

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/5/2007
DECISION DATE: 19/12/2007

ORDER

(1) In each of the 1,125 (one thousand one hundred and twenty five) claims identified in parts A, B and C 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 691 (six hundred and ninety one) claims identified in part D 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 1,816 (one thousand eight hundred and sixteen) claims referred to in paragraphs (1) and (2) 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;*

- (4) In each of the 601 (six hundred and one) claims identified in part E 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*
- (5) 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.*

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 above finding reflects the views of the majority of the Commission. One Member of the Commission is of the view that the Commission should limit its decision to making an eviction order and not decide that the claimants have established ownership over the claimed properties, except where the claimant has made an express claim for ownership. In the view of the majority of the Commission, and based on the explanations provided by the Executive Secretariat of the Kosovo Property Agency (the "Executive Secretariat" and "KPA," respectively) concerning the process of registration of the claims, the claimants have indeed made such an express claim when indicating on the claim form that the claim falls under the category of an "ownership claim."

4. The Commission held its fourth session on 10-12 December 2007 in Prishtinë/Pristina. A total of 1,846 agricultural property claims were submitted by the Executive Secretariat to the Commission at its fourth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information.

5. 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

6. 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 30 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 F of the attached Schedule, will be considered by the Commission in due course. The present decision applies therefore to the remaining 1,816 claims, which are listed in parts A, B, C and D of the attached Schedule. In all of these claims the claimants seek the resolution of an ownership claim, and all of them relate to agricultural properties, including agricultural land, pasture and forests.

7. The Commission notes that all of the claims listed in parts A, B, C and D 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. 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 interest in such properties, as required by section 10.1 of UNMIK/REG/2006/50. Accordingly these claims must be considered uncontested.

8. In the 819 claims identified in part A of the attached Schedule, the Commission notes that the claimants have submitted various types of documents in support of their ownership claims, including possession lists, purchase contracts, contracts on gift, contracts on division of property, inheritance decisions, court decisions recognizing ownership 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.

9. In the 203 claims identified in part B of the attached Schedule, the claimants have filed claims in the capacity of a family household member of the property right holder pursuant to section 1.2 of Annex II of UNMIK/DIR/2007/5. Section 1 of the Administrative Direction 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 the claimants in the claims identified in part B of the attached Schedule fall within this definition and accordingly in each of these claims a decision confirming the property right in favour of the property right holder stands to be granted.

10. In the 103 claims identified in part C of the attached Schedule, the claimant 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 or contract on gift, as the case may be. These claimants 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 Claim Nos. 15351, 15352 and 15353 the Claimants have filed claims in the capacity of a family household member of the property right holder pursuant to section 1.2 of Annex II of UNMIK/DIR/2007/5. In all of these claims the Claimants meet the definition of the "Member of Family Household" in section 1 of UNMIK/DIR/2007/5. Accordingly, a decision confirming the property right in favour of the property right holder stands to be granted. In Claim No. 16349, the Claimant has adduced evidence of having subsequently succeeded to the respective ownership right by virtue of an inheritance decision issued by the court in Kragujevac in Serbia proper, where the property right holder resided for a number of years prior to his death. The Commission accepts the court decision as valid and holds that the court in Kragujevac had jurisdiction to issue the decision based on Article 95 of the Law on Non-contested Procedure, which provides that "[t]he Communal Court (probate court) with jurisdiction in the region where the permanent or temporary residency of the deceased person was located on the death moment has authority to conduct inheritance procedures." (Official Gazette, SAP Kosovo, No. 42, 24 October 1986.) This decision reflects the views of the majority of the Commission. One Member of the Commission is of the view that the court in Kragujevac was not competent to issue the decision, as there is no evidence that the deceased property right holder had officially recorded his permanent or temporary residence in Kragujevac. The dissenting Member of the Commission also referred to the court decision which recorded the deceased property right holder as being "formerly from" Podujevo in Kosovo, and he interpreted this to mean that he was resident there up to the date of his death.

11. In the 691 claims identified in part D 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. 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. A decision confirming the property right in favour of the deceased 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 claimant.

12. The various types of documents relied upon by the claimants in support of the claims referred to in paragraphs 8, 9, 10 and 11 above are listed in the relevant column of parts A, B, C and D of the attached Schedule.

13. 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 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.

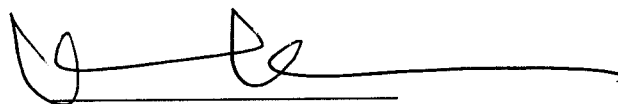
B. Claims for compensation

14. In the 601 claims identified in part E 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 the Commission has no jurisdiction over such claims. Accordingly these claims must be dismissed.

C. Concluding remarks

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

16. Section 8.8 of Annex III of UNMIK/ADM/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.**