



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/66/2010/CORR/1
DECISION DATE: 25/02/2010
DATE OF CORRECTION: 15/09/2010

ORDER

(1) *In Claim No. 13196, the Commission*

decides that

The Claimant has established the ownership of the Property Right Holder over the claimed property, or such part thereof as specified in the respective individual decision;

(2) *In the claim referred to in paragraph (1) above, the Commission*

orders that

(a) The Claimant 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.

(3) *In Claim Nos. 06183, 40607 and 52352, the Commission decides that the claim be dismissed.*

(4) *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, the Assembly of the Republic of Kosovo (the "Assembly") enacted 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. 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 under Article 142 of the Kosovo Constitution 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 of the Republic of Kosovo.

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 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

5. The Commission held its fifteenth session from 22 to 25 February 2010 in Prishtinë/Pristina. A total of 92 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its fifteenth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. Two residential property claims presented to the Commission were re-categorized by the Commission during the session as agricultural property claims, and one residential property claim was re-categorized as a commercial property claim. The Commission also finalized the adjudication of four residential property claims which had been presented to the Commission by the Executive Secretariat at the thirteenth session but in which the Commission had suspended deliberations pending confirmation of the notification of the claimed properties.

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 claims covered by the present decision the claimants seek the resolution of an ownership claim, and all of them relate to residential properties.

8. The present decision deals with four claims, namely Claim Nos. 06183, 13196, 40607 and 52352. The remaining 89 claims are covered by three other decisions, namely KPCC/D/R/63/2010, KPCC/D/R/64/2010 and KPCC/D/R/65/2010.

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. All four claims covered by the present decision are contested in the sense that the party occupying the claimed property, or a party that has expressed a legal interest in such property (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.

1. Claims granted: Claim No. 13196

11. In Claim No. 13196, the Claimant has filed the claim in his capacity as the family household member of the property right holder (the "Property Right Holder"), namely his son. The Claimant says that the Property Right Holder is deceased but has

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.

failed to submit any proof. The Claimant has submitted a possession list in the name of the Property Right Holder. The Executive Secretariat has obtained a certificate of immovable property rights ex officio from the municipal cadastral offices in Kosovo which confirms that the Property Right Holder is the owner of the claimed property.

12. The Claimant states that he lost possession of the property on 18 March 2004 in connection with the March 2004 riots. The Claimant states that the house was destroyed during the riots, and that a new house was built on the foundations of the destroyed house by the "European Perspective," a non-governmental organization, but that this house was subsequently also destroyed. The Claimant states that the house is presently being reconstructed a second time.

13. The Commission considers that the March 2004 riots constitute a circumstance directly relating to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999, as required by section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. Accordingly, the Commission finds that the claim falls within its jurisdiction. (See also the Commission decision KPCC/D/A/42/2009.)

14. The claimed property is currently occupied by the Respondent, who contends that he has purchased the property from the Claimant. The Respondent has provided as evidence a pre-purchase contract dated 22 August 2006, concluded between the Property Right Holder and the brother of the Respondent, as well as a receipt showing payment of the amount of €3,700 out of a total purchase price of €37,000 for the claimed property. The pre-purchase contract states that the remaining purchase price should be paid no later than 31 December 2006 at which time the principal purchase contract would be certified in a competent court. The Respondent states that he has not had any contact with the Claimant since 2007, despite his efforts to locate the Claimant. The Respondent states that the house on the property was without a roof as it was burned and without windows and doors, and that he has built the concrete slab which forms the ceiling of the first floor and the floor of the second floor.

15. The Claimant confirms that the parties concluded a pre-purchase agreement, and that he received €3,700 from the Respondent. The Claimant states, however, that the Respondent failed to pay the remaining purchase price, and that therefore the principal purchase contract was never concluded. The Claimant states that the Property Right Holder is still the owner of the property and requests confirmation of the Property Right Holder's property right and repossession of the property.

16. The Commission notes that according to Article 45 of the Law on Contracts and Torts (Official Gazette of FRY, No. 31/93), a preliminary contract is a contract which creates an obligation to enter into a principal contract at a later time. Parties to such a contract may request the conclusion of the principal contract within a six month period beginning with the expiration of a stipulated time period in the preliminary contract. Pursuant to Article 8.3 of the Law on Contracts and Torts, the municipal court is competent to hear disputes in relation to preliminary and principal purchase contracts.

17. Accordingly, while the parties to Claim No. 13196 have concluded a pre-purchase contract, such a contract cannot transfer ownership in the absence of a

principal purchase contract relating to the claimed property. As no such principal purchase contract has yet been concluded between the parties or verified in the competent court, the Property Right Holder remains the owner of the claimed property. Consequently, the claim stands to be granted, as set out above. Moreover, the Commission notes that no evidence has been submitted to the Commission proving the surface area of the house. In these circumstances, the claim is to be granted as a residential property with an associated yard but without specifying the surface area of the house as this is not known.

2. Claims dismissed

a. Claim No. 06183

18. In Claim No. 06183, the Claimant has filed the claim in his capacity as property right holder. In support of his claim, the Claimant has submitted a death certificate of his father, the previous property right holder, an inheritance decision issued by a parallel court in Serbia, and a possession list issued by the dislocated cadastral archives in Serbia dated 2003. Consistent with its jurisprudence, the Commission considers that an inheritance decision issued by a parallel court does not constitute evidence of entitlement to inheritance.

19. In the course of the verification of the possession list with the cadastral offices in Kosovo, the Executive Secretariat was informed that the claimed parcel had been subdivided into two parts and registered in the name of the current occupant of the property (the Respondent in this case). The transfer of the title was based on a judgement of the Municipal Court of Pristina, Judgement No. 2175/03 dated 26 April 2004. The Executive Secretariat subsequently contacted the Claimant to clarify whether he had sold the claimed property. The Claimant has filed a number of claims with the Executive Secretariat in relation to land parcels contained in the same possession list. He advised that some of those land parcels had been exchanged with his uncle, including the parcel which is the subject of the present claim. The ownership of the other claims in the possession list had been retained. He stated that the parcel in the present claim had been sold to the Claimant's uncle 15 to 20 years ago, and that his uncle had subsequently sold the land to a third person.

20. During the physical notification of the property, the Executive Secretariat noted that the parcel is no longer a meadow, but contains a house which is occupied by the Respondent. The Respondent stated that he had purchased the claimed property from the previous owner and had built a house on the property. He said that he possessed all the relevant documents to prove title. The Respondent also submitted judgement No. 2175/03 from the Municipal Court of Pristina dated 26 April 2004, which became enforceable on 15 June 2004. This document has been verified by the Executive Secretariat.

21. The Municipal Court of Pristina found in the judgement, on the basis of section 28.4 of the Law on Basic Property Relations, that the Respondent had acquired the title over the property as a conscientious holder of real estate in good faith through the adverse possession of the property for a period of over twenty years. The Court accepted that the Respondent had purchased the property in 1981 from the previous property right holders (which included the Claimant's father as co-owner).

The Court accepted that the full purchase price had been paid on 10 May 1981, that the contractual obligations between the parties were fulfilled at the time of the contract and that ownership of the property passed to the Respondent at that time. The Court found that the Respondent had been in a continuous and undisturbed possession of the property since that time and thus satisfied the conditions for acquisition of the property right through adverse possession pursuant to the applicable law. The Court appointed a "temporary representative" to act for the previous property right holders in the court proceedings although it is not clear to the Commission what efforts were made to contact the previous owners or whether they were aware of the court proceedings. The Court also confirmed that the judgement would serve as the legal basis for registration of the property in the name of the Respondent with the Department of the Cadastre in Pristina.

22. The documents submitted by each of the parties were disclosed to the other party for their comment. A copy of the judgment of the Municipal Court of Pristina was provided to the Claimant for his comment, but he did not reply. The Respondent in his reply essentially re-iterated his earlier arguments and stated he was the lawful owner of the property.

23. In view of the foregoing, the Commission considers that the Claimant did not lose possession of the claimed property as a result of circumstances arising from the armed conflict in Kosovo during 1998-1999, but voluntarily disposed of it as a result of the sales transaction that took place in 1981. The Claimant has confirmed that such transaction indeed has taken place. The claim therefore stands to be dismissed.

b. Claim No. 40607

24. In Claim No. 40607, the Claimant has filed the claim in his capacity as the property right holder. He has submitted a certificate for immovable property rights confirming his co-ownership of the property. The document has been verified by the Executive Secretariat.

25. In the course of physical notification of the property, the Executive Secretariat noted that the property no longer comprises an orchard, but a house and a backyard which are currently being occupied. The current occupant, who is the Respondent in this claim, signed a notice of participation and claimed a legal right over the property, alleging that he had purchased the claimed property from the property right holder. The property has a surface area of 7 ares and 52 square metres. The Respondent contends that he purchased the property in 1992 and paid the full purchase price for seven ares. The boundary over the remaining 52 square metres was unknown at the time as it adjoined land owned by the Claimant's uncle. The remainder of the purchase price was to be paid once the boundary was determined. Following the end of the armed conflict in Kosovo in 1998-1999, the parcel boundaries were defined with the assistance of the cadastral authorities. The Respondent states that he did not use the 52 square metres until after the boundaries were fixed. He is currently in negotiations with the Claimant through a lawyer and expects to finalize the purchase of the remaining 52 square metres soon through a formal written contract. The ownership of the entire claimed parcel can then be updated in the cadastral records.

26. The Claimant confirmed that he and his brothers, the co-owners of the property, had already sold seven ares of the property to the Respondent. Although he could not remember the year, he stated that the Respondent was using the land in 1998-1999. He explained that he was in the process of finalizing the sale of the remaining 52 square metres so that the claimed parcel could be transferred into the Respondent's name. The Claimant acknowledged that nothing was contested with the Respondent and that he had filed the claim to confirm his ownership rights pending conclusion of the sale of the remaining portion of the property.

27. In light of the facts as set out above, it is evident that the Claimant did not lose possession of the claimed property as a result of circumstances arising from the armed conflict in Kosovo during 1998-1999, as required by section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. Indeed, there is no dispute on this since the Claimant acknowledges that he sold seven ares of the claimed property to the Respondent prior to the conflict. As to the remaining 52 square metres of the parcel, the Claimant confirms that there is no dispute between the parties, and that the parties are presently in negotiations for the sale of this remaining portion of the property. Consequently, the claim stands to be dismissed.

c. *Claim No. 52352*

28. In Claim No. 52352, the Claimant has filed the claim in her capacity as property right holder. The claim involves an apartment. The Claimant states that her husband had been allocated the apartment by his employer. After the death of her husband, the occupancy right over the property was transferred into the name of the Claimant pursuant to an administrative decision by her husband's former employer, the state electricity company, by which the Claimant was determined to be the lawful heir of the occupancy right of her husband. Subsequently the Claimant purchased the property pursuant to a purchase contract between the Claimant and her husband's former employer dated 30 June 1995. Both documents have been verified by the Executive Secretariat as being valid.

29. The Respondent in this case is the current occupant of the property. He states that his mother is the owner of the claimed property, having entered into a contract for exchange with the Claimant in 1999 in which his mother sold her apartment in Soko Banja, Serbia, to the Claimant in return for the claimed property. In support of his statement, the Respondent submitted the contract on exchange. This document has been verified by the Executive Secretariat as being valid.

30. The Respondent also submitted a decision of the Housing and Property Claims Commission ("HPCC"), namely decision HPCC/D/131/2004/B dated 18 June 2004 concerning the claimed property, in which decision the HPCC confirmed the property right of the Respondent's mother to the claimed property on account of an informal property transaction entered into between the Claimant and the Respondent's mother in 1999. The HPCC decision states, in relevant part:

"[The Claimants] complain that they... sold the property concerned for less than its market value, or entered into an allegedly inequitable contract on exchange. The Claimants seek revision of the sale agreement with a view to a market value purchase price being set and/or cancellation of the contract.

The Commission has no jurisdiction to grant such relief. The claims accordingly stand to be dismissed.”

31. The HPCC noted that the Respondent’s mother had entered into a transaction of residential property between 23 March 1989 and 13 October 1999 and concluded that, as required by the relevant provisions of UNMIK/REG/2000/60 (on which the HPCC’s jurisdiction was based), the transaction was unlawful under the provisions of the Law on Special Conditions Applicable to Real Estate Transactions (Law 22/91 of 18 April 1991), that it would otherwise have been lawful, and that it was based on the free will of the parties. The HPCC noted that Law 22/91 was one of the laws adopted during the Milosevic regime that had been repealed by UNMIK Regulation No. 1999/10 “On the Repeal of Discriminatory Legislation affecting Housing and Rights in Property” on account of being discriminatory. The Commission notes that the same law is also elsewhere referred to as “The Law on Changes and Supplements on the Limitation of Real Estate Transactions,” including in UNMIK Regulation No. 1999/10.

32. The Claimant in the present case has submitted no additional evidence to challenge the findings of the HPCC, or any evidence to indicate duress which could lead to vitiation of the purchase contract in accordance with section 4 of the UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079. Pursuant to section 11.4 of the UNMIK/REG/2006/50, as adopted by Law No. 03/L-079, the Commission shall dismiss a claim, in whole or in part, where it has previously been considered and decided in a final administrative or judicial decision. The Commission considers that the HPCC by decision HPCC/D/131/2004/B resolved the issue of the Respondent’s ownership over the claimed property in a final manner. Consequently the claim stands to be dismissed.

B. Concluding remarks

33. 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.

34. 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.

35. 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.**