



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/62/2010/CORR/1
DECISION DATE: 25/02/2010
DATE OF CORRECTION: 15/09/2010

ORDER

(1) *In Claim Nos. 00436, 06059, 06060, 29599 and 52437, the Commission*

decides that

The claimant, or the property right holder, as the case may be, 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 Claim Nos. 26163 and 38964, the Commission*

decides that

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

(3) *In the claims referred to in paragraphs (1) and (2) 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;*

- (4) *In Claim Nos. 00269 and 06610, the Commission decides that the claim be dismissed.*
- (5) *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, 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

5. The Commission held its fifteenth session from 22 to 25 February 2010 in Prishtinë/Pristina. A total of 1,084 agricultural 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. A further two residential property claims presented to the Commission were re-categorized as agricultural property claims during the session. The Commission also finalized the adjudication of an additional sixteen claims which had been presented to the Commission by the Executive Secretariat in the thirteenth session but in which the Commission had suspended deliberations pending confirmation of the physical 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. Claims covered by the present decision

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

8. The present decision applies to nine claims, namely Claim Nos. 00269, 00436, 06059, 06060, 06610, 26163, 29599, 38964 and 52437. Based on its review of the claims and of the supporting documentation during the session, and of the information provided and the verification conducted by the Executive Secretariat, one further contested agricultural claim was referred by the Commission back to the Executive Secretariat for additional review and verification. This claim, which is listed in part B ("Claims referred back") of the attached Schedule to this decision, will be considered by the Commission in due course. The remaining 1092 claims for agricultural property referred to the Commission at the present session are covered by two other decisions, namely decision KPCC/D/A/60/2010 and decision KPCC/D/A/61/2009.

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

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.

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 nine claims covered by the present decision 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.

11. In all the claims covered by the present decision, except Claim Nos. 00269 and 06610 (as set out below in section 2), the claimant or the property right holder, as the case may be, has submitted evidence establishing that they lost possession over the claimed property as a result of the armed conflict occurring in Kosovo the period 27 February 1998 and 20 June 1999.

1. Claims granted

a. Claim No. 00436

12. In Claim No. 00436, the Claimant has filed the claim in his capacity as the property right holder. However, the Claimant subsequently died in the course of the proceedings. The Claimant has provided a possession list confirming his ownership of the claimed property; this document has been verified by the Executive Secretariat. The Claimant's son has been contacted by the Executive Secretariat in relation to the claim and he advises that the family lost possession of the claimed property in the year 2000 in the circumstances surrounding the conflict in 1998-1999, and that the property has been unlawfully occupied since that time.

13. The Respondent in this case is the current occupant of the claimed property. He has not claimed any legal right, however he signed a notice of participation and has submitted a statement indicating that he has been cultivating a part of the land with the consent of the property right holder but that the property is now being used by KFOR. He states that he wishes to purchase the property from the property right holder who has told him that he does not presently wish to sell the property, but will sell it to the Respondent if and when he decides to sell it. The Respondent states that he was given permission to cultivate the land for the year 2008.

14. The Claimant's son denies that his father gave any permission to the Respondent to use the claimed property and requests repossession. The Claimant also claimed for repossession in the initial claim form.

15. The Claimant's son having denied that the Respondent has any permission to use the claimed property, and in the absence of any corroborating evidence from the Respondent, the Commission is unable to accept the Respondent's contention that he had such permission. Moreover, while the Claimant has now died, the Commission considers that a claimant's death during the proceedings cannot affect the validity of

the claim. Accordingly a decision confirming the property right in favour of the property right holder stands to be granted.

b. Claim Nos. 06059 and 06060

16. In Claim Nos. 06059 and 06060, which are submitted by the same Claimant, the Claimant has filed the claim in his capacity as the property right holder. The Claimant has provided a possession list indicating that he owns the claimed properties. The Executive Secretariat has verified this document as being genuine.

17. The claimed properties are both occupied by the same individual (the "Respondent"). The Respondent has not formally claimed any legal right or signed a notice of participation in relation to the claim, however, he contends that he has a verbal agreement with the Claimant for use of the property, and that he is negotiating with the Claimant to purchase the property. The Respondent has not provided any documentary evidence in support of his allegations.

18. The Claimant denies that he has given any permission to the Respondent to occupy the claimed property and requests repossession.

19. The Claimant having denied that the Respondent has any permission to use the claimed property, and in the absence of any corroborating evidence from the Respondent, the Commission is unable to accept the Respondent's contention that he had such permission. Accordingly the claim stands to be granted, as set out above.

c. Claim No. 26163

20. In Claim No. 26163, the Claimant has filed the claim in his capacity as a family household member, namely the brother, of the property right holder. The property right holder is deceased and the Claimant has provided his death certificate. In support of his claim, the Claimant has provided a possession list in the name of his father and a court decision confirming his brother's acquisition of the property right from his father. Both documents have been verified by the Executive Secretariat.

21. The Respondent in this case is the current occupant of the property. He has claimed a legal right to the property and has signed a notice of participation but has submitted no further evidence or information. He indicated that he would submit documents in support of his defense, but has failed to produce any such documents.

22. As the Claimant has proven the property right holder's ownership right over the claimed property, and in the absence of any valid defense on the part of the Respondent, the claim stands to be granted, as set out above.

d. Claim No. 29599

23. In Claim No. 29599, the Claimant has filed the claim in his capacity as a family household member, namely the son, of the property right holder. In support of his claim, the Claimant has submitted a possession list, an inheritance decision and a contract on long life care. All of these documents have been verified by the Executive Secretariat. The Executive Secretariat has also verified ex officio with the municipal

cadastral authorities the certificate of immovable property which confirms the property rights holder's ownership of the property.

24. The Respondent in this case is the current occupant of the claimed property. He has claimed a legal right over the property but has refused to sign a notice of participation. He alleges that he purchased the property but has not submitted any documents in support of his allegation. Instead, he states that it is the job of the Executive Secretariat to check the documents with the relevant public institutions. He states that he cannot remember the numbers of the land parcels as he purchased them from different individuals over a period of time since 2000.

25. The Executive Secretariat contacted the Claimant to ask whether he had sold the claimed parcel. The Claimant advised that he had sold a number of other parcels, but not the parcel in question in this claim.

26. As the Respondent insisted that he had purchased the claimed parcel and indicated that the information had been updated in the public records, the Executive Secretariat attempted to locate evidence *ex officio*. The Secretariat checked the data available from the Kosovo Cadastral Agency in the parcels surrounding the claimed parcel. It transpired that a number of parcels had indeed been registered in the name of the Respondent, but not the claimed parcel. The Secretariat also visited the area to determine if there were any witnesses who could attest to the fact that the Respondent had purchased the claimed parcel, but none of the neighbours were willing to provide a statement.

27. Based on the evidence on record, the Commission is unable to uphold the Respondent's allegation that he has purchased the claimed parcel. Accordingly, as the Claimant has provided verified documentation confirming the property right holder's ownership of the claimed property, his claim stands to be granted, as set out above.

e. Claim No. 38964

28. In Claim No. 38964, the Claimant has filed the claim in his capacity as a family household member, namely the grandchild, of the property right holder. The Claimant has submitted a possession list confirming the property right holder's ownership interest as well as the death certificate of the property right holder.

29. The Respondent approached the Executive Secretariat in relation to the claim and provided a purchase contract purporting to show that he owns the claimed property. However, the purchase contract, which was verified by the Executive Secretariat, relates to a different parcel and not to the claimed property. When contacted by the Executive Secretariat, the Respondent confirmed that the purchase contract relates to a different parcel of land, but stated that the notification sign was placed on his property. The notification report prepared by the Executive Secretariat indicates that the notification sign was indeed placed on the correct property. The Commission notes that a claim has been lodged with the KPA in relation to the other land parcel purchased by the Respondent, who has been invited to respond to this other claim.

30. As the Claimant has proven the property right holder's ownership right over the claimed property, and as the Respondent's evidence does not relate to the claimed property, a decision in favour of the property right holder stands to be granted in this claim, as set out above.

f. Claim No. 52437

31. In Claim No. 52437, the Claimant has filed the claim in her capacity as the property right holder. The Claimant has provided a possession list confirming her share of the ideal part of the property. The Claimant has also submitted an inheritance decision in relation to the claimed property, which shows that the share of the Claimant's mother to the property has been transferred to the Claimant's brother. However, as the Claimant has not inherited any part of her mother's immovable property according to the inheritance decision, the information contained in the possession list submitted by the Claimant in support of her claim remains valid. The Executive Secretariat has verified the certificate for immovable property rights with the municipal cadastral office. The certificate confirms the Claimant's ownership right over the claimed property.

32. The Respondent in this case is the current occupant of the property. He has claimed a legal right to the property and has signed a notice of participation, but has not submitted any further evidence or information in relation to his claim.

33. As the Claimant has proven her ownership over the claimed property, the claim stands to be granted in her name.

34. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in Claim Nos. 00436, 06059, 06060, 29599, 26163, 38964 and 52437:

- (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 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
- (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.

2. *Claims dismissed*

a. Claim No. 00269

35. In Claim No. 00269, the Claimant has filed the claim as a family household member, namely the son, of the property right holder. The property right holder is deceased, as evidenced by a death certificate submitted by the Claimant. The Claimant has submitted a possession list indicating that the property right holder is the

co-owner of the claimed parcel. The Executive Secretariat has obtained ex officio a copy of the certificate for immoveable property rights from the municipal cadastral authorities, which confirms the property right holder's co-ownership of the claimed property.

36. The claimed property is occupied by the Respondent.

37. The Claimant states that the property right holder lost possession of the claimed property prior to 1998, perhaps in 1995, although he says he cannot be sure. The Claimant asserts that the Respondent deliberately moved the boundary stones to enlarge his own backyard, and that now the Claimant does not know where the boundary line is or how far he can use his land. The Claimant states that he has continued to use his parcel up to the boundary line as established by the Respondent. While the Claimant advised that he was aware of the Respondent's relocation of the land boundary prior to 1999, he claimed that there was no-one to whom he could complain to enforce his legal rights an account of the discrimination against ethnic Albanians between the years 1989-1999 in accessing public institutions.

38. The Commission notes that, even if there were such discriminatory practices in existence during the relevant years, the Claimant has failed to provide any information about what steps he took to enforce his legal rights after 1999 when those practices ceased, including through the use of a surveyor to assess the property boundaries.

39. In any event, it is evident from the record that the Claimant did not lose possession of the claimed property in circumstances directly related to or arising from the armed conflict of 1998-1999, as required by section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. The Claimant's claim concerns a private dispute between the Claimant and the Respondent that arose prior to the conflict and thus falls outside the Commission's jurisdiction. The Commission's decision is without prejudice to the Claimant's right to take his claim to the competent local courts for resolution.

b. Claim No. 06610

40. In Claim No. 06610, the Claimant has filed the claim in his capacity as property right holder. In support of his claim, the Claimant has provided a possession list from 2001 indicating that he is the co-owner of the property. The possession list has been verified with the municipal cadastral office.

41. The Respondent states that his father purchased the claimed property in 1978 from his uncle. According to the Respondent, his father paid the full purchase price and had the possession of the land from 1978 until his death in 2007. He further states that his uncle had purchased the property in 1973 from the father of the Claimant, however the property had remained registered in the name of the Claimant's father. The Respondent states that the Claimant's father was aware of the sale of the property to the Respondent's father in 1978, as the Claimant's father lived in Podujevo municipality until 1999. The Respondent explained that he did not have the purchase contract between the Claimant's father and his uncle and could not locate it as some of his family documents were burned during the war.

42. The Claimant, in response, confirmed that the claimed property had been sold in 1966 and had not been used by the Claimant's family since that time. However, the Claimant contends that the buyer did not pay the full purchase price and that the Claimant's father had continued to pay the property tax bills. The Claimant confirms that there was a purchase contract, although he does not have a copy of it, but that the contract was never certified in court.

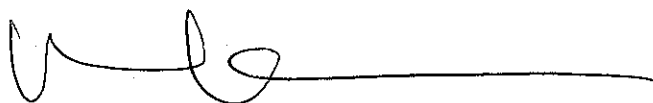
43. The Commission considers that, in light of the foregoing, the Claimant's claim does not involve the circumstances directly related to or arising from the armed conflict of 1998-1999. Accordingly, the claim stands to be dismissed. The Commission's decision is without prejudice to the Claimant's right to raise his dispute with the Respondent before competent local courts.

B. Concluding remarks

44. 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.

45. 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.

46. 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

KPA52437	KPA06059	KPA29599	KPA00269	KPA06060	KPA06610	KPA26163
KPA38964	KPA00436					