates of immovable property rights. The Commission is satisfied that the contract on gift, submitted in Claim No. 00980, and the certificate of immoveable property rights, submitted in Claim No. 34743, indeed constitute proof of ownership. The other documents submitted by the Claimants, such as the possession list submitted by the Claimant in Claim No. 00980, provides further presumptive proof of ownership. The claims are uncontested and no evidence has been received or obtained by the Secretariat *ex officio* which would rebut any presumption of ownership. The documents have been verified as being valid by the Executive Secretariat, as relevant. Consequently the Commission is satisfied that the documents submitted prove the property right holders' ownership over the claimed properties.

12. In Claim No. 00980, referred to in part A of the attached Schedule, the property right holder is represented by an authorized natural person. The Commission has determined that the authorized individual possesses a valid and duly executed power of attorney pursuant to section 5.2 of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. Accordingly a decision confirming the property right in favour of the property right holder stands to be granted in this claim.

13. In Claim No. 34743, referred to in part B of the attached Schedule, the Claimant has filed the claim in the capacity of a family household member, namely the grandchild, 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. The Claimant falls within the definition of family household member. The Claimant has provided the death certificate of his grandfather, the property right holder, but has not provided an inheritance decision that establishes any heirs to the claimed property. 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 claim, as set out above. The Commission's decision with respect to this claim is without prejudice to the determination by the competent court as to how the heirs will succeed to the property right of the deceased.

14. The various types of documents relied upon by the Claimants in support of the claims referred to in paragraphs 12 and 13, are listed in the relevant column of parts A and B of the attached Schedule.

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 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.

C. *Concluding remarks*

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

17. In the Claim No. 00980, 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. 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 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.

18. 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.

19. 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 approach of the Commission is to grant 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 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).

20. 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

KPA00980

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

KPA34743