

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

Perandori Justinian 5
Pristina
Tel: +381 (0) 38 249-918
Fax: +381 (0) 38 249-919
E-mail: mailbox@kpaonline.org

DECISION

PANEL NO: 1

DECISION NO.:
DECISION DATE:

KPCC/D/AR/103/2011
23/02/2011

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

In Claim Nos. 36740, 36750, 36755, 36756, 36757, 36758, 36759, 36760, 36761 and 36762, the Commission decides that the claims be dismissed.

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 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.)¹

5. The Commission held its twenty first session from 21 to 23 February 2011 in Prishtinë/Pristina. A total of 2,632 agricultural property claims and 35 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty first session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. However, two of the agricultural claims presented to the Commission were re-categorized by the Commission during the session as residential property claims and are dealt with in the decisions dealing with residential property claims. One further agricultural property claim, which had been presented to the Commission by the Executive Secretariat in the thirteenth commission session but in which the Commission had suspended deliberations pending confirmation of physical notification of claims over the claimed properties, was re-submitted to this twenty first session but was withdrawn by the Executive Secretariat during the session. This claim will be re-submitted to the Commission for final adjudication in due course. In total the Commission considered 2,631 agricultural property claims and 37 residential property claims 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. All of the claims covered by the present decision have been filed by the same person, namely Stojan Tomislav Stepic (the "Claimant"). The Claimant seeks the resolution of an ownership claim, and the claims all relate to agricultural properties, including agricultural land, pasture and forests with the exception of Claim No. 36740 which relates to residential property, namely a house. The house has been reconstructed as the previous house on the parcel had been destroyed.

8. The present decision applies to ten claims, namely Claim Nos. 36740, 36750, 36755, 36756, 36757, 36758, 36759, 36760, 36761 and 36762. The remaining 2,622 claims for agricultural property dealt with by the Commission during the session are covered by three other decisions, namely decisions KPCC/D/A/100/2011, KPCC/D/AR/101/2011 and KPCC/D/A/102/2011. The remaining 36 claims for residential property dealt with by the Commission during the session are covered by three

¹ 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.

other decisions, namely KPCC/D/AR/101/2011, KPCC/D/R/104/2011 and KPCC/D/R/105/2011.

9. In order to satisfy the requirements for a valid claim, the claimant or the property right holder, as the case may be, must show that he or she had an ownership or use right in respect of the claimed property, and that he or she is not now able to exercise his or her property right due to the circumstances directly relating to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

10. All of the ten claims covered by the present decision are contested in the sense that the party occupying the claimed properties 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. The Executive Secretariat has notified claims in a variety of ways including through the physical notification of the property and/or through notification of the property via publication in gazette and newspapers, through local municipal authorities, municipal courts, 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.

B. Claims dismissed

11. Pursuant to section 11.4 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission shall dismiss the whole or part of a claim where:

- (a) The claimant has failed to file a complete claim in accordance with the procedures set out in the Regulation;
- (b) The claim is not within the scope of jurisdiction of the KPA; and
- (c) The claim has previously been considered and decided in a final administrative or judicial decision.

12. Section 8.6 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-07907/50 provides the Commission with the power to dismiss or refuse a claim on any ground, including those set down in section 11.4 of UNMIK Regulation 2006/50.

13. Claims which are dismissed as falling outside the Commission's jurisdiction or for procedural reasons and not on account of their merits, may be capable of resolution through the local courts, subject to the applicable law. In such claims the Commission's decision does not constitute a *res judicata*. Section 3.2 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 confirms the claimants' right to pursue before courts of competent jurisdiction claims that do not fall within the mandate of the Commission, as set out in section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. (See also section 8.1 of Annex III of UNMIK/ADM/DIR/2007/5 concerning the

Commission's authority to refer issues arising in connection with a claim which are not within its jurisdiction, to a competent local court or administrative board or tribunal.)

14. Pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the jurisdiction of the Commission is limited to property claims that are conflict-related in the sense that they involve circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999, where the claimant is not now able to exercise such property rights. In order to establish whether or not a claim falls within its jurisdiction, the Commission must determine whether the claimant or the property right holder, as the case may be, has been displaced from the claimed property, or has lost possession or control over such property, as a consequence of the conflict. The Commission must also establish whether the claimant or the property right holder, as the case may be, is now able to exercise his or her rights over the claimed property.

15. While the Commission has taken the view that a loss of possession that occurred outside the period 27 February 1998 and 20 June 1999 may nonetheless be considered to be directly related to or result from the conflict, depending on the circumstances of the case, it must be satisfied that there is some evidence indicating that the property loss involved circumstances surrounding the conflict.

1. Preliminary and processing issues

16. All ten claims covered by the present decision are filed by the Claimant, Stojan Tomislav Stepic, in his capacity as family household member, namely grandson, of the alleged property right holder, Stojan Stepic. Pursuant to section 1.2 of Annex II of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 claims may be filed by family household members on behalf of property right holders. 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, grandchildren, great-grandparents and great-grandchildren of the property right holder. Consequently, as the grandson of the property right holder, the Claimant has the requisite legal capacity to file the claim on behalf of his deceased grandfather. The Claimant has submitted a death certificate for his grandfather, which identifies the date of death as 9 June 1972. The document has been verified as being valid by the Executive Secretariat.

17. The Executive Secretariat has physically notified the claimed properties, which are located in Vranidoll/Vrani Do in the municipality of Prishtinë/Pristina. During the process of notification, three individuals, Mr Nebi Bici (the "First Respondent"), who currently uses the claimed properties, Mr Osman Muqolli (the "Second Respondent") and Mr Ismajl Recica (the "Third Respondent") challenged the Claimant's title over the claimed properties. The First Respondent signed a notice of participation claiming a

legal right to the properties, whereas the Second Respondent did not sign such notice but has replied to Claim Nos. 36756, 36757, 36758, 36759, 36760, 36761 and 36762. The Third Respondent has claimed a legal right in relation to the land parcel covered by Claim No. 36755. He occupies the parcel and has signed a notice of participation. The First and Second Respondents have submitted documentary evidence in support of their challenge. The Third Respondent advised that he would submit a purchase contract in support of his challenge, but has not done so. The Commission is satisfied that the claimed properties have been properly notified pursuant to section 10.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

18. In support of his claim, the Claimant has submitted one document relating to his alleged property right, namely Possession List No. 1 dated 28 June 2007 and issued by the dislocated cadastral archive in Krushevc/Krusevac, Serbia. The document lists Stojan Stepic as the owner of the land parcels contained in the Possession List. However the Executive Secretariat was unable to verify this document against cadastral records held in Kosovo which list the First Respondent as the owner of the relevant land parcels.

19. The First Respondent has approached the Executive Secretariat several times in relation to the claimed properties and has claimed a legal right over the properties. The First Respondent states that he purchased the claimed properties from Stojan Stepic in 1972, paid the full purchase price and has been in possession of the properties ever since. In support of his assertions, the First Respondent has submitted several documents including two handwritten and unregistered purchase contracts as well as Possession List Nos. 1 and 2, both dated 8 September 2005 and issued by the Kosovo cadastral authorities. The first purchase contract is concluded on 16 June 1972, between Rexhep Muqolli as buyer and Stojan Stepic as seller. The contract states, in relevant part, that the parties "concluded the purchase price of 330.000,00 dinars on 1 March 1972 for the property located in Vranidol." Rexhep Muqolli is the father of the Second Respondent. It appears that the contract relates to properties contained in Possession List No. 2 submitted by the First Respondent. The Commission notes that this purchase contract was drawn up after Stojan Stepic's death and is signed by his son Mirko Stepic. The contract could not be verified as it was never certified in court. The second purchase contract was concluded on 8 November 1972 between Rexhep Muqolli as buyer and Aleksandar Stepic as authorized representative of Stojan Stepic as the seller, stating that "on 5 June 1972 the seller has sold to the buyer the property located in Vranidol with the price of 355.000 dinars." It appears that this contract relates to properties contained in Possession List No. 1 submitted by the First Respondent. The First Respondent has also submitted a judgment of the Municipal Court in Prishtinë/Pristina, C.nr.1288/03, dated 30 July 2003, through which the First Respondent's ownership right over the claimed parcels was confirmed based on adverse possession. This document has been verified by the Executive Secretariat through the records held with the Municipal Court of Prishtinë/Pristina. Finally, the First Respondent has submitted a Certificate of Immovable Property Rights, dated 25 March 2008 and issued by the Kosovo cadastral authorities, listing him as the sole owner of the claimed properties.

20. The Second Respondent did not sign a notice of participation in any of the claims over which he has claimed. However he signed a reply form in which he claims to be the owner of the claimed properties. He states that his father bought the claimed properties

from Stojan Stepic and names potential witnesses who, according to him, were present during the transaction. He states that the purchase price was given to Stojan Stepic's brothers at the time of the sale. In support of his allegations he submitted a typewritten purchase contract concluded on 7 March 1973 between Rexhep Muqolli as Buyer and Mirko Stepic as Seller stating that "Mirko Stepic states that he is selling to Rexhep Muqolli for 330,000.00 dinar all his property in Vranidol." The Second Respondent also provided several receipts for payment of purchase price instalments from 1972 and 1973. These receipts could not be verified by the Executive Secretariat. Nor could the purchase contract be verified by the Executive Secretariat as it was never registered with the local court.

21. The Third Respondent claimed to have purchased the land covered by Claim No. 36755 from the First Respondent. The Third Respondent indicated that he would submit his purchase contract, but has not done so. The First Respondent has confirmed that he sold this land parcel to the Third Respondent.

22. Pursuant to section 10.1 of UNMIK/REG/2006/50, as adopted by Law No. 03/L-079, each of the Respondents has been provided with a copy of the claim submitted by the Claimant. In accordance with section 3.5 of Annex II to UNMIK/AD/2007/5, as adopted by Law No. 03/L-079, the Claimant has been provided with a copy of the documents submitted by each of Respondents in response to the claim. Each of the parties has thus been given an opportunity to comment on the evidence provided by the other parties, and any such comment or evidence has been taken into account during claim processing and adjudication. Neither the Claimant nor his family participated in the Municipal Court proceedings relating to the claimed properties which took place in Kosovo, while the Claimant and his family reside in Serbia. Instead, the Court appointed a temporary representative in the absence of the opposing party pursuant to the relevant provisions of the Law on Contested Procedures, (Official Gazette of the SFR of Yugoslavia, No. 4/77, 36/80 and 69/82).. The Executive Secretariat has contacted the Claimant to confirm that he was aware of the Municipal Court decision relating to the properties. The Claimant confirmed that he had previously seen a copy of the judgment and had no comments regarding the Court's decision.

2. *The relevant facts*

23. The Municipal Court of Prishtinë/Pristina in its decision confirmed that the First Respondent had acquired the ownership right over the claimed parcels (as listed in Possession Lists Nos. 1 and 2) through adverse possession pursuant to article 28 of the Law on Basic Property Relations on account of possession of the claimed properties in good faith for a period of over thirty years. The Court noted that the First Respondent was working in Austria in 1972 when he was informed that his neighbours, Stojan Stepic (listed in Possession List no. 1 as owner of 1/1 of the property) and Mirko Stepic (listed in Possession List no. 2 as owner of 1/1 of the property) intended to sell their properties. The First Respondent then asked his relative, Rexhep Muqolli, to purchase the properties from his neighbours on his behalf. The Court noted that after Rexhep Muqolli paid the full purchase price to the Stepic family, he took possession of the claimed properties in the name of the First Respondent. When the First Respondent returned from Austria in 1973, he assumed possession. He has continued to be in possession of the claimed

properties since that time. Rexhep Muqolli subsequently died, but the properties were not registered in the name of the First Respondent. The Court also heard witness testimony from the brother of the Second Respondent who stated that there was no dispute between the families of the First and Second Respondents. Following the Court judgment in 2003, the First Respondent registered the claimed properties in his name, as evidenced by the Certificate of Immoveable Property Rights.

24. The Commission concludes from the evidence as set out in the Municipal Court judgment that the First Respondent has been in possession of the claimed properties since 1973. This evidence is corroborated by the First Respondent in his submissions to the Commission and is not contradicted by the Claimant or the Second Respondent in their evidence before the Commission. While the Second Respondent has also claimed ownership over the properties, he has not provided any evidence rebutting the First Respondent's claim to ownership of the properties based on adverse possession of the properties as confirmed by the Municipal Court judgement. The Second Respondent was provided with a copy of that judgment by the Executive Secretariat, but did not provide any comments in relation to the judgment. Instead the Second Respondent's evidence is limited to confirmation of the informal property transaction that occurred in 1972 and 1973. The evidence before the Commission indicates that the claimed properties were sold in 1972 through an informal purchase contract concluded between the deceased property right holder, Stojan Stepic, or his sons, and Rexhep Muqolli, the father of the Second Respondent, who was authorized to purchase the land on behalf of the First Respondent. The evidence further indicates that the First Respondent has been in possession of the claimed properties since that time, and was formally confirmed as the registered owner through the Certificate of Immoveable Property Rights dated from 2008. It appears that the First Respondent has now sold the land parcel covered by Claim No. 36755 to the Third Respondent.

3. *Are the claims filed by the Claimant conflict-related?*

25. The determinative issue before the Commission is whether the Claimant's claims fall within the Commission's mandate to resolve conflict-related ownership or use rights claims pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. If the claims fall outside the Commission's jurisdiction, the claims stand to be dismissed pursuant to section 11.4 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

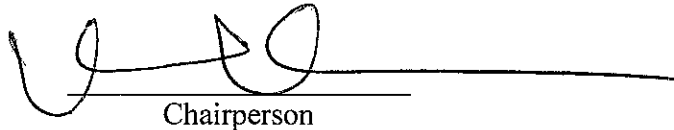
26. The Commission finds, based on the evidence before it, that the First Respondent has been in possession of the claimed properties since 1973. In addition, the Executive Secretariat has contacted the Claimant who states that neither he nor his family has been using the claimed properties since 1973. He also confirms that he was not in possession nor using the claimed properties at the time of the 1998-99 conflict in Kosovo and does not consider his alleged loss to be related to the 1998-1999 conflict. In these circumstances the Commission concludes that the claims cannot be said to be related to the conflict and fall thus outside the jurisdiction of the Commission. Accordingly they stand to be dismissed.

C. *Concluding remarks*

27. With respect to Claim No. 36740, the Commission's above decision and order also apply to any associated property, *i.e.* land or buildings which form a unit with the claimed residential property.

28. 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.

29. The Commission's decision is without prejudice to the right of the claimants or the property right holders, as the case may be, to seek confirmation of their property right over the claimed properties before the competent local authorities, such as the cadastral authorities or local courts, in accordance with the applicable law.



Chairperson

APPEALS

UNMIK/REG/2006/50 and the Law No. 03/L-79 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.

Information on the appeals procedures 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.**