

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/17/2008
DECISION DATE: 30/04/2008

ORDER

In each of the 6 (six) claims identified in the attached Schedule, the Commission decides that the claims be dismissed.

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. Where the claimant makes a claim for a property use right pursuant to section 3.1(b) of UNMIK/REG/2006/50, 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/DIR/2007/5.)

3. The Commission held its sixth session on 28-30 April 2008 in Prishtinë/Pristina. A total of 2,325 agricultural property claims were submitted by the Executive Secretariat to the Commission at its sixth session, together with supporting

documentation, claims processing reports, verification reports, legal memoranda and other relevant information. The present decision applies to the six claims referred to in the operative part of the decision; the remaining claims are the subject of another decision (KPCC/D/A/13/2008).

4. At the Commission's session, the Executive Secretariat of the Kosovo Property Agency (the "Executive Secretariat" and "KPA," respectively) 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 the claims covered by the present decision the claimants seek the resolution of an ownership claim, and all of them relate to agricultural property, including land, pasture and forests.

6. 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 a 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 circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999, as set out in paragraph 1 above.

7. In Claim Nos. 07941, 07943, 07944, 07945 and 07946, which are all filed by the same Claimant, the Claimant failed to submit any evidence to demonstrate that he lost possession of the claimed properties in circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Indeed, the Claimant acknowledges that his loss of possession was brought about as a result of a family dispute in or about 1992. Accordingly, these claims stand to be dismissed for want of compliance with section 3.1 of UNMIK/REG/2006/50.

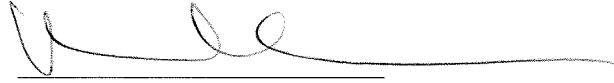
8. As regards Claim No. 19110, also covered by the present decision, the Commission notes that this claim is an exact duplicate of Claim No. 30695, which was resolved by the Commission at its fourth session held in December 2007 (KPCC/D/A/5/2007). Consequently, the matter must be considered *res judicata*, and the claim stands to be dismissed.

B. Concluding remarks

9. In view of the foregoing the Commission finds that the claims identified in the attached Schedule fail and that an order be made as set out above.

10. The Commission notes that where the properties concerned are unlawfully occupied, the above decision and order do not confer any rights on the respondents or current occupants.

11. Section 8.8 of Annex III of UNMIK/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.**