



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/C/111/2011

DECISION DATE: 13/05/2011

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) *In Claim Nos. 00103 and 13070, the Commission*

decides that

The property right holder has established his ownership over the claimed property; and

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;*

(2) *The Commission additionally decides that Claim No. 00103 the claim is dismissed insofar as the Claimant seeks ownership of the new structure erected on top of the claimed property and compensation for physical damage to, or for loss of use of, the claimed property.*

(3) *In Claim Nos. 00256, 00842 and 01011, 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 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

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

5. The Commission held its twenty second on 11 and 13 May 2010 by way of telephone conference. A total of five commercial property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty second session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information.

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.

7. The present decision applies to five claims, namely Claim Nos. 00256, 00842, 00103, 01011 and 13070 in which Claimants seek the resolution of an ownership claim, and all of them relate to commercial properties.

8. Claim Nos. 00256 and 00842 had not previously been considered by the Commission, while Claim Nos. 00103, 13070 and 01011 were the subject of an earlier Commission decision. However the earlier decisions in these claims were overturned by the Commission either on account of an incorrect notification of the claimed properties during claims processing by the Executive Secretariat or on account of other processing errors by the Executive Secretariat which were identified after the decision had been taken. These claims consequently stand to be re-determined following correct notification of the claimed property and correction of the other processing errors. Evidence and information provided by any respondents to the claim or any current occupants of the properties is taken into account by the Commission in the re-determination of the claims. In the claims in which previous decisions have been overturned by the Commission, the Executive Secretariat has written to each claimant advising them of the notification error and informing them that their claims will be re-determined following correct notification of the claimed property. The claimants, as well as the relevant cadastral authorities, have been advised that the previous Commission decisions are invalid and cannot be used for the purposes of any legal transaction.

A. Claims dismissed

9. 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.

10. Claim No. 01011 is uncontested in the sense that at the time the claimed properties were notified there was no evidence of illegal occupation, use or cultivation of the claimed properties by any person or, even if there was such evidence, no party

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.

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. Decisions taken in claims that were incorrectly notified have been overturned by the Commission to ensure correct notification of the property and provide any persons who may have a legal interest in the property with an opportunity to respond to the claim pursuant to section 10.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. The Executive Secretariat has notified claims in a variety of ways including through the physical notification of the property and/or through notification of the property via publication in the Secretariat's gazette and newspapers, through local municipal authorities, municipal courts, local village leaders and through other relevant institutions in Kosovo and Serbia. 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.

11. Claim Nos. 00256 and 00842 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. 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.

13. 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 dismiss or refuse a claim on any ground, including those set down in section 11.4 of UNMIK Regulation 2006/50.

14. 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 claimants' right 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.)

15. 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.

1. Claim No. 00256

16. In Claim No. 00256 the Claimant seeks confirmation of ownership interest and the right to repossession of the claimed property. The property is located in the municipality of Gllgovc/Glogovac (the "Municipality"), in some documents also referred to as Drenas/Gllgovc. The claimed property was allocated to the Claimant on a temporary basis by the Municipality in 1997. In 2001 the Municipality revoked the earlier allocation decision based on a decision of the Municipal Assembly of the Municipality (the "Municipal Assembly") by which an urban plan for the construction of "Skenderbeu" square in the Municipality was approved. This decision impacted on the claimed property, and the Claimant had his shops removed in 2005 for the construction of the square.

17. A variety of documentation have been submitted by the Claimant in support of his claim including allocation decisions, administrative decisions, decisions of various courts including from the Municipal, District and Supreme Courts of Kosovo, and a letter from the Ombudsperson. The Executive Secretariat has verified the allocation and administrative decisions from the Municipal Assembly as well court judgements submitted by the Claimant. There is therefore no issue as to the veracity of the documentation submitted by the Claimant. The key issue for the Commission is rather, whether the claims fall within the mandate of the Commission to resolve property disputes related to the 1998-1999 armed conflict in Kosovo.

18. The allocation decision provided by the Claimant specifies only the underlying surface area of the land, not the total surface area of the shops which formerly existed on the land. The allocation decision also specifies that the purpose of the permitted allocation was for the construction of commercial premises. The Commission accepts this as sufficient proof of the commercial nature of the claimed premises.

19. The Commission is satisfied that the claimed property has been properly notified pursuant to section 10.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. The Commission considers that reasonable efforts have been made to notify all parties currently exercising or purporting to have rights to the property, or other persons who may have a legal interest in the property. During the notification process the Executive Secretariat found the claimed property occupied by the Municipal Assembly. An authorized representative of the Municipal Assembly, Mr Hakif Hasi, Municipal Public Lawyer, signed a notice of participation and claimed a legal right of behalf of the Municipal Assembly, which is the Respondent in this matter. Mr Hasi made a reply on behalf of the Respondent.

20. The Respondent contends that the claim should be dismissed as falling outside the jurisdiction of the Commission as the Claimant did not lose possession as a result of the 1998-1999 armed conflict in Kosovo.

21. Pursuant to section 10.1 of UNMIK/REG/2006/50, as adopted by Law No. 03/L-079, the Respondent has been provided with a copy of the claim submitted by the Claimant. In accordance with section 3.5 of Annex II to UNMIK/AD/2007/5, as adopted by Law No. 03/L-079, the Claimant has been provided with a copy of the documents submitted by the Respondent in response to the claim. Both Claimant and Respondent have thus been given an opportunity to comment on the information provided by the opposing party, and any such comment or information has been taken into account during claim processing and adjudication.

22. The Claimant was first issued with allocation decision by the Municipal Assembly in 1997. The allocation decision gave the Claimant the temporary right of use of the parcel for the construction of a shop. On 28 March 2001 the Municipal Assembly issued a decision authorizing the removal of 60 structures which included the Claimant's shop, as those constructions were not in accordance with the new urban plan.

23. The Claimant appealed the decision of the Municipal Assembly, which has been considered by various courts, including the Municipal, District and Supreme Courts of Kosovo, as well as other institutions such as the Ombudsperson Institute of Kosovo. Ultimately the Municipal Assembly confirmed its 2001 decision and the shop was removed by the Municipality in 2005. The Claimant advises that he lost possession of his shop in 2005.

24. There is no dispute about the fact that the loss of possession occurred well after the end of the armed conflict in Kosovo in 1999. No arguments have been advanced by the Claimant as to how the loss of his property right involved circumstances directly related to or resulting from that armed conflict. In these circumstances, and in light of the evidence on record, the loss of the Claimant's property right cannot be attributed to the conflict, but is the result of urban planning decisions made by the Municipal Assembly in 2001. The allocation decision specified that the use of the allocated land was for a temporary purpose only. Accordingly the claim stands to be dismissed as it falls outside of 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. The Commission notes that the Claimant has already challenged the decision of the Municipal Assembly before the local courts, which are the appropriate fora for the resolution of property disputes that are not related to the 1998-1999 conflict.

2. *Claim No. 00842*

25. In Claim No. 00842, the Claimant filed the claim in his capacity as family household member, namely the son, of the alleged property right holder.

26. The Claimant's father, the alleged property right holder, entered into a contract of exchange with the Municipality of Viti in 1992. As per this contract, the parties agreed to exchange an apartment of the Claimant's father with the claimed shop of the municipality. This agreement was challenged later by the municipality and various court proceedings in this matter have been carried out at the Municipal

Court, the District Court and the Supreme Court of Kosovo. As a result, the said contract has never been enforced, the Claimant's father never took possession of the claimed property, and never gave up possession of the apartment in exchange. Accordingly the property dispute at issue is not related to the armed conflict in Kosovo between 27 February 1998 and 20 June 1999, and the claim stands to be dismissed as it falls outside of 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. The Commission notes that the Claimant has already brought the dispute over the agreement before the local courts, which are the appropriate fora for the resolution of property disputes that are not related to the 1998-1999 conflict.

3. *Claim No. 01011*

27. In Claim No. 01011, the Claimant states that he lost possession of the property in 1970. The Claimant alleges that the shop was expropriated in 1959 and merged into the assets of a socially owned enterprise.

28. Subsequently, in 2007, the socially owned enterprise was privatized and the property was sold. The matter has already been subject to proceedings before the Special Chamber of the Supreme Court of Kosovo, which rejected the claim of the property right holder as ungrounded.

29. In any event, it is evident that the Claimant's claim does not arise out of the circumstances directly relating to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Accordingly the claim stands to be dismissed as it falls outside of 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.

B. Claim granted

30. 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.

31. In Claim No. 00103, the Claimant has submitted the claim in his capacity as the property right holder. The Claimant alleges that he lost possession of the claimed property in June 1999 due to the conflict in Kosovo at the time.

32. The Commission notes that the claim is uncontested in the sense that at the time the claimed property was notified the person who occupied the claimed property did not claim any legal right to the property. Accordingly the claim must be considered uncontested.

33. The Claimant has provided a purchase contract relating to the claimed property dated from 1995. This document has been verified as being valid by the Executive Secretariat. The illegal occupant has meanwhile constructed an additional floor on top of the claimed property. The construction has been erected on top of the claimed property, but has not become part of the claimed property since it is a separate unit. The Commission considers that it has no jurisdiction over the legal

status of the new construction as it falls outside of 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. Insofar the claim stands dismissed with regard to the new structure on top of the claimed property.

34. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that:

- (a) the property right holder had an ownership right in respect of the claimed property;
- (b) the claim is uncontested in that no person has contested the validity of the claim;
- (c) neither the Claimant nor the property right holder is now able to exercise the ownership right in relation to the property; and
- (d) the claim case involves circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

C. Claims for compensation

35. In Claim No. 00103 the Claimant also seeks, 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 the claim stands to be dismissed.

D. Concluding remarks

36. 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.

37. 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.

38. 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. As noted above, many of the Claimants have already taken such steps.



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.**