



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/108/2011
DECISION DATE: 13/05/2011

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

- (1) In each of the eleven (11) claims identified in Part A of the attached Schedule, the Commission decides that the claimant has established the ownership of the property right holder over the claimed properties.*
- (2) In the 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) The respondent and any other person occupying the property 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.*
- (3) In each of the claims identified in the relevant columns in Part A 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.*
- (4) In each of the seventeen (17) claims identified in Part B of the attached Schedule, the Commission decides that the claim be dismissed.*
- (5) In Claim Nos. 06609, 20160, 20161, 43288, 43289, 43290 and 43291, the Commission additionally refers the dispute between the Claimants and the Respondent concerning the ownership of the claimed properties to the competent local court for adjudication.*

- (6) *In cases in which there is more than one owner, the above decisions and orders 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 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 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 was referred by the Commission back to the Executive Secretariat for further verification, and one agricultural property 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. Claims covered by the present decision

7. In 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 applies to 28 claims identified in the attached Schedule. The remaining 1,532 claims for agricultural property dealt with by the Commission during the session are covered by two other decisions, namely decision KPCC/D/A/106/2011 and decision KPCC/D/A/107/2011.

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 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 28 claims covered by the present decision are contested in the sense that the party or parties occupying the claimed properties, or a party that has expressed a legal interest in such properties (the "Respondent"), has contested the validity of the

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.

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.

B. Claims granted

1. Claim No. 40740

11. In Claim No. 40740, the Claimant has filed the claim in his capacity of property right holder. The Claimant produced a possession list identifying him as the property right holder of the claimed properties. The Executive Secretariat has verified the possession list as valid.

12. When notifying the property the Executive Secretariat found two different parties occupying different parts of the property. Ali Thaqi (hereinafter the "First Respondent") is using a part of 10 ar of the claimed property, whereas Kadri Musliu (hereinafter the "Second Respondent") is using the remaining 26 ar of the property.

13. The First Respondent does not assert any right to the claimed property but expresses his intent to purchase the property from the Claimant.

14. The Second Respondent claims that he has used the land for twenty years based on an agreement with the Claimant. He asserts that until ten years ago he has paid a lease to the Claimant. The Second Respondent has failed to submit any documentary evidence in support of his allegation.

15. The Claimant confirms that the Second Respondent used the land for five or six years before the conflict, but has not paid rent regularly. He further contests that there has been a lease agreement between him and the Respondent.

2. Claim Nos. 27079, 27080, 27081 and 27082

16. In Claim Nos. 27079, 27080, 27081 and 27082, the Claimant has filed the claim in his capacity as property right holder. The Executive Secretariat has *ex officio* located the certificate for immovable property rights dated 11 February 2011. The document is registered in the name of the Claimant and has been verified as being valid. The Claimant states that his family lost possession of the properties in June 1999 during the armed conflict in Kosovo.

17. The Respondent asserts that the property used to belong to his family, but lost possession when his family migrated to Turkey in 1924. He claims that his family repossessed the property subsequent to their return to Kosovo but lost possession again in 1965 when the property was nationalized. The Respondent claims that he brought his claim to court but no decision was issued. The Respondent has failed to produce any documents in support of his allegations.

3. Claim Nos. 40932, 40940, 40941, 40943 and 40944

18. In Claim Nos. 40932, 40940, 40941, 40943 and 40944, the Claimant has filed the claim in the capacity of property right holder. The Claimant has produced a possession list identifying her as the property right holder of an ideal part of 1/7 of the claimed properties. The Executive Secretariat has verified the possession list as valid.

19. The Respondent claims that his grandfather is a co-owner to the property. He submitted a court judgment dated 1 October 1945 in support of his allegation, however, the judgment is not powerful. The Respondent has failed to submit any other documents or evidence in support of his assertion.

4. *Claim No. 10340*

20. In Claim No. 10340, the Claimant has submitted the claim in his capacity of property right holder. In support of his claim, the Claimant has submitted a possession list identifying him as the property right holder. The possession list has been verified as being valid by the Executive Secretariat. The Executive Secretariat has also *ex officio* located Certificate of Immovable Property Right No. 82 dated 10 September 2008 which is consistent with the submitted possession list and identifies the Claimant as the owner of the claimed property. The Claimant states that he was in possession of the claimed property until 1999 when he left Kosovo for security reasons.

21. The Respondent who is currently occupying the claimed property asserts that his family was the leaseholder of the property from 1915 until 1937 when they were evicted from the land. The Respondent has submitted statements and court decisions of proceedings that his grandfather Bislim Hasani pursued through various instances. The final and powerful decision by the Supreme Court in Belgrade dated 18 January 1955 confirms the first instance judgment of the District Court of Pristina in which the Court refused the claim of Bislim Hasani over the claimed property. The Supreme Court decision has been verified as being valid by the Executive Secretariat.

22. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in the claims identified in part A of the attached Schedule:

- (a) the property right holder has an ownership right in respect of the claimed properties;
- (b) neither the claimant or the property right holder are now able to exercise the ownership right over the property; and
- (c) 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.

23. Accordingly, since the Claimants in each of the claims identified in part A of the attached Schedule have proven their ownership right over the claimed property, and in the absence of any valid defence on the part of the Respondents, all of these claims stand to be granted.

C. *Claims dismissed*

24. 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.

25. 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 Regulation 2006/50.

26. Claims which are dismissed as falling outside the Commission's jurisdiction 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 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.)

27. 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.

28. 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. *Claims dismissed based on lack of jurisdiction over claims that have been submitted to the competent court prior to the date of entry into force of UNMIK/REG/2006/50*

29. In Claim No 00036, the Claimant has filed the claim in her capacity as the property right holder. The Respondent contends that his father purchased the property from a third party in 1997 and has been in possession of the property ever since. He states that when his father became aware of the fact that the Claimant was still registered as the property right holder in the Cadastre, he initiated a lawsuit in the Municipal Court of Pristina for confirmation of his ownership right over the claimed property.

30. The Respondent has submitted in support of his defense a judgement from the Municipal Court in Pristina dated 8 November 2005 in favour of the Respondent's father. The judgement has been verified as being valid by the Executive Secretariat. However, the judgement is not powerful as it has been appealed. Pursuant to Section 18 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission has no jurisdiction over claims that have been submitted to the competent court prior to the date of entry into force of UNMIK/REG/2006/50. The lawsuit in the present claim has been submitted in 2005 to the competent court and the claim therefore stands to be dismissed.

2. *Claims dismissed based on res judicata*

31. Claim No. 22830 was previously decided by the Commission's decision KPCC/A/13/2008, which was subsequently overturned insofar as it concerned Claim No. 22830 by KPCC/RES/24/2010. Claim No. 22830 is a duplicate of Claim No. 23027, i.e., it has been filed by the same claimant for the same property. Claim No. 23027 has previously been refused by the Commission in decision KPCC/D/A/78/2007. As the claim has previously been considered and decided in a final decision of the Commission, this 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*

32. 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.

33. Section 1 of 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.

34. 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.

35. In Claim Nos. 47326, 47327 and 47328, the Claimant initially submitted the claims on behalf of her deceased father as the alleged property right holder. During the processing of the claim the Executive Secretariat noted that there was a discrepancy between the name of the Claimant's father and the name of the property right holder according to the supporting documents, and on 18 March 2011, the Executive Secretariat contacted the Claimant for clarification. The Claimant stated that the deceased property right holder in fact is her great-uncle, the uncle of her father. Accordingly the Claimant does not meet the definition of family household member as set out in paragraph 33 above. In these circumstances, and in the absence of a power of attorney from a family household member, the claim stands to be dismissed.

36. In Claim Nos. 34698, 34699, 34700, 34701 and 34702 the Claimant has filed the claims in the capacity of a family household member for his uncle. As the Claimant has failed to provide a power of attorney from a family household member of the property right holder, the Executive Secretariat contacted the Claimant requesting him to submit the missing power of attorney. The Claimant stated that he is not in a position to produce the required power of attorney. Accordingly the claim must 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.

4. *Claim dismissed on account of non-conflict-related loss of possession*

37. In Claim No. 06609, the Claimant has filed the claim in his capacity as property right holder. In support of his claim, the Claimant has provided a possession list from 2001 indicating that he is the co-owner of the property. The possession list has been verified by the Executive Secretariat as being valid.

38. Claim Nos. 43288, 43289, 43290 and 43291 are submitted by the brother of the Claimant in Claim No. 06609 in his capacity as property right holder. The Claimant submitted a possession list indicating that he owns the ideal part of $\frac{1}{4}$ of the claimed property.

39. The Respondent, who is in possession of all parcels claimed in Claim Nos. 06609, 43288, 43289, 43290 and 43291, contends that his father purchased the claimed property in 1978 from his uncle. According to the Respondent, his father paid the full purchase price and was in possession of the land from 1978 until his death in 2007. He further states that his uncle had purchased the property in 1973 from the father of the Claimants, however the property had remained registered in the name of the Claimants' father. The Respondent states that the Claimants' father was aware of the sale of the property by the Respondent's uncle to his father in 1978, as the Claimants' father lived in the same municipality until 1999. The Respondent explained that he did not have the purchase contract between the Claimants' father and his uncle and could not locate it as some of his family documents were burned during the war.

40. In response, both Claimants confirmed that the claimed property had been sold in 1966 and had not been used by their family since then. However, the Claimants contend that the buyer did not pay the full purchase price and that the Claimants' father had continued to pay the property tax bills. The Claimants confirm that there was a purchase contract, although they do not have a copy of it, but that the contract was never certified in court.

41. The Commission considers that, in light of the evidence before it, the Claimants' claims in Claim Nos. 06609, 43288, 43289, 43290 and 43291 do not involve circumstances directly related to or arising from the armed conflict of 1998-1999. Accordingly, the claims stand to be dismissed.

42. In Claim Nos. 20160 and 20161, the Claimant filed the claim in his capacity as family household member, namely son, of the property right holder. The Claimant asserts that the property right holder is his deceased father and has submitted a death certificate as evidence. In support of his claim the Claimant has submitted a possession list listing his father as owner of the claimed parcels. This document has been verified by Executive Secretariat. The Claimant states that his mother Sindja retained possession of the claimed properties until December 2004 when she passed away.

43. Two different persons responded to the claim as being current occupants of and claiming a legal right to the claimed property.

44. The First Respondent, Remzi Haradinaj, contends that he has been cultivating the claimed land for more than twenty years pursuant to an oral agreement with the Claimant and his mother. The First Respondent states that subsequently, in 2001, purchased the claimed property. In support of his assertion he has submitted a purchase contract concluded on 18 May 2001 between Sindja Pajovic, Biljana Pajovic-Mirjadic and Djurdje Pajovic as sellers and the First Respondent as buyer. The contract is not certified in court and therefore could not be verified by the Executive Secretariat. The First Respondent also submitted a statement certified in the Municipal Court in Vrsac, Serbia, dated 18 May 2001, by which the Claimant confirms that the signature contained in the uncertified purchase contract is his signature. This document has been verified by the Executive Secretariat. The First Respondent contends that he could not get the purchase contract certified as the local courts were not operational in 2001. When he later tried to have the contract certified, the Claimant refused to accept the contract.

45. The Second Respondent, Xhemajl Zhegrova, alleges that he purchased the claimed property in 1977 from the Claimant and has been in possession ever since. In support of his allegation, the Second Respondent has produced a document originating from the Municipality of Vushtrri/Vučitirn regarding the consolidation of land dated 10 October 1984, according to which the alleged property right holder sold the property to the Second Respondent. However, the Secretariat has not conducted the verification of this document.

46. The Claimant denies that he or anyone in his family sold the claimed properties to either of the Respondents and asserts that the purchase contract with the First Respondent is forged. He contends that the purchase contract could not be genuine as the inheritance proceedings in relation to his father, the alleged property

right holder, had not been initiated at the time and therefore no-one had the legal capacity to sell his father's properties.

47. While the Claimant and the Respondents have differing accounts of the past use of the properties, the Claimant contends that his mother remained in possession of the properties until December 2004, well after the end of the armed conflict in Kosovo. The Executive Secretariat contacted the Claimant to clarify whether the Claimant's claim involved in any way the circumstances surrounding the conflict, as it was initially claimed that possession of the properties was lost in 1999. The Claimant confirmed that there had been no loss of possession as a result of the 1998-99 conflict, but that after his mother's death in 2004 the properties had been occupied by unknown persons. Accordingly, the Commission concludes that the claims stand to be dismissed as falling outside the jurisdiction of the Commission.


48. Pursuant to section 8.1 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079, the Commission is authorized to refer issues arising in connection with a claim, which are not within its jurisdiction, or specific parts of such claims, if the adjudication of those separate parts do not raise issues listed in section 3.1 of UNMIK Regulation No. 2006/50 as adopted by as adopted by Law No. 03/L-079, to a competent local court or administrative board or tribunal. The Commission considers that this is the proper approach in the case of Claim Nos. 20160, 20161, 06609, 43288, 43289, 43290 and 43291, and makes an order accordingly, as set out above.

D. Concluding remarks

49. The Commission's decision and order also apply, where appropriate, to any associated property, *i.e.* any buildings or other constructions owned or used by the claimant or the property right holder, as the case may be, which form a unit with the claimed property.

50. 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.

51. 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.**