



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/98/2010
DECISION DATE: 07/12/2010

ORDER

In each of the 25 (twenty five) claims identified in the attached Schedule, the Commission decides that the claim be dismissed.

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 or the property right holder, as the case may be, 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 twentieth session on 7 December 2010 by way of a telephone conference. A total of 929 agricultural property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twentieth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information.

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 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 deals with 25 agricultural property claims. The remaining 904 agricultural property claims are covered by decisions KPCC/D/A/97/2010 and KPCC/D/A/99/2010.

9. The Commission notes that all of the claims covered by the present decision are uncontested in the sense that at the time the claimed properties were notified there was no evidence of illegal occupation, use or cultivation of these properties by any person or, even if there was such evidence, no party 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 any later stage during the proceedings, pursuant to section 10.3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. Based on the information provided by the Executive Secretariat, the Commission is satisfied that the Executive Secretariat has made reasonable efforts to notify the claimed properties, the persons who may be currently occupying the properties, and any other persons who may have a legal interest in such properties, as required by section 10.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. Accordingly these claims must be considered uncontested.

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.

B. Claims dismissed

10. Pursuant to section 11.4 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the Commission shall dismiss the whole or part of a claim where:

- (a) The claimant has failed to file a complete claim in accordance with the procedures set out in the Regulation;
- (b) The claim is not within the scope of jurisdiction of the KPA; and
- (c) The claim has previously been considered and decided in a final administrative or judicial decision.

11. Section 8.6 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-07907/50 provides the Commission with the power to refuse or dismiss a claim on any ground, including those set down in section 11.4 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

12. Claims which are dismissed as falling outside the Commission's jurisdiction or for procedural reasons and not on account of the merits of the claim, may be capable of resolution through the local courts, subject to the applicable law. In such claims the Commission's decision does not constitute a *res judicata*. Section 3.2 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 confirms the right of claimants to pursue before courts of competent jurisdiction claims that do not fall within the mandate of the Commission, as set out in section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. (See also section 8.1 of Annex III of UNMIK/ADM/DIR/2007/5 concerning the Commission's authority to refer issues arising in connection with a claim which are not within its jurisdiction, to a competent local court or administrative board or tribunal.)

1. Claims dismissed on account of lack of evidence of loss of possession

13. Pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the jurisdiction of the Commission is limited to property claims that are conflict-related in the sense that they involve circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999, where the claimant is not now able to exercise such property rights. In order to establish whether or not a claim falls within its jurisdiction, the Commission must determine whether the claimant or the property right holder, as the case may be, has been displaced from the claimed property or has lost possession or control over such property as a consequence of the conflict. The Commission must also establish whether the claimant or the property right holder, as the case may be, is now able to exercise his or her rights over the claimed property.

14. While the Commission has taken the view that a loss of possession that occurred outside the period 27 February 1998 and 20 June 1999 may nonetheless be considered to be directly related to or result from the conflict, depending on the circumstances of the case, it must be satisfied that there is some evidence indicating that the property loss involved circumstances surrounding the conflict.

15. Claim No. 34786 is filed by the Claimant in his capacity as family household member, namely grandchild, of the property right holder. While the Claimant asserts that the property right holder is deceased, he has not produced any evidence in support of his assertion. In any event, the Claimant acknowledges that neither he nor his family were displaced from their village as a result of the conflict and that the claimed properties were not unlawfully occupied by anyone during the conflict. Consistent with the Commission's earlier decision regarding other claims lodged by the same Claimant, which the Commission found to be unrelated to the 1998-1999 conflict, the present claim stands to be dismissed as the Claimant has not been displaced or lost possession of the claimed properties. (See the Commission decisions in KPCC/D/A/56/2009 and KPCC/D/A/61/2010.)

16. Claim No. 37576 is filed by the Claimant in his capacity as family household member, namely son, of the property right holder. While the Claimant asserts that the property right holder is deceased, he has not produced any evidence in support of his assertion. The Claimant further stated that his father, who passed away in 2003, used the claimed property and was not displaced from the property during the conflict. The Claimant currently lives in Serbia but confirms that he can freely use the claimed property if he wishes. He states that he filed the claim for the purposes of confirmation of his property right and to ensure the legal security of title. In these circumstances the property right holder has not lost possession of the claimed property as a result of the conflict, and the Claimant is also currently able to exercise his property right. Consequently the claim falls outside of the jurisdiction of the Commission and stands to be dismissed. (See the Commission decision in KPCC/D/A/88/2010.)

2. *Claims dismissed on account of lack of proof of capacity to file the claim on behalf of the property right holder*

17. Pursuant to section 5.2 of UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079, claims may be made by either the property right holder, a family household member of the property right holder, or an authorized natural person with a valid and duly executed power of attorney from either the property right holder or a family household member of the property right holder. In exceptional cases where the provision of a power of attorney is problematic, the Executive Secretariat may certify an alternative document authorizing representation of a claimant.

18. Section 1 of the UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 defines "Member of Family Household" to include "the spouse, children (born in and out of wedlock or adopted) and other persons whom the property right holder is obliged to support in accordance with the applicable law, or the persons who are obliged to support the property right holder in accordance with the applicable law, regardless of whether or not that person resided in the property together with the property right holder." The Commission has determined that, under the applicable law, this definition covers, in addition to spouses and children, parents, brothers, sisters, grandparents, grandchildren, great-grandparents and great-grandchildren of the property right holder. However, by implication the definition does not cover in-laws, uncles, aunts, nephews, nieces or cousins, or other more distant relatives who must provide a power of attorney authorizing their representation on behalf of the property right holder.

19. Claims in which the relationship between the family household member claimant and the property right holder cannot be established, or in which the claimant requires a power of attorney but in which no power of attorney is provided, cannot be considered complete claims in accordance with section 5.2 of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079, since an essential procedural requirement is not satisfied, namely authorization from the property right holder or family household member.

20. Claim Nos. 51243, 51244, 51246 and 51247 are filed by the Claimant in his capacity as family household member, namely step-son, of the deceased property right holder. The Claimant has provided the death certificate of his step-mother, but no evidence proving his family household member relationship with his step-mother. Nor has the Claimant provided other relevant documentation such as the marriage certificate of his father and step-mother or his own birth certificate. The Commission notes that the property right holder did not take the name of the Claimant's father upon marriage, but appears to have retained her surname from a previous marriage. The Claimant has not provided any proof that he was formally adopted by his step-mother, nor has he provided a court decision indicating any obligation by his step-mother to support him in accordance with the applicable law, or an inheritance decision indicating that he has inherited the claimed property. In these circumstances the Claimant cannot be considered a family household member of the property right holder and the claims stand to be dismissed on account of the Claimant's lack of capacity to file the claim on behalf of the property right holder. Nor has the Claimant proved his own ownership over the claimed property. (See the Commission decision in KPCC/D/A/84/2010.)

3. *Claims dismissed on account of the absence of a power of attorney*

21. Pursuant to section 5.2 of UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079, claims may be made by either the property right holder or a family household member of the property right holder. A claimant may be represented by an authorized natural person with a valid and duly executed power of attorney. In exceptional cases where the provision of a power of attorney is problematic, the Executive Secretariat may certify an alternative document authorizing representation of a claimant.

22. Section 1 of the UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 defines "Member of Family Household" to include "the spouse, children (born in and out of wedlock or adopted) and other persons whom the property right holder is obliged to support in accordance with the applicable law, or the persons who are obliged to support the property right holder in accordance with the applicable law, regardless of whether or not that person resided in the property together with the property right holder." The Commission has determined that, under the applicable law, this definition covers, in addition to spouses and children, parents, brothers, sisters, grandparents and grandchildren of the property right holder. However, by implication the definition does not cover in-laws, uncles, aunts, nephews, nieces or cousins, or other more distant relatives who must provide a power of attorney authorizing their representation on behalf of the property right holder or a family household member of the property right holder. Individuals who do not fall within the definition of a household member cannot be considered claimants, but are persons purporting to represent the claimant.

23. Claims in which the person filing the claim is not a family household member and requires a power of attorney cannot be considered complete claims in accordance with section 5.2 of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079, since an essential procedural requirement is not satisfied, namely authorization from the property right holder or a family household member of the property right holder.

24. Claims Nos. 28015, 28016, 28017, 28018, 28019 and 28020 are filed by the daughter in law of the property right holder who is now deceased. However the Claimant has not provided a death certificate for her father in law, so the death cannot be proven. As the Claimant does not stand in a family household member relationship with the property right holder, the Executive Secretariat contacted the Claimant on four occasions between 2007 and 2009 requesting that she provide a power of attorney from a family household member of her father in law. She was advised that that the claims could be dismissed in the absence of such authorization. The Claimant provided a death certificate for her mother in law from 1998 and advised that her brother in law did not wish to provide her with a power of attorney. Accordingly, since the Claimant has failed to establish her capacity to lodge a claim on behalf of the property right holders in accordance with the requirements of section 5.2 of UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079, the claims must be dismissed. (See also the Commission decision in KPCC/A/93/2010.)

25. The persons filing Claim Nos. 37008, 37009, 37010, 37012, 37013, 36793, 36794, 36795, 36796, 36798, 36799, 36800 and 36801 are not family household members of the property right holder pursuant to the above definition and must consequently demonstrate their authorization to act on behalf of the property right holder, or a family household member of the property right holder, through a valid power of attorney. In each of the cases the claimant is the nephew of the property right holder. In each of the cases the claimant alleges that the property right holder has died but no acceptable evidence has been submitted that would establish death, nor has the Executive Secretariat been able to locate any such documents. The Executive Secretariat has contacted the respective claimant on numerous occasions to request that they provide a power of attorney from either the property right holder or a family household member of the property right holder; however no such document has been provided. In each of the claims the claimant has indicated that he would provide a power of attorney from a family household member, however, they have failed to do so. In Claim No. 37012 the land parcel is in the name of two co-owners. The Claimant has not provided a power of attorney from either owner, or from a family household member of either owner. Consequently, as in each of these cases the claimant has failed to prove his capacity to file the claim on behalf of the respective property right holder, all of these claims stand to be dismissed.

C. *Concluding remarks*

26. 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.

27. 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-079 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.

Further information on the appeals procedure 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

KPA28015	KPA28016	KPA28017	KPA28018	KPA28019	KPA28020	KPA34786
KPA37008	KPA37009	KPA37010	KPA37012	KPA37576	KPA51244	KPA51246
KPA51247	KPA36801	KPA36798	KPA36799	KPA36800	KPA36796	KPA36795
KPA36794	KPA36793	KPA37013	KPA51243			