

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/R/116/2011

DECISION DATE:

22/06/2011

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

In 9 (nine) claims, identified in part A, B and C of 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 twenty-third session from 20 to 22 June 2011 in Prishtinë/Pristina. A total of 54 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-third 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.

A. Ownership claims

7. In the nine claims covered by the present decision the claimants seek the resolution of an ownership claim and all of them relate to residential property, including the associated land. This decision and decision KPCC/D/R/117/2011 deal with claims for residential properties which, at the time of their notification, were not damaged or, even if damaged, were still standing and potentially capable of repair or reconstruction. Claims for residential properties which turned out to be, at the time of their notification, entirely destroyed are covered by decision KPCC/D/R/115/2011.

8. The present decision covers the nine residential property claims which are listed in parts A, B and C of the attached Schedule. The remaining 45 claims for residential property are covered by decisions KPCC/D/R/115/2011 and KPCC/D/R/117/2011.

9. The five claims identified in part A of the attached Schedule are contested in the sense that the party occupying the claimed properties, or a party that has expressed a legal interest in such 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. 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. These claims are identified in the relevant columns in the Schedule to this decision. The Executive Secretariat has notified claims in a variety of ways including

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.

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.

10. The Commission notes that the four claims listed in parts B and C of the attached Schedule are all 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.

11. 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. 00052

12. 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 be 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 claimed property loss involved circumstances surrounding the conflict.

13. Claim No. 00052 was filed by the Claimant in his capacity of the property right holder. The Claimant is seeking restoration of his alleged user right and compensation for not being able to exercise his user right. The Claimant acknowledges that he has lost possession of the claimed property already in 1988/1989. In these circumstances, as there has been no loss of possession of

property as a result of the 1998-99 conflict, the claim falls outside the Commission's jurisdiction and stands to be dismissed.

2. *Claim No. 00449*

14. In Claim No. 00449 the Claimant submitted the claim in his capacity of property right holder. He asserts that he lost the property in 1999 as a result of the conflict but entered into a purchase contract with the Respondent regarding the property in 2000. However, he wishes to rescind the contract since the Respondent did not pay the purchase price in full.

15. The Respondent acknowledges that he owes the Claimant € 8,000 of the total purchase price as agreed between the parties.

16. Since the Claimant voluntarily entered into a valid purchase contract with the Respondent in 2000, he was still the owner of the property during the conflict in 1998-99. The Claimant does not challenge the voluntary nature of the transaction. In these circumstances, the Commission finds that there has been no loss of possession of property as a result of the 1998-99 conflict. Accordingly the claim falls outside the Commission's jurisdiction and stands to be dismissed.

3. *Claim No. 01096*

17. In Claim No. 01096 the Claimant submitted the claim in his capacity of property right holder. The Claimant alleges that he bought an apartment in 2005. However, he acknowledges that the claimed property consists of a space of 8 m² which forms part of a common space used by all residents of the apartment building. However, he asserts that the Respondent incorporated this space to his apartment in 1999. The Respondent who is currently using the disputed space of 8 m² claims that he converted the space already in 1995.

18. The Commission considers that it does not need to determine whether the alleged conversion of the property took place in 1995 or 1999. Such the Claimant's alleged property loss could in any event not have been related to the 1998-99 conflict because the Claimant purchased the property only in 2005. In these circumstances, as there has been no loss of possession of property as a result of the 1998-99 conflict, the claim falls outside the Commission's jurisdiction and stands to be dismissed.

4. *Claim Nos. 08232 and 08240*

19. Claim Nos. 08232 and 08240 as identified in Part A of the Schedule attached to this decision were submitted by Slavko Kalajdjic (the "Claimant") in his capacity of property right holder of an ideal part of 1/3 of the claimed properties.

20. Both properties have been physically notified by the Executive Secretariat. During the process of notification, Gege Zefi who is currently using the property claimed in Claim No. 08240, responded to the notification and claimed a legal right to the property.

21. The Claimant states that he inherited the claimed properties from his mother Petrusha Kalajdjic in 1992. However, the Claimant explains that his mother was not in possession of the properties after 1961 when the properties were sold and possession was transferred to Ajdin Tusha. However, after the death of his mother an inheritance decision regarding the properties was issued in 1992 disregarding the previous sale in 1961. The Claimant acknowledges that he was neither in possession nor used the claimed properties at any time prior to the 1998-99 conflict in Kosovo. In these circumstances the Commission concludes that the alleged loss of property rights cannot be said to be related to the conflict. Consequently, the Claimant's claims fall outside the jurisdiction of the Commission and stand to be dismissed.

5. *Claims dismissed on account of the absence of a power of attorney*

22. Claim Nos. 01451 and 36797, referred to in part C of the attached Schedule, have been lodged by the nephews of the alleged property right holders.

23. Claim Nos. 13625 and 13626, referred to in part B of the attached Schedule, have been filed by the daughter in law of the alleged property right holder.

24. 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 or a family household member of the property right holder. A claimant may be represented by an authorized natural person with a valid and duly executed power of attorney. 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.

25. 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 and 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 or a family household member of the property right holder. Individuals who do not fall within the definition of a household member cannot be considered claimants, but are persons purporting to represent the claimant.

26. Claims in which the person filing the claim is not a family household member and requires a power of attorney 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 a family household member of the property right holder.

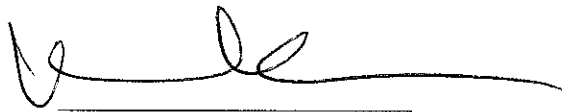
27. As the Claimants in the above cases did not provide a power of attorney from a family household member of the property right holder, the Executive Secretariat contacted the Claimants several times requesting them to submit the missing power of attorney. However, the Claimants have failed to provide a power of attorney. In these circumstances the claims must be dismissed on account of the failure by the Claimants to provide authorization of their capacity to file the claim on behalf of the property right holder.

C. Concluding remarks

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

29. The Commission's above decisions and order also apply, where appropriate, to any associated property, *i.e.* any land or buildings owned or used by the claimant or the property right holder, as the case may be, which form a unit with the claimed residential property.

30. 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**