



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/C/118/2011
DECISION DATE: 22/06/2011

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

- (1) *In Claim Nos. 00053, 00054, 00055 and 26112, the Commission decides that the claim be dismissed.*
- (2) *In Claim No. 01282, the Commission decides that the claim be refused.*

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

5. The Commission held its twenty-third session from 20 to 22 June 2011 in Prishtinë/Pristina. A total of five commercial property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-third 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. Claims covered by the present decision

7. In Claim Nos. 01282 and 26112 the Claimant seeks the confirmation of ownership right, whereas in Claim Nos. 00053, 00054 and 00055 the Claimant seeks the confirmation of a use right over the claimed properties. All five claims relate to commercial properties, namely office premises and shops.

8. 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 or a use 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.

9. All five claims covered by the present decision are contested in the sense that the party occupying the claimed 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. Pursuant to section 10.1 of UNMIK/REG/2006/50, as adopted by Law No. 03/L-079, each of the Respondents has been provided with a copy of the claim submitted by the Claimant. In accordance with section 3.5 of Annex II to UNMIK/AD/2007/5, as adopted by Law No. 03/L-079, each of the Claimants has been provided with a copy of the documents submitted by the Respondent in response to the claim. The parties to the claim have thus been given an opportunity to comment on the information provided by

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.

the opposing party, and any such comment or information has been taken into account during claim processing and adjudication.

B. Claims dismissed

11. 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.

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 dismiss or refuse a claim on any ground, including those set down in section 11.4 of UNMIK Regulation 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 claimants' right 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.)

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.

I. Claim Nos. 00053, 00054 and 00055

15. In Claim Nos. 00053, 00054 and 00055, the Claimant has lodged the claims in his capacity as use right holder. The Claimant seeks repossession of the claimed properties, confirmation of use right and compensation. The claimed properties are located in the municipality of Glllogovc/Glogovac (the "Municipality"). The property, which is constructed to serve as office space subject to Claim No. 00053 is located in Ashanajka Road and a total surface of 0.04.00 Ha. The Claimant failed to identify the parcel number in the Claim Intake Form and in the subsequent documents submitted by him. The Executive Secretariat contacted the Claimant who stated that the claimed property does not have a parcel number. He further asserts that the property consist of a building and yard, which the Municipal Assembly of the Municipality took under possession in 2005.

16. The properties claimed in Claim Nos. 00054 and 00055 are shops in one building with a total surface of 21m². The Claimant initially failed to stipulate the parcel number. When the Executive Secretariat contacted the Claimant, he confirmed that the claimed property is located within parcel 772/4, Possession List 1124, Cadastral Zone Glllogoc/Glogovac. The said Possession List shows that the use right to this parcel was transferred to another person named Veli Elshani in 2004.

17. The Claimant first stated that he lost possession of the claimed properties in 1987, 1988 and 1997. However, when subsequently contacted by the Executive Secretariat, he stated that he lost possession in 2004 and 2005, due to his eviction from the claimed properties by the Municipality. Subsequently, the Secretariat contacted a municipal official who confirmed that the Claimant was evicted 2004 due to the change in urban planning.

18. The Claimant submitted various documents in support of his claims, including but not limited to decisions and judgements of various courts from the Municipal and Supreme Courts of Kosovo, dating mainly from the 1980s, letters addressed to the Municipality and decisions of the Municipality.

19. The Respondent is the Municipality, represented by the Municipal Public Lawyer Hakif Hasi, which has submitted written replies to the KPA, stating *inter alia* that the claims should be dismissed as falling outside the jurisdiction of the Commission as the Claimant did not lose possession over the claimed properties as a result of the 1998-1999 conflict in Kosovo.

20. Based on the statements from the Claimant and the evidence submitted by him and the Respondent, the Commission finds that the Claimant lost possession of the claimed properties in 2005 (Claim No. 00053) and 2004 (Claim Nos. 00054 and 00055), respectively, when he was evicted from the properties by the Respondent. Accordingly, the Claimant's claims do not involve circumstances directly related to or resulting from the 1998-99 conflict and stand to be dismissed as falling outside the Commission's jurisdiction.

2. *Claim No. 26112*

21. In Claim No. 26112, the Claimant has filed the claim in his capacity as property right holder. He seeks confirmation of his property right over a commercial property in an apartment block located in Prishtinë/Pristina with a surface of 49.60 m².

22. The Claimant acknowledges that he sold the property in December 1999, but asserts that he sold it below the market value. He requests the determination of the fair market value of the claimed property and compensation for the resulting discrepancy.

23. The Respondent states that the Claimant sold the property to his brother Shemsi Shala by a certified contract on 10 July 2000.

24. It is not disputed that the Claimant's claim arises out of a voluntary transaction and does not involve circumstances directly related to or resulting from the 1998-99 conflict. Accordingly, the claim falls outside the jurisdiction of the Commission and stands to be dismissed.

C. *Claims refused*

25. Pursuant to section 8.6 of Annex III of UNMIK/ADM/DIR/2007/5 implementing UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission may refuse or dismiss a claim on any grounds. Claims may be refused by the Commission if the claimant or the property right holder as the case may be has been unable to prove their ownership or use right interest over the claimed property.

26. Pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission has jurisdiction to determine ownership or use right claims over private immovable property. In reaching its decisions, the Commission may consider any reliable evidence which it considers relevant to a claim, including evidence presented by the Executive Secretariat concerning the reliability of any public record (section 6.2 of Annex III to UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079). The Commission may also require that the Executive Secretariat obtain more information from a party or conduct additional investigations in relation to any claim (section 6.3 of Annex III to UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079). In making its determinations, the Commission may be guided but is not bound by the rules of evidence applied in the local courts in Kosovo (section 6.1 of Annex III to UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079).

27. In Claim No. 01282, the Claimant has submitted the claim in her capacity as property right holder. The Claimant seeks confirmation of ownership right and repossession over a prefabricated shop of temporary character located on municipal land. The shop was erected based on a temporary permit for construction issued on 18 August 1992 by the Municipality of Vushtrri/Vucitrn to the Claimant's late husband. The Claimant asserts that her late husband completed the construction of the shop in October 1992. The Claimant says that her husband passed away in 2003.

28. In support of her claim, the Claimant submitted a certificate from Vushtrri/Vucitrn Municipality, Possession List No. 45 and Inheritance Decision no. 215/2007 dated 26 November 2007, rendered by the Vushtrri/Vucitrn Municipal Court, by which the claimant inherited $\frac{1}{4}$ of the claimed shop from her late husband. However the Claimant has not provided the construction permit.

29. The Respondent, Fadil Hyseni, uses the claimed property based on a temporary permit issued by the Municipality of Vushtrri/Vucitrn

30. The Commission notes that the permit given to the Claimant's husband in 1992 by the Vushtrri/Vucitrn Municipality was of a temporary character, limited to the construction and use of a prefabricated structure on municipal land and as such did not allow the user to construct a permanent (immoveable) object. However, in breach of the permit, the Claimant's husband built what appears to be a permanent structure (a shop).

31. Under section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission's jurisdiction is limited to claims for repossession of private immovable property, including agricultural and commercial property. Given that the permit issued by the Municipality only allowed the Claimant's husband to build a temporary structure, and in light of the Claimant's husband's breach of the construction permit, it cannot be said that the Claimant's claim relates to private immovable property. Accordingly, the claim stands to be refused. The Commission's decision is without prejudice to any right of the Claimant to seek compensation before local courts for building expenses or value enhancement.

D. Claims for compensation

32. In all claims with the exception of Claim No. 01282, the Claimants also seek, in addition to ownership or user right, compensation for physical damage to, or 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 these claims also stand to be dismissed.

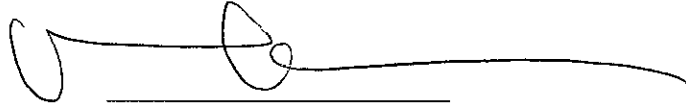
E. Concluding remarks

33. 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.

34. 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.

35. 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. As noted above, several of the Claimants have already taken such steps.



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

KPA00053
KPA00054
KPA00055
KPA26112
KPA01282