

DECISION

PANEL NO: 1

DECISION NO.: KPCC/D/A/29/2008
DECISION DATE: 19/12/2008

ORDER

(1) In each of the 1,196 (one thousand one hundred and ninety six) claims identified in parts A, B, C and D of the attached Schedule, the Commission

decides that

The claimant or the property right holder, as the case may be, has established ownership over the claimed property, or such part thereof as specified in the respective individual decision;

(2) In each of the 805 (eight hundred and five) claims identified in part E of the attached Schedule, the Commission

decides that

The claimant has established ownership of the deceased property right holder over the claimed property, or such part thereof as specified in the respective individual decision;

(3) In each of the 2,001 (two thousand and one) claims referred to in paragraphs (1) and (2) above, except Claim Nos. 16324, 34708, 52297, 52298, 52299 and 52300, 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;*
- (4) *In Claim Nos. 06417, 11074, 11075, 11076, 19136, 49501, 49502, 49503 and 49505 where the claimed property is currently occupied by KFOR which enjoys immunity from legal process, the Commission*
- orders that*
- (a) *The claimant or the property right holder, as the case may be, be given possession of the claimed property upon its vacation by KFOR;*
- (b) *Any person other than KFOR occupying the property after its vacation by KFOR, vacate the same within 30 (thirty) days of the delivery of this order, or immediately after its vacation by KFOR if this is later; and*
- (c) *Should any person other than KFOR occupying the property fail to comply with the order to vacate within the time stated, they be evicted from the property;*
- (5) *In each of the claims identified in part F 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; and*
- (6) *In cases in which there is more than one owner, the above decisions and order do not affect the rights of any respective co-owners.*

LEGAL FRAMEWORK

1. On 13 June 2008, the Assembly of the Republic of Kosovo (the "Assembly") enacted 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. 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 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 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 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.)

6. 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

7. The Commission held its tenth session from 15 to 19 December 2008 in Prishtinë/Pristina. A total of 2,051 agricultural property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its tenth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information.

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. 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. Based on its review of the claims and of the supporting documentation, and of the information provided and the verification conducted by the Executive Secretariat, a total of 40 claims 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 listed in part G of the attached Schedule ("Claims referred back") and part H of the attached Schedule ("Claims withdrawn"), will be considered by the Commission in due course. During the session, nine residential property claims were recategorized as agricultural property claims, while one agricultural property claim was recategorized as a residential claim. The present decision applies to the 2,001 claims which are listed in parts A, B, C, D and E of the attached Schedule. The remaining eighteen claims are covered by two other decisions, namely KPCC/D/A/30/2008 and KPCC/D/A/31/2008.

10. The Commission notes that all of the claims listed in parts A, B, C, D and E of the attached Schedule 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. 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

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.

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.

11. In the claims identified in parts A, B, C and D of the attached Schedule, the Commission notes that the claimants have submitted various types of documents in support of the ownership claims, including possession lists, purchase contracts, contracts on gift, contracts on division of property, inheritance decisions, court decisions recognizing ownership, contracts on long life care and certificates of immovable property rights. The Commission is satisfied that these documents indeed constitute proof of ownership. Many claimants have also submitted additional supporting documents, including tax decisions, witness statements, copies of plans and cadastral decisions. All of these documents have been verified as being valid by the Executive Secretariat, as relevant.

12. In the 600 claims identified in part A of the attached Schedule, the claimant has filed the claim in the capacity of a property right holder. In light of the Commission's findings in paragraph 11 above, all of these claims stand to be granted.

13. In the 359 claims identified in part B of the attached Schedule, the claimants have filed the claim in the capacity of a family household member of the property right holder pursuant to section 1.2 of Annex II of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. 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 and grandchildren of the property right holder. All of the claimants in the claims identified in part B of the attached Schedule fall within the definition of family household member. Accordingly a decision confirming the property right in favour of the property right holder stands to be granted in each of the claims identified in part B of the attached Schedule, as set out above. In the claims identified in column 7 of this part B of the Schedule, the claimant alleges that the property right holder died but no acceptable evidence has been submitted by the claimant that would establish death, nor has the Executive Secretariat been able to locate any such documents. Accordingly a decision confirming the property right in favour of the property right holder also stands to be granted in each of these claims, as set out above.

14. In the 40 claims listed in part C of the attached Schedule, the property right holders are represented by authorized natural persons with a power of attorney. The Commission has determined that in each of these cases the authorized natural person possesses a valid and duly executed power of attorney pursuant to section 5.2 of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. Accordingly a decision confirming the property right in favour of the property right holder in each of these claims stands to be granted, as set out above.

15. In the 197 claims identified in part D of the attached Schedule, the claimant or the current property right holder, as the case may be, was not the property right holder at the date of loss of possession of the claimed property, but has adduced evidence of having subsequently succeeded to the respective ownership right by virtue of inheritance, contract on gift or purchase contract, as the case may be. The claimant or the current property right holder, as the case may be, must be considered as having succeeded to all the rights belonging to an owner, including the right to claim for confirmation of ownership and for repossession in the present proceedings. These claims therefore stand to be granted, as set out above. In the claims identified in column 6 of this part D of the Schedule, the claimants have filed the claim as a family household member or authorized representative of a property right holder who has adduced evidence of having succeeded subsequent to the date of loss of possession of the claimed property to the respective ownership right. The Commission determines that the claimants in these cases are either family household members of the current property right holder within the meaning of section 1 of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 or possess a valid and duly executed power of attorney pursuant to section 5.2 of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079, and thus are entitled to bring a claim on behalf of the current property right holder.

16. In the 805 claims identified in part E of the attached Schedule, the claimant was not the property right holder at the date of loss of possession of the claimed property but asserts to having succeeded to the property. In each of these claims the claimant has established that she or he is a family household member of the deceased property right holder. However, no valid inheritance decision or other documentary evidence has been submitted by the claimants that would establish any of the claimants as being an heir to the claimed property, nor has the Executive Secretariat been able to locate any such documents. The Commission has no jurisdiction to resolve issues relating to inheritance. Accordingly a decision confirming the property right in favour of the deceased property right holder stands to be granted in each of these cases, as set out above. The Commission's decision with respect to all of the claims identified in this part E of the attached Schedule is without prejudice to the determination by the competent court as to how the heirs will succeed to the property right of the deceased. In the claims identified in column 6 of this part E of the attached Schedule, the family household member of the deceased property right holder is represented by an authorized natural person with a power of attorney. The Commission has determined that in each of these claims the authorized natural person possesses a valid and duly executed power of attorney from the family household member of the deceased property right holder pursuant to section 5.2 of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. Accordingly a decision confirming the property right in favour of the deceased property right holder stands to be granted in each of these cases. In Claim No. 27702 the Claimant is a family household member of the deceased property right holder, namely the grandson, and has additionally provided a duly executed power of attorney from the successor to the property right holder, namely his father. A decision confirming the property right in favour of the deceased property right holder stands to be granted in this case.

17. The various types of documents relied upon by the claimants in support of the claims referred to in paragraphs 12, 13, 14, 15 and 16 above are listed in the relevant column of parts A, B, C, D and E of the attached Schedule.

18. In a number of claims the claimants or the property right holders, as the case may be, left the property outside the period 27 February 1998 and 20 June 1999, referred to in section 3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. The Commission has determined that, even though the date of loss in these claims fell outside the above period, the loss of property right in each case occurred in circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999, as required by section 3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

19. In Claim Nos. 16324, 34708, 52297, 52298, 52299 and 52300 (listed in column 5 of the attached Schedules), the Claimants seek confirmation of the ownership right over the claimed properties without an eviction order as permission has been granted to a named individual to use the claimed property. In these circumstances, an order confirming the property right in favour of the Claimant or the property right holder, as the case may be, stands to be granted, without any other form of ancillary relief, as set out above.

20. In Claim Nos. 06417, 11074, 11075, 11076, 19136, 49501, 49502, 49503 and 49505, the claimed properties are currently occupied by KFOR, which under UNMIK/REG/2000/47 enjoys immunity from legal process. The Commission considers that these claims, to the extent that they seek confirmation of ownership, are *in rem* and that, accordingly, their granting does not infringe upon the immunity enjoyed by KFOR. The Executive Secretariat has informally consulted KFOR, which, it appears, does not disagree with this view. However, the immunity enjoyed by KFOR prevents the Commission from issuing an eviction order against KFOR as the current occupant of the claimed properties. Accordingly, the eviction order in the above claims applies only to any third parties who may illegally occupy the claimed properties after their vacation by KFOR.

21. In Claim Nos. 10521, 35971, 35947, 22114, 42090, 42089, 42092 and 42093, the Claimant died after filing the claim. The Commission considers that a claimant's death during the proceedings cannot affect the validity of the claim. Accordingly a decision confirming the property right in favour of the property right holder therefore stands to be granted, as set out above. This decision is without prejudice to the determination by the competent court as to how the heirs will succeed to the property right of the deceased. Claims in which the claimants have died during the proceedings are listed in the relevant columns of parts A, B, and E of the attached Schedule.

22. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that:

- (a) the claimant or the property right holder, as the case may be, had an ownership right in respect of the claimed property, or such part thereof as specified in the respective individual decision;

- (b) each claim is uncontested in that no person has contested the validity of the claim;
- (c) the claimant or the property right holder, as the case may be, in each case is not now able to exercise his or her ownership right; and
- (d) 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.

B. Claims for compensation

23. In the claims identified in part F of the attached Schedule, the claimants also seek, in addition to ownership, compensation for physical damage to, or for loss of use of, the claimed property. Under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the Commission has no jurisdiction over such claims. Accordingly these claims must be dismissed. In Claim No. 10185, the Claimant seeks an exchange of property on account of his inability to currently use or possess his claimed property. The Commission has no jurisdiction to grant such a remedy under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 and accordingly this claim must be dismissed.

C. Concluding remarks

24. In view of the foregoing, the Commission finds that the claims listed in parts A, B, C, D and E of the attached Schedule succeed and an order be made in respect of each claim as set out above.

25. In a number of claims, the claimant had filed a claim for repossession of the same property with the Housing and Property Directorate, which claim had subsequently been granted by the Housing and Property Claims Commission ("HPCC"). The Commission notes that the causes of action available for claimants before the present Commission and HPCC, respectively, and accordingly the jurisdiction of the two Commissions, are not identical in that, unlike HPCC, the present Commission has jurisdiction to confirm ownership. Thus the decisions of HPCC do not constitute *res judicata* before the present Commission. Moreover, in cases where HPCC granted an eviction order in favour of the Claimant, the Commission does not consider that such an order constitutes a bar for this Commission to issue a fresh eviction order in cases where the property is unlawfully occupied.

26. The Commission's above 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.

27. 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.



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.

* 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.