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DECISION

PANEL NO: 1

DECISION NO.: KPCC/D/A/43/2009
DECISION DATE: 11/06/2009

ORDER

In each of the 30 (thirty) claims identified in the attached Schedule, 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 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 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.

3. 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. The two international members of the Commission were appointed by the International Civilian Representative by decision dated 6 March 2009. The national Commissioner was appointed by decision of the Assembly dated 12 March 2009.

4. In light of the above, the Commission considers that it is duly constituted and competent to exercise its functions pursuant to Law No. 03/L-079 and the relevant implementing directions and legislation.

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

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.

7. The Commission held its twelfth session from 8 to 11 June 2009 in Prishtinë/Pristina. A total of 2,370 agricultural property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twelfth 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 42 claims were referred by the Commission back to the Executive Secretariat during the session for additional review and verification, or were withdrawn by the Executive Secretariat. During the session, one residential property claim was recategorized as an agricultural property claim, while one agricultural property claim was recategorized as a commercial property claim. The present decision deals with the 30 agricultural claims listed in the attached Schedule. A further 2,292 claims are covered in decision KPCC/D/A/42/2009. The remaining six agricultural property claims are covered by decision KPCC/D/A/44/2009 (three contested agricultural claims) and decision KPCC/D/A/45/2009 (three use right claims).

10. 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.

11. 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 considered to be directly related to or result from the conflict, it must be satisfied that there is some evidence indicating that the property loss involved circumstances surrounding the conflict.

12. Claim Nos. 38117, 38118, 38119, 38120, 38121, 38122, 38123, 38124, 38125, 38126, 38128, 38129, 38130, 38131, 38132, 38134, 38135, 38136, 38137, 38138, 38139,

38140, 38141, 38142 and 38143 have each been brought by the same Claimant in his capacity as family household member of the same Property Right Holder. The Claimant does not claim any loss of possession and indeed has confirmed to the Executive Secretariat that he continues to use the claimed property.

13. Similarly, Claim Nos. 25309, 25313, 30524 and 30526 are brought by the same Claimant in his capacity as family household member of the same Property Right Holder. The Claimant does not claim any loss of possession and states that the Property Right Holder continues to use the claimed property.

14. Claim No. 47372 is filed by the Claimant in his capacity as Property Right Holder. He states that he left Kosovo in 1977 for Serbia, and that his brother has been using the property since that time with his permission and without any loss of possession.

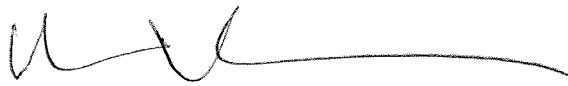
15. There is no evidence available to the Commission in any of the claims referred to in paragraphs 12, 13 and 14 above to indicate that the claimants or the property right holders, as the case may be, have been displaced from the claimed property, or have lost possession or control over such property, temporarily or otherwise, as a consequence of the conflict. Accordingly the Commission finds that these claims stand to be dismissed and an order be made as set out above. 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, in accordance with the applicable law.

B. Compensation

16. In the claims identified in the relevant column 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 also stand to be dismissed.

C. Concluding remarks

17. 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.

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.**