



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/A/107/2011

DECISION DATE: 13/05/2011

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

- (1) *In each of the twenty five (25) claims identified in part A of the attached Schedule, the Commission decides that the claim be dismissed.*
- (2) *In Claim Nos. 28544, 37342, 37343 and 49284, referred to in part B of the attached Schedule, the Commission decides that the claims be refused.*
- (3) *In Claim No. 31226, referred to in part C of the attached Schedule, the Commission decides that the property right holder has established ownership over the claimed property as specified in the respective individual decision.*
- (4) *In Claim No. 31226, 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.*

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.)¹

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

5. The Commission held its twenty second session on 11 and 13 May 2011 by way of telephone conference. A total of 1,560 agricultural property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty second session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. In addition, one residential property claim presented to the Commission was re-categorized by the Commission during the session as an agricultural property claim and is included in the decisions concerning claims for agricultural property. One agricultural property claim which had been presented to the Commission by the Executive Secretariat was referred by the Commission back to the Executive Secretariat for further verification, and one claim was withdrawn by the Executive Secretariat during the session. In sum, a total of 1,559 agricultural property claims were resolved by the Commission 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. 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 agricultural properties, including agricultural land, pasture and forests.

8. The present decision deals with 30 agricultural property claims. The remaining 1,529 agricultural property claims are covered by decisions KPCC/D/A/106/2011 and KPCC/D/A/108/2011.

9. A total of 24 of the 30 claims covered by this decision have not previously been considered by the Commission, while six of these claims were the subject of an earlier Commission decision. However the earlier decisions in these six claims were overturned by the Commission either on account of an incorrect notification of the claimed properties during claims processing by the Executive Secretariat or on account of other processing errors by the Executive Secretariat which were identified after the decision had been taken. These claims consequently stand to be re-determined following correct notification of the claimed property and correction of the other processing errors. Evidence and information provided by any respondents to the claim or any current occupants of the claimed properties is taken into account by the Commission in the re-determination of the claims. In the claims in which previous decisions have been overturned by the Commission, the Executive Secretariat has written to each claimant advising them of the notification error and informing them that their claims will be re-determined following correct notification of the claimed property. The 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.

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.

10. Some of the claims dismissed by the Commission in the present decision were previously granted by the Commission in its earlier decisions. In its re-determination of claims, the Commission takes into account new information obtained by the Executive Secretariat or provided by the claimant or a respondent in the course of re-processing of claims. In situations where information has been provided which would affect the outcome of the earlier decision, such as information indicating that there was no loss of possession or inability to exercise property rights in relation to the claimed property, the Commission acts on the basis of the new information and may dismiss a claim that was previously granted.

11. The Commission notes that all of the claims covered by the present decision 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. Decisions taken in claims that were incorrectly notified have been overturned by the Commission to ensure correct notification of the property and provide any persons who may have a legal interest in the property with an opportunity to respond to the claim pursuant to section 10.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. These claims are identified in the relevant columns in the Schedule to this decision. 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. Accordingly these claims must be considered uncontested.

B. Claims dismissed

12. 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.

13. 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 refuse or dismiss a claim on any ground, including those set down in section 11.4 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

14. Claims which are dismissed as falling outside the Commission's jurisdiction or for procedural reasons and not on account of the merits of the claim, 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 right of claimants 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.)

1. *Claims dismissed on account of lack of evidence of loss of possession*

15. 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.

16. 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.

17. Claim Nos. 38664, 38665, 38667, 39066, 39067, 39068, 39070, 39071 and 39074 were all filed by the same Claimant, some in his capacity of property right holder and some initially in his capacity of family household member. He alleges that he subsequently became the owner of all of the claimed properties based on a purchase contract. However, the Claimant acknowledges that neither he nor his family have lost possession of the claimed properties as a result of the conflict. When asked why he had previously claimed to have lost possession of the properties, he stated that his family feared losing possession of the land following the unilateral declaration of independence in Kosovo. In these circumstances, as there has been no loss of possession of the claimed property as a result of the 1998-99 conflict, the claims stand to be dismissed. (See also Commission decision KPCC/D/A/70/2010 of 21 April 2010 in which the Commission dismissed claims filed by the same Claimant for the same reason).

2. *Claims dismissed based on res judicata*

18. Claim No. 19212 is a duplicate of Claim No. 18208 which has previously been decided by the Commission in favour of the property right holder in decision KPCC/D/1/2007/CORR/1 of 12 July 2007. In other words, this claim involves a subsequent claim by the same property right holder for the same parcel of land. As

this claim has previously been considered and decided in a final decision of the Commission, the claim stands to be dismissed pursuant to section 11.4 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

3. *Claims dismissed on account of the absence of a power of attorney*

19. Pursuant to section 5.2 of UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079, claims may be made by either the property right holder or a family household member of the property right holder. A claimant may be represented by an authorized natural person with a valid and duly executed power of attorney. In exceptional cases where the provision of a power of attorney is problematic, the Executive Secretariat may certify an alternative document authorizing representation of a claimant.

20. Section 1 of the UNMIK/ADM/DIR/2007/5 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. However, by implication the definition does not cover in-laws, uncles, aunts, nephews, nieces or cousins, or other more distant relatives who must provide a power of attorney authorizing their representation on behalf of the property right holder or a family household member of the property right holder. Individuals who do not fall within the definition of a household member cannot be considered claimants, but are persons purporting to represent the claimant.

21. Claims in which the person filing the claim is not a family household member and requires a power of attorney cannot be considered complete claims in accordance with section 5.2 of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079, since an essential procedural requirement is not satisfied, namely authorization from the property right holder or a family household member of the property right holder.

22. In Claim Nos. 31009, 31011, 31012, 31013, 31015 and 31016, the person filing the claims is the daughter in law of the property right holder. As she did not provide a power of attorney from a family household member of the property right holder, the Executive Secretariat contacted the Claimant four times between 15 December 2008 and 10 March 2011 requesting her to submit the missing power of attorney. When the Executive Secretariat contacted the Claimant the last time, she advised that she no longer wished to provide the documents and is no longer interested in pursuing the claim. In these circumstances the claim must be dismissed on account of the failure by the Claimant to provide authorization of her capacity to file the claim on behalf of the property right holder.

23. In Claim No. 45358, the person filing the claim is the daughter in law of the allegedly deceased property right holder. As the Claimant did not provide a power of attorney from a family household member of the deceased property right holder, the Executive Secretariat contacted her three times between 20 May and 21 October 2009 requesting her to submit the missing power of attorney. When the Executive

Secretariat contacted the Claimant for the last time, she stated that she will seek the power of attorney from the daughter of the property right holder who is the only living child of the deceased property rights holder. However, to date the Claimant has not produced the power of attorney of the daughter or any other family household member of the deceased property right holder to the Executive Secretariat. In these circumstances the claim must be dismissed on account of the failure by the Claimant to provide authorization of her capacity to file the claim on behalf of the property right holder.

24. In Claim Nos. 06592 and 06594 the person filing the claims is the cousin of the deceased property right holder's son. As the Claimant did not provide a power of attorney from a family household member of the property right holder, the Executive Secretariat contacted him three times between 4 January 2008 and 12 November 2009 requesting him to submit the missing power of attorney. When the Executive Secretariat contacted the Claimant for the last time, he advised that he no longer wished to provide the documents and is no longer interested in pursuing the claim. In these circumstances the claim stands to be dismissed on account of the failure by the Claimant to provide authorization of his capacity to file the claim on behalf of the property right holder.

C. *Claims refused*

25. Pursuant to section 8.6 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-07907/50, the Commission may refuse or dismiss a claim on any grounds. Claims may be refused by the Commission if the claimant or the property right holder, as the case may be, has been unable to prove their ownership or use right interest over the claimed property.

26. Pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission has jurisdiction to determine ownership or use right claims over private immovable property. In reaching its decisions, the Commission may consider any reliable evidence which it considers relevant to a claim, including evidence presented by the Executive Secretariat concerning the reliability of any public record (section 6.2 of Annex III to UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079). The Commission may also require that the Executive Secretariat obtain more information from a party or conduct additional investigations in relation to any claim (section 6.3 of Annex III to UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079). In making its determinations, the Commission may be guided but is not bound by the rules of evidence applied in the local courts in Kosovo (section 6.1 of Annex III to UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079).

27. In Claim Nos. 37342 and 37343, the Claimant did not submit any valid documentary or other evidence to establish an ownership right over the claimed property. The Executive Secretariat located *ex officio* a Certificate for Immovable Property Right dated 1 December 2009 which indicated Dragulub Milan Petkovic, the Claimant's step-cousin, as the owner of the claimed parcel. The Claimant alleges that he has purchased the parcel from his step-cousin. The Executive Secretariat contacted the Claimant five times between 17 January 2008 and 11 January 2011 requesting him to present the purchase contract. However, the Claimant has failed to produce the document. Accordingly the claim stands to be refused for lack of evidence.

28. In Claim No. 28544, the Claimant lodged the claim in his capacity as the property right holder. He bases his alleged ownership right on an allocation decision issued on 23 June 1997 by the Ministry of Finance of the Republic of Serbia pursuant to the Law on the Conditions, Ways and Procedures of Granting Farming Land to Citizens Who Wish to Work and Live in the Territory of the Autonomous Province of Kosovo and Metohija (see Official Gazette of Republic of Serbia, 43/91 of 20 July 1991.) The Commission notes that this Law has been repealed by UNMIK Regulation 1999/10 of 13 October 1999 on account of its discriminatory nature and as failing to comply with international human rights standards.

29. The Claimant further submitted a decision issued by the Housing and Property Claims Commission (HPCC/D/144/2004/C of 27 August 2004) confirming the Claimant's right to possession over a parcel other than the one claimed. The Commission notes that even though this claim was also based on the same allocation decision, it was never brought to the attention of the Housing and Property Claims Commission that the allocation decision was based on the repealed law.

30. The Executive Secretariat contacted the Claimant requesting him to provide further evidence to establish his property right over the claimed parcel. However, the Claimant has failed to produce any such evidence.

31. In these circumstances, and in the absence of any further evidence, the Commission considers that the Claimant cannot rely on the allocation decision as a basis of his alleged property right as this decision is based on a law that has been abrogated by UNMIK Regulation 1999/10.

32. In the light of the above, Claim Nos. 37342, 37343 and 28544 stand to be refused pursuant to section 8.6 of Annex III to UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079.

D. Claim Nos. 31226 and 49284

33. In Claim Nos. 31226 and 49284, the Claimants seek confirmation of ownership of the same property. In Claim No. 31226, the Claimant has submitted the claim in her capacity of family household member, namely daughter, of the property right holder, Branislav Jaric. Claim No. 49284 is submitted by the brother of Branislav Jaric in his capacity as family household member, namely son, of the alleged property right holder, Dusan Jaric.

34. The Claimant in Claim No. 31226 has submitted an inheritance decision dated 27 August 2007 which indicates that Branislav Jaric has inherited the claimed parcel, whereas the Claimant in Claim No. 49284, who is the brother of Branislav Jaric, has inherited a different parcel from their father Dusan Jaric. The decision has been verified as being valid by the Executive Secretariat. The decision is also powerful as the relevant parties, Branislav Jaric and the Claimant of Claim No. 49284, are waiving their right to appeal.

35. Accordingly, as the evidence establishes that the claimed property belongs to Branislav Jaric, a decision confirming the property right in favour of the property right holder Branislav Jaric stands to be granted in Claim No. 31226.

36. It follows from this decision that the Claimant in Claim No. 49284 has failed to prove a property right and accordingly his claims stands to be refused pursuant to section 8.6 of Annex III to UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079.

E. Concluding remarks

37. 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.

38. 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-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.**