



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/31/2008
DECISION DATE: 19/12/2008

ORDER

(1) In Claim Nos. 00661, 00662, 01245, 53828 and 53831 the Commission

decides that

The claimant or the property right holder, as the case may be, has established ownership over the claimed property, or such part thereof as specified in the respective individual decision;

(2) In the 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 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 No. 00652, the Commission decides that the claim be dismissed.

(4) In Claim No. 01245, the Commission additionally decides that the claim be dismissed insofar as the Claimant seeks compensation for physical damage to and for loss of use of the claimed property.

(5) 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 Article 10 of Law No. 03/L-079, which amended section 7.1 of UNMIK/REG/2006/50, the Property Claims Commission (the "Commission") shall be appointed by the Assembly upon nomination by the President of the Supreme Court, with the proviso that until the end of international supervision of the implementation of the Comprehensive Proposal for the Kosovo Status Settlement of 26 March 2007, two of the three members, including its Chairperson, shall be appointed by the International Civilian Representative.

3. On 18 June 2008, the Commission wrote to the Special Representative of the Secretary General of the United Nations in Kosovo stating its understanding that Article 10 and other relevant provisions of Law No. 03/L-079 did not divest the current members of the Commission of their mandate and that, accordingly, the extensions of their appointments by the Special Representative on 22 April 2008 continued to be valid unless terminated prior to the expiry of their terms in accordance with the applicable law. The Commission has subsequently been advised by the Office of the International Civilian Representative that the new appointment procedures set forth in Article 10 of Law No. 03/L-079 do not affect the authority of the Commission in its current composition to exercise its functions. The Office of the International Civilian Representative confirmed that Article 10 merely provides a new appointment procedure in relation to future appointments of the members of the Commission.

4. In light of the above, the Commission considers that it is duly constituted and competent to continue to exercise its functions pursuant to UNMIK/REG/2006/50 and Law No. 03/L-079, and the relevant implementing directions and legislation, including UNMIK/ADM/DIR/2007/5 and Annex I, respectively.

REASONS FOR THE DECISION

5. 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.)

6. 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

7. The Commission held its tenth session from 15-19 December 2008 in Prishtinë/Pristina. A total of 2,051 agricultural property claims were submitted by the Executive Secretariat of the Kosovo Property Agency (the “Executive Secretariat” and “KPA,” respectively) to the Commission at its tenth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information.

8. 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

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 circumstances directly relating to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

10. The present decision applies to the six claims detailed below. In each of claims, the claimant seeks the resolution of an ownership claim, and all of them relate

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.

to agricultural properties. All of these claims are contested in the sense that the parties occupying the claimed properties (the “Respondents”) have 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. In each of the six claims, the Respondents have made representations or submitted documents purporting to show ownership or use rights over the claimed property.

11. In Claim Nos. 00661, 00662, 01245, 53828 and 53831, the Claimants have submitted possession lists and court decisions recognizing ownership in support of their claims to ownership. The Commission is satisfied that these documents indeed constitute proof of ownership. All of these documents have been verified as being valid by the Executive Secretariat.

12. In Claim Nos. 00661 and 00662, the Respondent contends that the claimed property belonged to his family but that following the First World War, the regime of the Yugoslav Kingdom gave the property to the Claimant’s family. The Respondent states that he does not possess any documentary evidence of ownership but contends that there are witnesses who could prove his family’s prior ownership. However, the Respondent has not provided any such documentation or other proof of ownership, despite having been provided with a number of opportunities to do so. In these circumstances, and the Claimant having demonstrated his ownership of the claimed property as noted above, the claims stands to be granted.

13. In Claim Nos. 53828 and 53831, the Respondent alleges that he holds ownership and usage rights over the claimed properties. The Respondent variously indicated that he had a verbal agreement with the Claimant to use the property, that he had documentation in support of his claim, and that he intended to provide witness statements confirming his legal rights over the property. However, the Respondent failed to produce any documentation in support of his allegations. In these circumstances, and the Claimant having demonstrated his ownership of the claimed property as noted above, the claims stands to be granted.

14. In Claim No. 01245, the Respondent alleges that he is the owner of the claimed property and has provided a possession list and cadastral plan. However, neither of the documents relates to the claimed property. When the Respondent was again contacted by the Executive Secretariat to produce relevant documents, he stated that he possessed no other documents in relation to the claimed property. In these circumstances, and the Claimant having demonstrated his ownership of the claimed property as noted above, the claim stands to be granted.

15. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in Claim Nos. 00661, 00662, 01245, 53828 and 53831:

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

- (d) 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.

16. Claim No. 00652 concerns a piece of land allegedly expropriated in 1981 from the Claimant's father by a former socially-owned enterprise of the Federal Republic of Yugoslavia for construction of roads. The Claimant contends that the expropriation was unlawful and claims ownership over the claimed property. The Respondent states that he purchased the property from a third party, who in turn had purchased it from the Kosovo Trust Agency as the administrator of the socially-owned enterprise, the previous owner of the property. The Commission notes that the claim arises out of an expropriation that took place in 1981. Nor is there any evidence that the Claimant lost possession of the claimed property in circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Consequently, the Commission lacks jurisdiction over the claim, which stands to be dismissed.

B. Claim for compensation

17. In Claim No. 01245, the Claimant also seeks, in addition to ownership, compensation for physical damage to and for loss of use of the claimed property. Under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the Commission has no jurisdiction over such claims. Accordingly this claim must be dismissed.

C. Concluding remarks

18. 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.

19. 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-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.

*** 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

KPA00652
KPA00661
KPA00662
KPA01245
KPA53828
KPA53831