



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/93/2010
DECISION DATE: 28/10/2010

ORDER

In each of the 20 (twenty) claims identified in the attached Schedule, the Commission decides that the claim be dismissed.

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 nineteenth session from 26 to 28 October 2010 in Prishtinë/Pristina. A total of 1,241 agricultural property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its nineteenth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. The Commission also finalized the adjudication of two claims which had been presented to the Commission by the Executive Secretariat in the thirteenth session but in which the Commission had suspended deliberations pending confirmation of the notification of claims over the properties. In sum, a total of 1,243 agricultural property claims were considered by the Commission during the nineteenth 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 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 twenty agricultural property claims. The remaining 1,223 agricultural property claims are covered by decisions KPCC/D/A/92/2010 and KPCC/D/A/94/2010.

9. The Commission notes that all of the claims covered by the present decision 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. 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

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.

adopted by Law No. 03/L-079. Accordingly these claims must be considered uncontested.

B. Claims dismissed

10. Pursuant to section 11.4 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the Commission shall dismiss the whole or part of a claim where:

- (a) The claimant has failed to file a complete claim in accordance with the procedures set out in the Regulation;
- (b) The claim is not within the scope of jurisdiction of the KPA; and
- (c) The claim has previously been considered and decided in a final administrative or judicial decision.

11. Section 8.6 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-07907/50 provides the Commission with the power to refuse or dismiss a claim on any ground, including those set down in section 11.4 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

12. Claims which are dismissed as falling outside the Commission's jurisdiction or for procedural reasons and not on account of the merits of the claim, may be capable of resolution through the local courts, subject to the applicable law. In such claims the Commission's decision does not constitute a *res judicata*. Section 3.2 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 confirms the right of claimants to pursue before courts of competent jurisdiction claims that do not fall within the mandate of the Commission, as set out in section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. (See also section 8.1 of Annex III of UNMIK/ADM/DIR/2007/5 concerning the Commission's authority to refer issues arising in connection with a claim which are not within its jurisdiction, to a competent local court or administrative board or tribunal.)

1. Claims dismissed on account of lack of evidence of loss of possession

13. 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.

14. 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, depending on the circumstances of the case,

it must be satisfied that there is some evidence indicating that the property loss involved circumstances surrounding the conflict.

15. Claim Nos. 21827, 21828, 21829, 45255, 45259, 45262, 45266, 45269 and 45273 are filed by the same Claimant on behalf of the same property right holder. The claims were initially filed by the Claimant in his capacity of family household member, namely son, of the previous property right holder. However the previous property right holder is now deceased. The Claimant has inherited the deceased property right's holder's title in Claim Nos. 45255, 45262, 45266, 45269 and 45273, while the Claimant's brother has inherited the ideal parts of the properties claimed in Claim Nos. 21827, 21828, 21829 and 45259, as specified in the respective individual decisions. The inheritance decision has been verified by the Executive Secretariat. The Claimant states that while his family left Kosovo after the 1998-1999 armed conflict, his nephew remained in Kosovo and has continued to use the claimed properties since that time with the permission of the property right holder. The Claimant acknowledges that neither he nor his family lost possession of the claimed properties. He continues to visit the properties occasionally and has filed the claims for the purposes of confirmation of his property right and to ensure the legal security of title. In these circumstances, as the Claimant has not lost possession of the claimed properties as a result of the conflict and is currently able to exercise property rights over the properties, the claims stand to be dismissed. (See also the Commission decisions KPCC/D/A/70/2010 of 21 April 2010 and KPCC/D/A/77/2010 of 16 June 2010.)

16. In Claim No. 26376, the Claimant, who filed the claim in his capacity as property right holder, states that he left Kosovo in 1970 for Serbia and has continued to use his property since that time. He acknowledges that he was never displaced because of the conflict and has never lost possession of the claimed property. The Claimant states that he has filed the claim for the purposes of confirmation of his property right and to ensure the legal security of his title. Accordingly, like other claims filed by the same Claimant and previously resolved by the Commission, the claim stands to be dismissed as being outside the jurisdiction of the Commission. (See also the Commission decision KPCC/D/A/52/2009 of 19 August 2009 and KPCC/D/A/65/2010 of 25 February 2010).

17. In Claim Nos. 50368 and 50369, the Claimant is a family household member, namely son of the property right holder. When the Claimant last visited the properties in 1998, he saw that there were a number of houses on the parcels which had been built by unknown persons. He stated that the houses were probably built prior to 1998. When questioned about his loss of possession of the properties by the Executive Secretariat, the Claimant advised that neither he nor his family had used the claimed properties since 1955 as they used to live in the centre of Pejë/Peć town, while the claimed properties are located on the outskirts of Pejë/Peć. As the Claimant has not lost possession of the claimed property on account of the armed conflict in Kosovo during 1998-1999, both claim stands to be dismissed as falling outside the jurisdiction of the Commission.

2. *Claims dismissed on account of lack of proof of capacity to file the claim on behalf of the property right holder*

18. Pursuant to section 5.2 of UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079, claims may be made by either the property right holder, a family household member of the property right holder, or an authorized natural person with a valid and duly executed power of attorney from either the property right holder or a family household member of the property right holder. In exceptional cases where the provision of a power of attorney is problematic, the Executive Secretariat may certify an alternative document authorizing representation of a claimant.

19. Section 1 of the UNMIK/ADM/DIR/2007/5 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. However, by implication the definition does not cover in-laws, uncles, aunts, nephews, nieces or cousins, or other more distant relatives who must provide a power of attorney authorizing their representation on behalf of the property right holder.

20. Claims in which the relationship between the family household member claimant and the property right holder cannot be established, or in which the claimant requires a power of attorney but in which no power of attorney is provided, cannot be considered complete claims in accordance with section 5.2 of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079, since an essential procedural requirement is not satisfied, namely authorization from the property right holder or family household member.

21. Claims Nos. 27996, 27999, 28001, 28009, 28010, 28012, 28013 and 28014 are filed by the daughter in law of the former property right holder. The Claimant states that her father in law is deceased. However as she has not provided a death certificate, his death is not proven. In the course of verification of the property documents, the Executive Secretariat found that the claimed properties were now registered in the names of two co-owners, namely the Claimant's mother in law and brother in law. As the Claimant does not stand in a family household member relationship with either property right holder, the Executive Secretariat contacted the Claimant on four occasions between 2007 and 2009 requesting that she provide a power of attorney from either property right holder. She was advised that that the claims could be dismissed in the absence of such authorization. The Claimant provided a death certificate for her mother in law from 1998 and advised that her brother in law did not wish to provide her with a power of attorney. As the Claimant has failed to establish her capacity to lodge a claim on behalf of the property right holders in accordance with the requirements of section 5.2 of UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079, the claims must be dismissed.

C. *Concluding remarks*

22. 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.

23. 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, such as the cadastral authorities or local courts, in accordance with the applicable law.



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.**