



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/28/2008
DECISION DATE: 23/10/2008

ORDER

In Claim Nos. 31471 and 31476, the Commission decides that the claims be dismissed.

LEGAL FRAMEWORK

1. On 13 June 2008, the Assembly of the Republic of Kosovo (the “Assembly”) enacted Law No. 03/L-079 amending UNMIK Regulation 2006/50 (“UNMIK/REG/2006/50”) on the resolution of claims relating to private immovable property, including agricultural and commercial property. The Law included an annex (“Annex I”) replacing 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 under Article 142 of the Kosovo Constitution 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 of the Republic of Kosovo.
2. Pursuant to Article 10 of Law No. 03/L-079, which amended section 7.1 of UNMIK/REG/2006/50, the Property Claims Commission (the “Commission”) shall be appointed by the Assembly upon nomination by the President of the Supreme Court, with the proviso that until the end of international supervision of the implementation of the Comprehensive Proposal for the Kosovo Status Settlement of 26 March 2007, two of the three members, including its Chairperson, shall be appointed by the International Civilian Representative.
3. On 18 June 2008, the Commission wrote to the Special Representative of the Secretary General of the United Nations in Kosovo stating its understanding that Article 10 and other relevant provisions of Law No. 03/L-079 did not to divest the current members of the Commission of their mandate and that, accordingly, the

extensions of their appointments by the Special Representative on 22 April 2008 continued to be valid unless terminated prior to the expiry of their terms in accordance with the applicable law. The Commission has subsequently been advised by the Office of the International Civilian Representative that the new appointment procedures set forth in Article 10 of Law No. 03/L-079 do not affect the authority of the Commission in its current composition to exercise its functions. The Office of the International Civilian Representative confirmed that Article 10 merely provides a new appointment procedure in relation to future appointments of the members of the Commission.

4. In light of the above, the Commission considers that it is duly constituted and competent to continue to exercise its functions pursuant to UNMIK/REG/2006/50 and Law No. 03/L-079, and the relevant implementing directions and legislation, including UNMIK/ADM/DIR/2007/5 and Annex I, respectively.

REASONS FOR THE DECISION

5. 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 and section 3.1 of Law No. 03/L-079.)

6. Where the claimant makes an ownership claim pursuant to section 3.1(a) of UNMIK/REG/2006/50 and section 3.1(a) of 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 and section 3.1(b) of 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 and section 3.1 of Law No. 03/L-079 read together with section 9 of Sub-Annex III of Annex I.)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 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

7. The Commission held its ninth session on 20-23 October 2008 in Prishtinë/Pristina. A total of 2,476 agricultural property claims were submitted by the Executive Secretariat of the Kosovo Property Agency (the “Executive Secretariat” and “KPA,” respectively) to the Commission at its ninth session, together supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. A total of fifteen of these claims were recommended to be dismissed by the Executive Secretariat.

8. 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

9. Based on its review of the claims and supporting documentation, and of the information provided and the verification conducted by the Executive Secretariat, thirteen of the fifteen claims that the Executive Secretariat recommended for dismissal were referred by the Commission back to the Executive Secretariat for additional review and verification, or were withdrawn by the Executive Secretariat. These claims, which are identified in part B of the attached Schedule, will be considered by the Commission in due course. The present decision therefore applies to the two claims referred to in the operative part of this decision.

10. 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 circumstances directly relating to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.


11. In the two claims covered by the present decision, Claim Nos. 31471 and 31476, which have been filed by the same Claimant, the Claimant alleges that he purchased the claimed property and submitted a possession list in support of his claim. However, the document does not show him or any of his family household members as the owner of the claimed property. The Claimant was requested to provide a copy of the purchase contract and was given a deadline within which to provide it. The Claimant indicated that he would provide the document but did not produce it. No other evidence has been presented by the Claimant, or could be found by the Executive Secretariat, that would show that the Claimant had an ownership right or indeed any property right over the claimed property. Accordingly, in the absence of any supporting evidence, both claims stand to be dismissed for want of compliance with section 3.1 of UNMIK/REG/2006/50 and section 3.1 of Law No. 03/L-079 (see paragraph 5 above).

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.

B. Concluding remarks

12. In view of the foregoing the Commission finds that Claim Nos. 31471 and 31476 fail.

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



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.**