



Kosovo Property Claims Commission
Komisioni i Kërkesave Pronësorete Kosovës
Komisija Kosovske Agencijeza 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/C/161/2012
DECISION DATE: 06/06/2012

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) In Claim Nos. 41072 and 51181, the Commission

decides that

As at the date of the destruction of the commercial property, the claimant or the property right holder, as the case may be, satisfied the requirements for establishing ownership over the claimed property and the associated land parcel, or such part thereof as specified in the respective individual decision;

(2) In the two 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 associated land parcel on which the commercial property stood;*
- (b) Any person unlawfully occupying the property vacate the same within 30 (thirty) days of the delivery of this order; and*
- (c) Should any person unlawfully occupying the property fail to comply with the order to vacate within the time stated, they shall be evicted from the property.*

(3) The Commission additionally decides that Claim No. 41072 be dismissed insofar as the Claimant seeks compensation for damage to, or loss of use of, the claimed property.

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

¹There 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 all its 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.

5. The Commission held its twenty-ninth session from 4 to 6 June 2012 in Prishtinë/Priština. A total of twenty-one commercial property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-ninth session, together with supporting documentation, claims processing reports, verification reports and other relevant information. All twenty-one commercial property claims were resolved by the Commission during the session. Two claims are dealt with in the present decision and the remaining nineteen are dealt with in decision KPCC/D/C/160/2012.

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. The present decision applies to two claims for commercial property submitted to the Commission during the twenty-ninth session. In both claims the claimant seeks the resolution of an ownership claim. The present decision deals with claims for commercial properties which, at the time of their notification, were found to be entirely destroyed.

8. The Commission notes that both claims are 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 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 maybe 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.

1. Claim No. 41072

9. In Claim No. 41072 the claim was submitted by the Claimant in his capacity as the property right holder. In support of his claim the Claimant submitted a possession list regarding the claimed property. The document was found to be genuine by the Executive Secretariat. The Commission notes that the middle name of the Claimant is incorrectly indicated as "Nedeljeko" instead of "Savo" in the possession list. The Commission further notes that the middle name of the Claimant's brother, who is co-owner of the claimed property and who is also listed as such in the possession list, is in fact "Nedeljko." The Commission is satisfied that the discrepancy is a result of a typing error by the registering officer and does not affect the validity of the Claimant's claim.

10. The Claimant also seeks, in addition to ownership, compensation for physical damage to 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.

2. Claim No. 51181

11. In Claim No. 51181 the Claimant filed the claim in the capacity of a family household member of the property right holder, namely his father. The Executive Secretariat located *ex*

officio a certificate on the immovable property rights which indicates that the Claimant's father is the owner of the claimed property.

12. In light of the Commission's findings in paragraphs 9 to 11 above, Claim Nos. 41072 and 51181 stand to be granted as set out above.

B. Concluding remarks

13. 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.

14. Section 8.8 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 allows 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.

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

KPA41072

KPA51181
