



Kosovo Property Claims Commission  
Komisioni i Kërkesave Pronësore të Kosovës  
Komisija Kosovske Agencije za Imovinu

Nazim Gafurri I (Miladin Popovic)  
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/17/2007  
DECISION DATE: 19/12/2007

## ORDER

*(1) In Claim Nos. 07091, 07736, 13376, 14021, 21045, 24517 and 28215, 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 underlying land parcel, or such part thereof as specified in the respective individual decision;*

*(2) In Claim Nos. 08669, 08929, 14457 and 33065, 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 underlying land parcel, or such part thereof as specified in the respective individual decision;*

*(3) In each of the 11 (eleven) 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 underlying land parcel on which the residential property stood;*

*(b) The respondent and any other person occupying the underlying 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 Claim Nos. 07091, 07736 and 14457, 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. (See section 3.1 of UNMIK/REG/2006/50, read together with section 9 of Annex III of Administrative Direction No. 2007/5.)

3. The Commission held its fourth session on 10-12 December 2007 in Prishtinë/Pristina. A total of seventeen 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 fourth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. This decision covers the eleven claims for destroyed residential property referred to above in the operative part of the decision; the remaining six claims are the subject of another decision (KPCC/D/R/6/2007).

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. In all of these claims the claimants seek the resolution of an ownership claim, and all of them relate to 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 and the land parcel is now vacant.

6. 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 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.

7. In Claim Nos. 07091, 13376, 14021, 24517 and 28215, the Commission notes that the Claimants have submitted various types of documents in support of their ownership claims, including possession lists, purchase contracts, inheritance decisions and in one cases a court decision recognizing ownership. 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.

8. In Claim Nos. 00736 and 21045, 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. 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.

9. In Claim Nos. 08669, 08929, 14457 and 33065, 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 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. 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.

10. The various types of documents relied upon by the claimants in support of the claims referred to in paragraphs 7, 8 and 9 above are listed in the relevant column of the attached Schedule.

11. 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, on the date of the destruction of the property;
- (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.

12. 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 underlying land parcel 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, their ownership over the land parcel on which the property stood.

*B. Claims for compensation*

13. In Claim Nos. 07091, 07736 and 14457, the Claimants also seek, in addition to ownership, compensation for physical destruction 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*

14. In view of the foregoing, the Commission finds that the claims succeed and an order be made in respect of each claim as set out above.

15. Section 8.8 of Annex III of UNMIK/ADM/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.**