



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/R/109/2011

DECISION DATE: 13/05/2011

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) In Claim Nos. 00956, 01034, 01070, 07369 and 15864, referred to in parts A, B and C of the attached Schedule, 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 Claim Nos. 34569 and 52231, referred to in part D of the attached Schedule, 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, except for Claim No. 01034, 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) Any person occupying the property vacate the same within 30 (thirty) days of the delivery of this order; and

- (c) *Should any person occupying the property fail to comply with the order to vacate within the time stated, they be evicted from the property;*
- (4) *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.*
- (5) *In Claim No. 38671, referred to in part E of 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 twenty second session on 11 and 13 May 2010 in way of telephone conference. A total of 27 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty second session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. One residential property claim was re-categorized as agricultural property and is dealt with in decision KPCC/D/A/106/2011.

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 the all claims covered by the present decision the claimants seek the resolution of an ownership claim and all of them relate to residential property, including the associated land. This decision deals with claims for residential properties which, at the time of their notification, were not damaged or, even if damaged, were still standing and potentially capable of repair or reconstruction. Claims for residential properties which turned out to be, at the time of their notification, entirely destroyed are covered by decision KPCC/D/R/110/2011.

8. The present decision covers the eight claims which are listed in parts A, B, C, D and E of the attached Schedule. The remaining 18 claims are covered by decision KPCC/D/R/106/2011.

9. The Commission notes that the eight claims listed in parts A, B, C, D and E of the attached Schedule covered by the present decision are all uncontested in the sense that at the time the claimed properties were notified there was no evidence of illegal occupation or use of these properties by any person or, even if there was such

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.

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 and section 10.1 of Law No. 03/L-079. Accordingly these claims must be considered uncontested.

10. The Commission notes that all Claimants have submitted various types of documents in support of the ownership claims, including purchase contracts, contract on exchange, inheritance decision, certificates of property rights, and possession lists. The Commission is satisfied that the respective documents submitted in the various claims, indeed constitute proof of ownership. The claims are uncontested and no evidence has been received or obtained by the Secretariat *ex officio* which would rebut any presumption of ownership. The documents have been verified as being valid by the Executive Secretariat, as relevant. Consequently the Commission is satisfied that the documents submitted prove the property right holders' ownership over the claimed properties.

11. In Claim No. 15864, referred to in part A of the attached Schedule, the Claimant has filed the claim in the capacity of a property right holder. In light of the Commission's findings in paragraph 10 above, this claim stands to be granted.

12. In Claim No. 07369, referred to in part B of the attached Schedule, the Claimant has filed the claim in the capacity of a family household member, namely the wife, of the property right holder pursuant to section 1.2 of Annex II of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. Section 1 of the Administrative Direction 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 Claimant falls within the definition of family household member. Accordingly a decision confirming the property right in favour of the property right holder stands to be granted in this claim, as set out above.

13. In Claim Nos. 00956, 01034 and 01070, referred to in part C of the attached Schedule, the Claimant was not the property right holder at the date of loss of possession of the claimed property, but has adduced evidence of having subsequently succeeded to the respective ownership right by virtue of inheritance respectively purchase contract. The Claimant must be considered as having succeeded to all the rights belonging to an owner, including the right to claim for confirmation of ownership and for repossession in the present proceedings. In Claim No. 00956 the property right holder is represented by an authorized natural person. The Commission has determined that the authorized individual possesses a valid and duly executed power of attorney pursuant to section 5.2 of UNMIK/ADM/DIR/2007/5 as adopted by

Law No. 03/L-079. Accordingly a decision confirming the property right in favour of the property right holder stands to be granted in this claim.

14. In Claims Nos. 34569 and 52231, referred to in part D of the attached Schedule, the Claimants have established that they are family household members of the respective deceased property right holders. However, no valid inheritance decision or other documentary evidence has been submitted by the claimants that would establish any of the claimants as being an heir to the claimed property, nor has the Executive Secretariat been able to locate any such documents. The Commission does not consider that this decision establishes an entitlement to inheritance. The Commission has no jurisdiction to resolve issues relating to inheritance. A decision confirming the property right in favour of the deceased property right holder stands to be granted in these two claims. The Commission's decision with respect to both claims is without prejudice to the determination by the competent court as to how the heirs will succeed to the property right of the deceased.

15. The various types of documents relied upon by the Claimants in support of the claims referred to in paragraph 10 are listed in the relevant column of parts A and B of the attached Schedule.

16. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that:

- (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) each claim is uncontested in that no person has contested the validity of the claim;
- (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.

B. Claim No. 38671

17. 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.

18. 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 claimed property loss involved circumstances surrounding the conflict.

19. Claim No. 38671 was initially filed by the Claimant in his capacity of family household member, namely son, of the property right holder. However subsequent to the death of the property right holder, the properties were transferred to the brother of the Claimant pursuant to an inheritance decision. On the basis of that decision, the property was registered in the name of the Claimant's brother by the cadastral authorities. The possession list has been verified by the Executive Secretariat. Moreover, the Claimant in this claim acknowledges that neither he nor his family lost possession of the claimed property as a result of the 1998-99 conflict. When asked why he had previously claimed to have lost possession of the property, he stated that his family feared losing possession of the property following the unilateral declaration of independence in Kosovo. In these circumstances, as there has been no loss of possession of property as a result of the 1998-99 conflict, the claim falls outside the Commission's jurisdiction and stands to be dismissed.

C. Concluding remarks

20. In view of the foregoing, the Commission finds that the claims listed in parts A, B, C and D of the attached Schedule succeed and directs that an order be made in respect of each claim as set out above.

21. In Claim No. 38671 the Commission's decision is without prejudice to the right of the claimant or the property right holder 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.

22. The Commission's above decisions and order also apply, where appropriate, to any associated property, *i.e.* any land or buildings owned or used by the claimant or the property right holder, as the case may be, which form a unit with the claimed residential property.

23. Pursuant to section 8.5 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079, the Commission may in its decision determine any property right in the name of the property right holder and make an order for possession in favour of the claimant. When the property right holder is alive, the approach of the Commission is to grant in the name of the property right holder. When the property right holder is deceased and the death is proven but no valid inheritance decision has been provided, the approach of the Commission is to grant possession to the claimant who is a family household member of the property right holder. The right to possession is granted pursuant to the applicable provisions of the law governing family relations in Kosovo, which includes the administration of family property. The Commission's decision on the entitlement to possession of property by the family household member claimant is without prejudice to the rights of other family household members or other heirs of the property right holder who have not filed claims with the KPA but who may have a joint

right to possession of the property pursuant to the applicable law or as a consequence of future inheritance proceedings (section 8.5 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079).

24. 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-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

KPA15864						
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Spreadsheet /Lista /Prilog
Part B/Pjesa B/Deo B

KPA07369						
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Spreadsheet /Lista /Prilog
Part C/Pjesa C/Deo C

KPA00956	KPA01034	KPA01070				
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Spreadsheet /Lista /Prilog
Part D/Pjesa D/Deo D

KPA52231	KPA34569					
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Spreadsheet /Lista /Prilog
Part E/Pjesa E/Deo E

KPA38671						
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