

Kosovo Property Claims Commission
Komisioni i Kërkesave Pronësore te Kosovës
Komisija Kosovske Agencije za Imovinu

Perandori Justinian 5
Pristina
Tel: +381 (0) 38 249-918
Fax: +381 (0) 38 249-919
E-mail: mailbox@kpaonline.org

DECISION

PANEL NO: 1

DECISION NO.: KPCC/D/C/125/2011
DECISION DATE: 07/09/2011

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) *In the 6 (six) claims referred to 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; 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. 31886 be dismissed insofar as the Claimant seeks compensation for loss of use of the claimed property.*

(3) *In Claim No. 16393, referred to in part D of the attached Schedule, the Commission decides that the claim be dismissed.*

(4) *In Claim Nos. 00202, 08174 and 23705, referred to in part D of the attached Schedule, the Commission decides that the claim be refused.*

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

¹There 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

5. The Commission held its twenty-fourth session from 5 to 7 September 2011 in Prishtinë/Pristina. A total of ten commercial property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-fourth session, together with supporting documentation, claims processing reports, verification reports 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 all ten commercial claims submitted to the Commission during the twenty-fourth session. In each of these claims, the Claimant seeks the resolution of an ownership claim.

A. Claims granted

8. The Commission notes that the five claims identified in parts A and B 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 or use 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 and section 10.1 of Law No. 03/L-079. Accordingly these claims must be considered uncontested.

9. The Commission notes that the claimants have submitted various types of documents in support of the ownership claims, including inheritance decisions, a contract on exchange of properties and contracts on joining of means. The Commission is satisfied that inheritance decisions confirming an ownership interest indeed constitute proof of ownership. The other documents submitted by claimants including contracts involving property transactions, create a rebuttable presumption of ownership. All claims identified in parts A and B of the attached Schedule are uncontested and no evidence has been received or obtained by the Secretariat *ex officio* which 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.

10. In Claim Nos. 44088, 44332 and 53631, referred to in part A of the attached Schedule, the Claimant has filed the claim in the capacity of a property right holder.

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.

In light of the Commission's findings in paragraph 9 above, the claims stand to be granted.

11. In Claim Nos. 31886 and 33818, referred to in part A of the attached Schedule, the Claimant has filed the claim in the capacity of a family household member, namely the wife, 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 Claimant falls 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 these claims, as set out above.

12. In Claim No. 00448, referred to in part B of the attached Schedule, the Claimant submitted the claim in her capacity as the property right holder. She asserts that at the time she lost possession of the claimed property (a shop) in March 1999 as a result of the conflict, the property was owned by her sister-in-law Ema Bucan, and that the Claimant and Ema Bucan have jointly invested in the commercial property and they were both equal partners of the business. The Claimant further alleges that her sister-in-law gave the property to the Claimant as a gift in 2006. The Claimant submitted a number of documents in support of her allegation including a contract on gift between Ema Bucan and the Claimant and a possession list dated 2 March 2007 listing the Claimant as the property right holder. Both documents have been verified by the Executive Secretariat as being genuine. The Respondent in Claim No. 00448 is the current occupant of the shop. The Respondent states that he has been given permission by the Municipality of Pejë/Peç to construct a liquor shop on the claimed property. In support of his allegation the Respondent submitted a number of documents, including the construction permit. However, the document shows that it has been given for a different parcel than the claimed property, and the other documents submitted by the Respondent do not evidence any property right over the claimed property. Accordingly the claim stands to be granted.

B. Claims dismissed or refused

13. 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.

14. The four claims identified in part D of the attached Schedule 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.

15. 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.

16. Section 8.6 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 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 as adopted by Law No. 03/L-079.

17. 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.)

18. 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. 00202*

19. In Claim No. 00202 the Claimant alleges that the claimed property (a garage) was allocated to him in 1987, and that he used the property until 1999 when he left Kosovo as a result of the conflict. The Claimant seeks repossession of the claimed property.

20. In support of his claim, the Claimant has submitted an allocation decision dated 25 March 1987. Pursuant to the allocation decision the Claimant was allocated a parcel of municipal land on a temporary basis until 1989. There is no evidence that the allocation decision has been extended beyond this date. Consequently, the Claimant has failed to establish a property right and the claim stands to be refused.

2. *Claim No. 08174*

21. In Claim No. 08174 the Claimant seeks confirmation of ownership over the claimed office premises. He contends that the office space was allocated to him in 1998, and that "Football Club Pristina," his employer at the time, subsequently transferred ownership of the claimed property to him.

22. The Respondent also claims ownership over the claimed property. She states that she entered into a contract on joining of means with the Public Housing Enterprise in July 2000, and that after fulfilment of the contractual obligations under the contract, she acquired ownership over the property as certified by the Public Housing Enterprise on 27 February 2007.

23. The Executive Secretariat conducted verification of the relevant documentation with the Public Housing Enterprise. The Contract on Joining of Means between "Football Club Pristina" and the Public Housing Enterprise for the benefit of the Claimant dated 5 June 1998 was located in the archive of the Public Housing Enterprise. Pursuant to sections 4 and 5 of the contract, the co-investor, "Football Club Pristina," was obliged to pay the total amount of 960,017 Dinar for the benefit of the Claimant within 30 days after the signing of the contract. The contract stipulates that in case the total amount is not paid by the specified deadline, the contract will automatically terminate. The Public Housing Enterprise confirmed in writing to the Executive Secretariat that the required payment was never made, and that therefore the contract terminated. Subsequently, a fresh contract on joining of means was concluded between the Public Housing Enterprise and the Respondent. This contract was verified as being valid.

24. The Commission concludes that, based on the evidence before it, "Football Club Pristina" never acquired ownership over the claimed property and therefore was not in a position to transfer ownership to the Claimant. Accordingly the claim stands to be refused.

3. *Claim No. 16393*

25. In Claim No. 16393 the Claimant seeks compensation for not being able to use the claimed property as a result of the conflict. Under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the Commission has no jurisdiction over such compensation claims. Accordingly the claim stands to be dismissed.

4. *Claim No. 23705*

26. In Claim No. 23705 the Claimant seeks confirmation of his lease right and repossession of the claimed property, a commercial premise. The Claimant also seeks compensation for not being able to use the property since 1999. The Claimant alleges that he entered into a lease agreement with RO DKSPC Boro i Ramiz in 1996. Among other documents, the Claimant produced in support of his claim a lease contract dated 7 November 1996. The contract has been verified by the Executive Secretariat in the archive of the Public Housing Enterprise and has been found to be genuine.

27. Pursuant to Article 6 of the said contract on lease, the lessor may terminate the contract immediately in case the lessee does not pay rent for two consecutive months

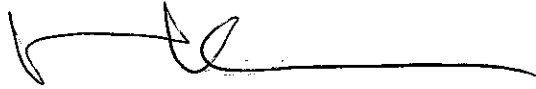
within the given deadline. The Respondent alleges that the Claimant ceased paying the agreed rent after he lost possession. This is not disputed by the Claimant. While there is no evidence on record that the Respondent formally terminated the contract by virtue of Article 6, the Commission considers that, in view of the fact that the Claimant has not paid rent since 1999, the contract must be considered to be terminated. Accordingly the claim stands to be refused.

C. Concluding remarks

28. 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.

29. Section 8.8 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 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.

30. 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-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.**