



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/127/2011
DECISION DATE: 26/10/2011

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

- (1) In each of the 21 (twenty one) claims identified in parts A and B of the attached Schedule, the Commission decides that the claimant has established ownership of the claimant or the property right holder, as the case may be, over the claimed properties.*
- (2) In each of the 21 (twenty one) claims referred to in paragraph (1) above, the Commission*
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 unlawfully 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 each of the claims identified in the relevant columns in parts A and B of the attached Schedule, the Commission additionally decides that the claims be dismissed insofar as the claimants seek compensation for physical damage to, or for loss of use of, the claimed property; and*
- (4) In cases in which there is more than one owner, the above decisions and orders do not affect the rights of any respective co-owners.*

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

5. The Commission held its twenty-fifth session from 24 to 26 October 2011 in Prishtinë/Prishtina. A total of 2,261 agricultural property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-fifth session, together with supporting documentation, claims processing reports, verification reports, and other relevant information. Two agricultural property claims which had been presented to the Commission were referred by the Commission back to the Executive Secretariat for further verification. In sum, a total of 2,259 agricultural property claims were resolved by the Commission during the 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. Claims covered by the present decision

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 applies to the 21 claims identified in the attached Schedule. The remaining 2,238 claims for agricultural property dealt with by the Commission during the session are covered by other decisions, namely decision KPCC/D/A/126/2011 and decision KPCC/D/A/128/2011.

9. All 21 claims covered by the present decision are contested in the sense that the party or parties 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.

10. 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.

1. Contested claims – simple defense

11. In the ten claims identified in part A of the attached Schedule, the party occupying the claimed property, or a party that has expressed a legal interest in such property (the "Respondent"), has either not submitted any legally valid defense in

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.

response to the claim or has merely claimed to have the claimant's permission to use the property, without providing any evidence in support of the allegation. In the absence of any valid defense on the part of the Respondents, the Commission finds that the claims stand to be granted.

12. In Claim No. 35608 the Claimant filed the claim in his capacity of a family household member of the property right holder, namely his late mother. The Respondent states that the Claimant has given him permission to use the property. The Claimant acknowledges that he verbally granted the Respondent a temporary permission to use the property, but that the permission has been subsequently withdrawn.

13. In Claim No.19134 the Claimant lodged the claim in his capacity of a family household member of the property right holder, namely his late father. The Respondent asserts that he has a verbal permission from the Claimant to use the claimed property but has not submitted any supporting evidence. The Claimant denies that he ever provided any permission to the Respondent and seeks repossession of the property.

14. In Claim No. 24191 the Claimant filed the claim in her capacity as the family household member of the property right holder, namely her late mother. The Respondent initially claimed an unspecified legal right to the claimed property, but subsequently confirmed that he is not claiming any legal right but is interested in purchasing the property.

15. In Claim Nos. 37511, 37513, 37514, 38840, 38841 and 38843 the Claimant initially submitted the claim as a family household member of the property right holder, namely her father-in-law, Aleksander Ivkovic. However, the Claimant has not submitted a power of attorney by her father-in-law authorizing her to represent him. Subsequently, the Claimant submitted a contract on gift dated 19 April 2010 which stipulates that her father-in-law transferred ownership of the claimed properties to the Claimant. The father-in-law passed away on 23 April 2010. The Claimant has submitted in support of her claim a possession list dated 13 April 2010 listing Aleksander Ivkovic as the owner of an ideal part of 19/36 and Cveta Ivkovic, Aleksander Ivkovic's sister, as the owner of 17/36 ideal part of the claimed property, as well as a contract on gift dated 19 April 2010 concluded between Aleksander Ivkovic as grantor and the Claimant as grantee by which the grantor transferred his ideal part of 19/37 of the claimed property to the grantee. Both documents have been verified by the Executive Secretariat as being genuine. The Respondent has submitted documents purporting to show that he has bought various parcels from the co-owners, Aleksander and Cveta Ivkovic. However, as recognized by the Respondent, these documents do not relate to the claimed properties.

16. Claim No. 14242 has been submitted by the Claimant in his capacity as the property right holder. The Claimant seeks confirmation of ownership and repossession, as well as compensation for loss of use of the property. In support of his claim the Claimant has submitted a possession list dated 21 February 2000 and a decision on division of the claimed property issued by the Municipal Court of Viti/Vitina dated 24 September 1985. Both documents show the Claimant as the property right holder of the claimed property, and both have been verified by the Executive Secretariat as being genuine. The Respondent Milorad Rajkovic, the Claimant's brother, initially contested the claim alleging that the property belongs to

him. In support of his allegation the Respondent submitted documents which however are not related to the claimed property. The Respondent passed away during 2010, and his son now states that he does not claim any legal right to the claimed property and indeed confirms that the claimed property belongs to his uncle, i.e., the Claimant.

2. *Contested Claims - Other*

17. In the eleven claims identified in part B of the attached Schedule, the party or parties 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. However, based on its review of the evidence before it, the Commission has reached the conclusion that the claims stand to be granted for the reasons set out below.

a. Claim No. 01028

18. Claim No. 01028 has been submitted by the Claimant in his capacity as the property right holder. He seeks confirmation of ownership and repossession of the claimed property. The Claimant submitted various documents in support of his claim, including a purchase contract dated 23 January 1984 and a possession list dated 25 May 2004 listing the Claimant as the property right holder. The Executive Secretariat has verified both documents as being genuine.

19. The Respondent claims that his late parents used to be owners of the claimed property in the beginning of the 20th century. In support of his allegation the Respondent submitted a so called *Tapia*, a document issued by Ottoman Cadastral Office dated 8 February 1909 allegedly proving the ownership of the Respondent's parents over the claimed property. However, the document does not provide any identification of the land parcel in question, only a description of various properties not identified by parcel numbers.

20. In light of the evidence before it, the Commission finds that the Respondent has failed to prove any legal right to the claimed property.

b. Claim No. 29038

21. Claim No. 29038 has been submitted by an authorized representative of the Claimant, who claims in his capacity of a family household member of his late brother. In support of his allegation the Claimant submitted a possession list dated 14 November 2002, which lists the Claimant's brother as the property right holder of the claimed property. The possession list has been verified by the Executive Secretariat as being genuine.

22. The Respondent asserts that the claimed property was in the ownership of his family until 1932 when the property was confiscated without any compensation. In support of his allegation the Respondent has submitted a certificate issued by the State archive of the Former Yugoslav Republic of Macedonia as well as a possession list showing that the members of the Respondent's family had possession over parcels 303/37 and 303/47 located in the Kpuz/Klina Municipality during the year 1929. The Respondent has not submitted an evidence in support of the alleged unlawful confiscation of the claimed property.

23. The Commission finds that the Respondent has failed to show a competing right to the claimed property.

c. Claim No. 08894

24. Claim No. 08894 has been lodged by the Claimant in his capacity of a family household member of the property right holder, namely his late grandfather. The Executive Secretariat has verified that the late grandfather is still registered as the owner of the claimed properties in the cadastre records.

25. The Respondent asserts that the claimed property belonged to his grandfather, and that it was confiscated from him in 1918. The Commission has no jurisdiction to assess the validity of the Respondents' defense, and in any event it is undisputed that the Claimant has established a valid claim under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

d. Claim No. 11440

26. Claim No. 11440 has been filed by the Claimant in his capacity of a family household member of the property right holder, namely his late grandfather. In support of his claim the Claimant produced three possession lists dated 4 March 1991, 10 May 2006 and 1 March 2007, all listing the Claimant's late grandfather as the property right holder of the claimed property. The Executive Secretariat has verified the validity of the possession lists.

27. The Respondent acknowledges that, while he has purchased certain properties from the Claimant's late grandfather, the property claimed in Claim No. 11440 is not among them. However, the Respondent states that the boundaries between the field claimed for in Claim No. 11440 and the adjacent property he had previously purchased from the Claimant's late grandfather are not clear. The Respondent concedes that he may have occupied the claimed property accidentally because of the ambiguity of the property boundaries and requests that the Claimant determine the boundaries between their respective properties. In the circumstances, the Commission considers that the Respondent does not dispute the ownership of the Claimant's grandfather over the claimed property.

e. Claim Nos. 14169 & 90737

28. In Claim Nos. 14169 and 90737 the Claimant submitted the claims in his capacity of a family household member of the property right holder, namely his late grandfather. He seeks confirmation of ownership of the alleged property right holder and repossession to the property. In support of his claim he submitted two possession lists dated 13 April 1988 and 3 October 2009. Both documents list the Claimant's late grandfather as the property right holder of the claimed properties, and both have been verified by the Executive Secretariat as being genuine.

29. The Respondent maintains that his late grandfather was the owner of the claimed properties until 1918 when the properties were expropriated and his grandfather was expelled to Albania. The Respondent further states that his father returned in 1940 and was in possession of the claimed property until 1945/46, when he was evicted by the Yugoslavian Communist Party. The Commission has no jurisdiction to assess the validity of such a defense, and in any event it remains

undisputed that the Claimant has established a valid claim under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

f. Claim No. 27599

30. Claim No 27599 is submitted by a person duly authorized by a family household member, namely the daughter, of the alleged property right holder who according to the Red Cross is missing since 12 June 1999. The Commission notes that, while the possession list and the certificate of the Red Cross produced by the Claimant are in the name of an individual called Bozidar Cvetkovic, in other documents such as the Claimant's birth and marriage certificates the father of the Claimant is named Bozidar Dusanovic. The Claimant explains that her father used both names interchangeably. The Executive Secretariat has conducted further *ex officio* investigation in the Civil Registration Office and has verified that the father of the Claimant was born with the surname Cvetkovic.

31. Based on the evidence and the explanations provided, the Commission is satisfied that Bozidar Dusanovic and Bosidar Cvetkovic are the same person. The Commission also notes that the power of attorney is given for claims filed with the "KTA." It is apparent that it should say "KPA" instead as the claim numbers listed in the document are all current KPA claim numbers.

g. Claim No. 48982

32. Claim No. 48982 was submitted by the Claimant in his capacity of a family household member of the property right holder, namely his father Bogdan Dajic. The Claimant initially alleged that his father is the sole owner of the claimed property. During the verification process the Executive Secretariat found an inheritance decision issued by Municipal Court of Ferizaj dated 13 October 2006 which shows that Bogdan Dajic has inherited an ideal part of 1/3 of the claimed property, whereas the remaining ideal part of 2/3 of the property has been inherited by one Nebojsa Dajic. Furthermore, the Executive Secretariat has verified a Certificate of Immovable Property Rights dated 25 August 2008, which shows Bogdan Dajic as the owner of an ideal part of 1/3 of the claimed property and Nebojsa Dajic as the owner of an ideal part of 2/3 of the claimed property, as being genuine.

33. The Respondent asserts that his father has purchased the ideal part of 2/3 of the claimed property from Nebojsa Dajic. The Claimant acknowledges that Nebojsa Dajic sold his ideal part of 2/3 of the claimed property to the Respondent and therefore only claims the ideal part of 1/3 of the property.

h. Claim Nos. 15126, 15129 and 27485

34. Claim Nos. 15126 and 15129 have been submitted by Bosiljka Mistic (the "First Claimant") in her capacity as the property right holder of the claimed parcels. Claim No. 27485 has been submitted by the son of the First Claimant, Nebojsa Mistic (the "Second Claimant"), in his capacity as the property right holder in respect of a different parcel. The First Claimant seeks confirmation of the ideal part of 2/15 of the claimed parcels. In support of their assertion the First and Second Claimant produced an inheritance decision dated 15 February 1996 issued by the Municipal Court of Prishtinë/Pristina declaring the First Claimant as co-owner of 2/15 of the claimed properties and the Second Claimant as co-owner of 1/15 of the respective claimed

property. They further submitted a possession list dated 14 August 2008, which had been updated after the issuance of the inheritance decision and listing the First Claimant as co-owner of the claimed properties with the ideal part of 2/15 and the Second Claimant as co-owner of the ideal part of 1/15 of the property claimed by him. Both documents were positively verified by the Executive Secretariat.

35. The Respondent is the brother-in-law of the First Claimant and the uncle of the Second Claimant. He claims to be the sole owner of the claimed properties and alleges that he has never lost possession of those properties. However, the verified documents show that the First Claimant, the Second Claimant and the Respondent are co-owners of the claimed properties. The evidence shows that both Claimants lost possession as a result of the 1998-99 conflict. Accordingly all three claims stand to be granted.

36. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in the claims in this decision:

- (a) the property right holder has an ownership right in respect of the claimed properties;
- (b) neither the claimant or the property right holder are now able to exercise the ownership right over the property; and
- (c) the claim in each case involves circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

37. Accordingly, since the Claimants in the claims referred to above have proven their ownership right over the claimed properties, and in the absence of any valid defense on the part of the Respondents, each of the claims stand to be granted.

38. The Commission notes that in some of the claims covered by the present decision the claimants seek compensation for damage to, or loss of use of, the claimed properties. Under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the Commission has no jurisdiction over compensation claims. Accordingly the claims for compensation of loss of use must be dismissed.

B. Concluding remarks

39. 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.

40. 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.

41. 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.**

Spreadsheet /Lista /Prilog
Part A/Pjesa A/Deo A

KPA35608	KPA19134	KPA24191	KPA37511	KPA37513	KPA37514	KPA38841
KPA38843	KPA14242	KPA38840				

Spreadsheet /Lista /Prilog
Part B/Pjesa B/Deo B

KPA08894	KPA27599	KPA01028	KPA29038	KPA11440	KPA14169	KPA90737
KPA48982	KPA15126	KPA15129	KPA27485			