



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/83/2010
DECISION DATE: 02/09/2010

ORDER

(1) *In each of the 529 (five hundred and twenty nine) 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 283 (two hundred and eighty three) 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 812 (eight hundred and twelve) claims referred to in paragraphs (1) and (2) above, except Claim Nos. 47115 and 91060, 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) *Any person occupying the property vacate the same within 30 (thirty) days of the delivery of this order; and*
- (c) *Should the any 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 No. 38740, 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 the relevant columns in parts A, B, C, D and 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*
- (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, 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 entered into force in Kosovo. 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 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.
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.

REASONS FOR THE DECISION

3. 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.)

4. 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

5. The Commission held its eighteenth session from 30 August to 2 September 2010 in Prishtinë/Pristina. A total of 917 agricultural property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its eighteenth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. A further two residential property claims presented to the Commission were re-categorized by the Commission as agricultural property claims during the session. In sum, a total of 919 agricultural property claims were considered by the Commission during the eighteenth session.

6. 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

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.

raised by the claims. At the Commission's request, the Executive Secretariat provided additional information and explanations, as required.

A. Ownership claims

7. 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.

8. The present decision deals with the 812 agricultural property claims which are listed in parts A, B, C, D and E of the attached Schedule. Based on its review of the claims and of the supporting documentation during the session, and of the information provided and the verification conducted by the Executive Secretariat, a total of 31 agricultural property 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 ("Claims referred back") and part G ("Claims withdrawn") of the attached Schedule to this decision will be considered by the Commission in due course. The remaining 76 claims for agricultural property dealt with by the Commission during the session are covered by three other decisions, namely decision KPCC/D/A/84/2010, KPCC/D/A/85/2010 and decision KPCC/D/ACR/91/2010.

9. 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, or at any later stage during the proceedings, pursuant to section 10.3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. In a number of claims covered by this decision, the local villagers were uncooperative in connection with the physical notification of the claimed property by the staff of the Executive Secretariat. In such circumstances the claimed properties were notified through notices placed with the local municipal authorities and municipal courts. 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 as adopted by Law No. 03/L-079. Accordingly these claims must be considered uncontested.

10. In the claims identified in parts A, B, C, D and E 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 final court decisions and certificates of immovable property rights confirming an ownership interest indeed constitute proof of ownership. The other documents submitted by claimants, including possession lists and contracts involving property transactions, create a rebuttable presumption of ownership.

The claims identified in the attached Schedule are uncontested and no evidence has been received or obtained by the Secretariat ex officio that would rebut the presumption of ownership. Consequently the Commission is satisfied that the documents submitted prove the claimants' ownership over the claimed properties. The documents have been verified as being valid by the Executive Secretariat, as relevant. Many claimants have also submitted additional supporting documents, including tax decisions, witness statements, copies of plans and cadastral decisions.

11. In the 202 claims identified in part A of the attached Schedule, the claimants have filed the claim in the capacity of a property right holder. In light of the Commission's findings in paragraph 10 above, all of these claims stand to be granted. In Claim No. 15498, the Claimant states that he had authorized a third person to use the claimed property on temporary basis from 2004 until 2005. However during the notification of the property by the Executive Secretariat the property was found unoccupied and no respondent party has approached KPA in relation to this claim. Accordingly the Commission issues an eviction order in this claim, as set out above. In Claim Nos. 48056 and 48062, there is a name discrepancy between the Claimant's real name, Nedeljko Radivoje Jankovic, which appears in his identification documentation, and his nickname, Deno Rasha Jankovic, which appears in the possession list for the claimed property. Based on the available evidence, including witness statements as corroborated by a taxation book containing the Claimant's nickname, the Commission is satisfied that Nedeljko and Deno Jankovic are the same person. Accordingly this claim stands to be granted.

12. In the 204 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, grandchildren, great-grandparents and great-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 the relevant column of part B of the Schedule, the claimant alleges that the property right holder has 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. Claim Nos. 14769 and 14775 are filed by the holder of a valid and duly executed power of attorney. In Claim No. 40338, the Claimant's name in the Certificate for Immovable Property has

been mistakenly entered as Cvetko Pasic instead of Cvetko Gasic. The Commission is satisfied, based on the evidence before it, that both names refer to the same person.

13. In the 15 claims listed in part C of the attached Schedule, the property right holder is represented by an authorized natural person. The Commission has determined that the authorized individual 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 stands to be granted in these claims. In Claim Nos. 25483, 25487, 25489, 25490, 25491, 25492, 25493 and 25494, the individual filing the claim has submitted a power of attorney authorizing him to represent the Property Right Holder generally in property proceedings. The Commission considers this authorization as sufficient for the purposes of the proceedings before the Commission. In Claim No. 90099, the individual filing the claim has been issued a power of attorney by the property right holder, although he is the grandchild of the property right holder and thus would also have been in a position to file the claim as a family household member. The Commission considers that the power of attorney is the more specific authorization and accordingly the claim is to be considered as having been filed by a holder of a power of attorney rather than by a family household member of the property right holder.

14. In the 108 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 whether as a co-owner or a sole owner of the property pursuant to the verified document that proves such succession specified in ideal part of the claimed parcel, including the right to claim for confirmation of ownership or co-ownership as the case may be, and for repossession in the present proceedings. These claims therefore stand to be granted, as set out above. In the claims identified in the relevant column of this part D of the Schedule, the claims have been filed either by a family household member or by an authorized representative acting on behalf of the property right holder. 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 are current property right holders who have authorized representatives 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, to bring a claim on their behalf.

15. In the 283 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 right. 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. Some claimants have submitted as evidence "inheritance decisions"

purportedly issued by parallel courts in Serbia. The Commission does not consider that such documents establish entitlement to inheritance. The Commission itself 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 the relevant column 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.

16. In Claim Nos. 47115 and 91060 (listed in the relevant column of the attached Schedule), the claimants seek confirmation of ownership rights 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.

17. In Claim No. 38740, the claimed property is currently occupied by KFOR, which under UNMIK/REG/2000/47 enjoys immunity from legal process. The Commission considers that this claim, to the extent that it seeks confirmation of ownership, is *in rem* and that, accordingly, granting the claim 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 property. Accordingly the eviction order in the above claim applies only to any third parties who may illegally occupy the claimed property after its vacation by KFOR.

18. The various types of documents relied upon by the claimants in support of the claims referred to in paragraphs 11 to 17 above are listed in the relevant column of parts A, B, C, D and E of the attached Schedule.

19. 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.

20. In some cases a claimant has 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.

21. 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

22. In the claims identified in the relevant columns of parts A, B, C, D and 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 as adopted by Law No. 03/L-079 the Commission has no jurisdiction over such claims. Accordingly these claims must be dismissed.

C. Concluding remarks

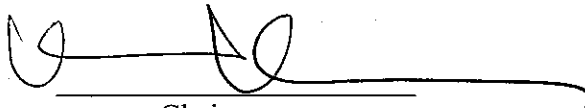
23. In view of the foregoing, the Commission finds that the claims listed in parts A, B, C, D and E of the attached Schedule succeed and directs that an order be made in respect of each claim as set out above.

24. 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. Accordingly the decisions of HPCC do not necessarily constitute *res judicata* before the present Commission, although in certain circumstances this may be the case. 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.

25. The Commission's above decisions 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. Pursuant to section 8.5 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079, the Commission may in its decision determine any property right in the name of the property right holder and make an order for possession in favour of the claimant. When the property right holder is alive, the Commission grants the right of possession in the name of the property right holder. When the property right holder is deceased and the death is proven but no valid inheritance decision has been provided, the Commission grants possession to the claimant as a family household member of the property right holder. The right to possession is granted pursuant to the applicable provisions of the law governing family relations in Kosovo, which includes the administration of family property, as well as by reference to the applicable law on inheritance. The Commission's decision on the entitlement to possession by the family household member claimant is without prejudice to the rights of other family household members or heirs of the property right holder who have not filed claims with the KPA but who may have a joint right to possession pursuant to the applicable law or as a consequence of future inheritance proceedings (section 8.5 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079).

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.

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.**