



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/44/2009
DECISION DATE: 11/06/2009

ORDER

(1) *In Claim Nos. 10325, 10327 and 00258, the Commission*

decides that

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

(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 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 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 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 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 the three claims covered by the present decision the claimants seek the resolution of an ownership claim, and all of them relate to agricultural properties. The remaining claims for agricultural property referred to the Commission at the session are covered in the following decisions: decision KPCC/D/A/42/2009 (covering 2,292 uncontested claims which the Commission has resolved to grant), decision KPCC/D/A/43/2009 (covering 30 claims which the Commission has resolved to dismiss) and decision KPCC/D/A/45/2009 (covering three claims for use rights). A further 42 claims for agricultural property were referred back to the Executive Secretariat by the Commission during the session for further verification and checking, or were withdrawn by the Executive Secretariat. During the session one agricultural property claim was recategorized as a commercial property claim, and one residential property claim was recategorized as an agricultural property claim.

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

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.

11. All three claims covered by the present decision are contested in the sense that the party occupying the claimed properties (the “Respondent”) 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, 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.

12. The Commission is satisfied, based on the evidence before it, that all three claims arise out of the circumstances directly relating to or resulting from the armed conflict that occurred in Kosovo during the period 27 February 1998 and 20 June 1999.

1. Claim Nos. 10235 and 10327

13. Claim No. 10235 is filed by the Claimant in his capacity as property right holder, while Claim No. 10327 is brought by the same Claimant as a family household member of his deceased father, who is 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. The Claimant in Claim No. 10237 therefore falls within the definition of family household member and consequently has capacity to submit a claim on his father’s behalf.

14. The Claimant has authorized his son to represent him in both claims pursuant to 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.

15. The Claimant has submitted in both claims a possession list in support of the claim for ownership over the claimed property. The possession lists have been verified as being valid by the Executive Secretariat. The Claimant states that he and his father were allocated their respective land parcels by the socially owned agricultural enterprise “Suvi D- Lipjan” as part of the process of land redistribution. No date is provided for the allocation of the parcels although reference is made to the Law on Land Restitution from 1992. It appears that the socially owned enterprise had in turn acquired the parcels through an earlier land expropriation. The Claimant states that both he and his father lost possession of the lands in June 1999.

16. The Respondent in Claim Nos. 10325 and 10327 is the current occupant of both parcels of land. He claims that the two land parcels in question belonged to his grandfather who lost possession of the land in 1937 when the land was forcibly acquired by two “colonialist” individuals. The Respondent claims that these persons later sold these and other land parcels to the agricultural enterprise from whom the

Claimant subsequently acquired their land. The Respondent states that the main title deeds to the land parcels were taken from his grandfather by the “colonialists.”

17. The Respondent has been unable to locate the title deeds for this property within any archives in Kosovo, however, he has submitted two court decisions in support of his claim. The first decision is a judgment of the District Court of Pristina dated 11 January 1954 whereby the Court refused the Respondent’s grandfather’s request for confirmation of his property right. The second decision is the appeal judgement of the Supreme Court dated 18 January 1954, which rejects the appeal of the Respondent’s grandfather as baseless and confirms the District Court’s earlier decision. The court decisions do not contain any references to the land parcels at issue in Claim Nos. 10325 and 10327, and the Commission notes that the nature and the surface areas of the agricultural properties referred to in the two court decisions are different from those described in the possession lists relating to the claimed properties. In any event, even if the court decisions did relate to the land parcels at issue in the present claims, they do not assist the Respondent as the requests for confirmation of ownership made by his grandfather are refused by both courts.

18. The Respondent states that he began to use the claimed properties from June 1999 onwards and says that he has submitted a number of witness statements attesting to his grandfather’s ownership of the land to the Lipjan police in 1999. However, these declarations have not been submitted to the Commission.

19. The Claimant has submitted verified possession lists in both claims confirming the property right holders’ ownership of the claimed properties. As set out above, the Respondent has submitted no evidence to indicate that he is the legal owner of the properties in question. Consequently, as the Claimant has proven the property right holders’ ownership over the claimed properties as of the date of loss of possession of the properties, namely June 1999, both claims stand to be granted in the name of the respective property right holders. The Commission has no jurisdiction to consider the legality of acts of land nationalization or expropriation by previous regimes.

20. No inheritance decision has been provided by the Claimant in relation to Claim No. 10327 and the Commission has no jurisdiction over inheritance issues. Accordingly a decision confirming the property right in favour of the deceased Property Right Holder stands to be granted in this claim.

2. Claim No. 00258

21. Claim No. 00258 has been submitted by the Claimant in his capacity as property right holder. He has submitted a possession list in relation to the claimed property which has been verified by the Executive Secretariat. The Claimant has also submitted a verified purchase contract over the claimed property dated 20 June 1988 identifying him as the co-purchaser of the property. The Kosovo Cadastral Agency confirms that the Claimant has been registered as a co-owner of the property since 1988.

22. The Respondent to this claim is the current occupier of the property. While he claimed a legal right over the property at the time of notification of the property, he

has provided no documentation or other information in support of such right, despite being given an opportunity to do so by the Executive Secretariat.

23. As the Claimant has provided a verified possession list and purchase contract confirming his right to joint-ownership over the property, a decision in favour of the property right holder stands to be granted in this claim, as set out above.


24. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in Claim Nos. 10325, 10327 and 00258:

- (a) the Property Right Holder has an ownership right in respect of the claimed property, or such part thereof as specified in the respective individual decision;
- (c) the Claimant in each case is not now able to exercise his rights to the property; 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. Concluding remarks

25. 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.

26. 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-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.**