



Kosovo Property Claims Commission
Komisioni i Kërkesave Pronësore të 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/A/141/2012
DECISION DATE: 29/02/2012

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

- (1) In each of the 47 (forty seven) 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 47 (forty seven) 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 occupying the property unlawfully 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 unlawfully 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 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.

5. The Commission held its twenty-seventh session from 27 to 29 February 2012 in Prishtinë/Pristina. A total of 3,342 agricultural property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-seventh session, together with supporting documentation, claims processing reports, verification reports, and other relevant information. A total of 37 agricultural property claims which had been presented to the Commission were referred by the Commission back to the Executive Secretariat during the session. The Commission suspended the consideration of 24 agricultural property claims pending the holding of an oral hearing. In addition, the Commission resolved three claims which had previously been suspended pending the holding of an oral hearing. In sum, a total of 3,284 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 47 claims identified in the attached Schedule. The remaining 3,237 claims for agricultural property dealt with by the Commission during the session are covered by two other decisions, namely decision KPCC/D/A/140/2012 and decision KPCC/D/A/142/2012.

9. All 47 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 defence

11. In the eight 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 defence in 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 defence on the part of the respondents, the Commission finds that the claims stand to be granted.

12. In Claim Nos. 14165 and 90820, the Claimant filed the claims in his capacity as the property right holder, namely co-owner of the claimed property. The claimed property was

initially incorrectly notified and it was found occupied by the Respondent who challenged the claim but failed to submit any evidence to support his allegations and also refused to cooperate with the Executive Secretariat. During the second, correct notification, the claimed property was found unoccupied.

13. In Claim No. 44603, the Claimant filed the claim in his capacity as the property right holder. The Respondent initially asserted that he had purchased the claimed property from the Claimant. However, in the course of the processing of the claim, the Respondent clarified that he purchased the property from a third party who had allegedly purchased it from the Claimant in 1980. The Respondent did not submit any evidence in support of his allegation. The Claimant denies that he ever sold the claimed property.

14. In Claim Nos. 48542 and 48543, the Claimant filed the claims in her capacity as the property right holder. The Respondent challenged the claim alleging a legal right to the claimed property, but failed to substantiate his defence or to submit any documents in supports of his challenge.

15. In Claim Nos. 08458 and 08460, the Claimant filed the claim in her capacity as family household member of the property right holder, namely her deceased father. The claimed properties were initially incorrectly notified and the Respondents challenged the claims based on the incorrect notification. The Respondents have not withdrawn their challenges even though they do not claim any rights to the claimed properties.

16. In Claim No. 22982, the Claimant filed the claim in his capacity as family household member of property right holder, namely his deceased father. The claimed property was initially incorrectly notified and the Respondent challenged the claim based on the incorrect notification. The Respondent has not withdrawn his challenge even though he does not claim any rights to the claimed property. The claimed property was found occupied during the second and correct notification. The occupant did not claim any legal rights, but expressed his interest in buying the claimed property.

2. *Contested claims – other*

17. In the 39 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, the Commission has reached the conclusion that the claims stand to be granted for the reasons set out below.

a. Claim No. 01137

18. In Claim No. 01137, the Claimant, through his authorized representative, filed the claim in his capacity as the property right holder. The claim relates to the same property that is being claimed in Claim Nos. 51106, 51107 and 51108, which were filed by the Claimant personally. The Claimant has submitted *inter alia* a possession list in his name. The Respondent has challenged the claims asserting that he purchased the claimed property from a third party, who allegedly exchanged it with the Claimant in 1985. However the evidence submitted by the Respondent does not relate to the claimed property.

b. Claim No. 44085

19. In Claim No. 44085, the Claimant initially filed the claim in his capacity as a family household member of the property right holder, namely his father. During the processing of

the claim, it turned out that the alleged property right holder had passed away, and that the Claimant together with his mother and two of his siblings had inherited the claimed property. As a result, the Executive Secretariat created three additional claims with Claim Nos. 91963, 91964 and 91965 for the properties of the Claimant's mother and siblings, which are now being claimed by the Claimant in his capacity as a family household member of the alleged property right holders, as recorded in the certificate for immovable property rights submitted by the Claimant. The said document was verified by the Executive Secretariat as being genuine. During notification the claimed property was found to be occupied by the Respondent, who initially challenged the claims but failed to submit any evidence in support of his allegations. The Respondent subsequently denied having any right to the claimed property, stating that his own property is close to the claimed property, and that he has no interest therein.

c. Claim Nos. 17894, 17895, 17896, 90184, 90223, 92325, 47876, 47877, 47878, 49567, 49568, 49569, 49571, 49572, 49573, 49574, 30042, 30043, 30045, 30046, 30047, 30048, 30049, 30050, 30051, 30052 and 30053

20. Claim Nos. 17894, 17895, 17896, 90184, 90223 and 92325 were filed by Senka Scepanovic in her capacity as a family household member, namely the daughter of the deceased property right holder Radusa Lalovic. Claim Nos. 47876, 47877, 47878, 49567, 49568, 49569, 49571, 49572, 49573 and 49574 were filed by Milovan Lalovic in his capacity as a family household member, namely the son of the deceased property right holder Radusa Lalovic. Claim Nos. 30042, 30043, 30045, 30046, 30047, 30048, 30049, 30050, 30051, 30052 and 30053 were filed by Jovanka Vukovic, also daughter of Radusa Lalovic, in her capacity as a family household member, namely the sister of the alleged property right holder Miladin Lalovic, who is the son of deceased property right holder Radusa Lalovic. All three Claimants are siblings and the claims cover the same areal units.

21. Claim Nos. 30042, 30043, 30045, 30046, 30047, 30048, 30049, 30050, 30051, 30052 and 30053 are submitted by Jovanka Vukovic for her brother Miladin Lalovic as the alleged property right holder pursuant to an "inheritance decision" issued by a parallel court in Serbia. The Commission does not consider that such a document establishes entitlement to inheritance. The Commission itself has no jurisdiction to resolve issues relating to inheritance. Accordingly the claims are to be processed on behalf of the deceased property right holder, in this case the mother of the Claimant and of the initially alleged property right holder Miladin Lalovic, namely Radusa Lalovic. The Claimant agreed to process the claims in the name of her mother Radusa Lalovic.

22. The Respondents to these claims are Ismet, Ukë and Fatmir Maloku. The Respondents contend that they purchased the claimed properties in 2004 from Milena Djuric, the alleged authorized representative of Radusa Lalovic. The Respondents submitted as evidence a contract on sale concluded in 2004 with the alleged power of attorney holder, Milena Djuric. The cadastral records are updated in the names of the respective Respondents.

23. The Claimants allege that the power of attorney presented by Milena Djuric, which was allegedly issued to her by the property right holder Radusa Lalovic, is a forgery. The Commission notes that the power of attorney was purportedly issued by Radusa Lalovic in 2001. However, the death certificate produced by the Claimants shows that Radusa Lalovic passed away on 22 January 1997. The Claimants also state that their mother was illiterate. The Executive Secretariat was unable to verify the power of attorney.

24. The Executive Secretariat contacted the Respondent Ismet Maloku, who stated that he does not wish to cooperate with the KPA as he considers himself an owner of the claimed

properties, and that he had sold the properties to a third party. This further sale was confirmed by an official from the Department of Cadastre in Deçan/Decani Municipality. According to the official, the claimed property was transferred from Ismet Maloku to Fatmir Maloku in 2005.

25. The Commission considers that it cannot rely on the power of attorney presented by the Respondents as it bears a date subsequent to the death of its purported issuer. Consequently, the transaction whereby the claimed property was purportedly transferred from Radusa Lalovic to the Respondents cannot be considered valid.

d. Claim Nos. 30867 and 30868

26. Claim Nos. 30867 and 30868 were submitted by the Claimant in the capacity of a family household member of the property right holder, namely his deceased mother. The Executive Secretariat has verified that the Claimant's mother, Draga Moravcevic, is registered as the owner of the claimed property in the cadastral records. The Respondent asserts that the property was in the past owned by his family, and that the Claimant had the cadastral records updated in his mother's name based on falsified documents. The Respondent however failed to submit any evidence in support of his allegations.

e. Claim No. 26070 and 26071

27. Claim Nos. 26070 and 26071 were submitted by the Claimant in his capacity of a family household member of the property right holder, namely his father. The Claimant submitted a number of documents in support of the ownership right of his father, including a certificate for immovable property rights, which has been verified by the Executive Secretariat as being genuine. During notification the claimed property was found to be occupied by the Respondent, who alleges that his father purchased the claimed properties some 35 years ago, however they were never registered in his name. The Respondent has failed to submit any evidence in support of his allegations.

28. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in the claims identified in parts A and B of the attached Schedule:

- (a) the claimant or the property right holder, as the case may be, had an ownership right in respect of the claimed property, or such part thereof as specified in the respective individual decision;
- (b) the claimant or the property right holder, as the case may be, in each case is not now able to exercise his or her ownership right; 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.

29. Accordingly, since the Claimants in each of the claims identified in parts A and B of the attached Schedule have proven their ownership right over the claimed property, and in the absence of any valid defence on the part of the Respondents, all of these claims stand to be granted.

3. *Compensation claims*

30. 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 stand to be dismissed.

B. Concluding remarks

31. 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.

32. 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.

33. 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

KPA14165	KPA22982	KPA44603	KPA48542	KPA48543	KPA90820	KPA08458
KPA08460						

Spreadsheet /Lista /Prilog

Part B/Pjesa B/Deo B

KPA01137	KPA30867	KPA30868	KPA44085	KPA51106	KPA51107	KPA51108
KPA91963	KPA91964	KPA91965	KPA17894	KPA17895	KPA17896	KPA30042
KPA30043	KPA30045	KPA30046	KPA30047	KPA30048	KPA30049	KPA30050
KPA30051	KPA30052	KPA30053	KPA49567	KPA47876	KPA47877	KPA47878
KPA49568	KPA49569	KPA49571	KPA49572	KPA49573	KPA49574	KPA90184
KPA90223	KPA92325	KPA26070	KPA26071			