



Kosovo Property Claims Commission
Omission i Kërkesave Pronësorete Kosovës
Komisija Kosovske Agencijeza Imovinu

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DECISION

PANEL NO: 1

DECISION NO.: KPCC/D/C/185/2012
DECISION DATE: 14/12/2012

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) In Claim No. 10057, referred to in part A of the attached Schedule, the Commission

decides that

As at the date of the destruction of the commercial property the property right holder 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 Claim No. 10057, referred to in paragraph (1) above, the Commission

orders that

- (a) The property right holder 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) In each of the eight (8) claims identified in part B and C of the attached Schedule, the Commission decides that the claim be dismissed; and

(4) The Commission additionally decides that Claim Nos. 10057, 11560 and 23593 be dismissed insofar as the Claimant seeks compensation for damage to, or for loss of use of, the claimed property.

- (5) *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.*

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,

5. The Commission held its thirty-second session from 12 to 14 December 2012 in Prishtinë/Priština. A total of 38 commercial property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its thirty-second session, together with supporting documentation, claims processing reports, verification reports 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. The present decision deals with nine claims out of the 38 claims for commercial property referred to the Commission during its thirty-second session. The remaining 29 claims are dealt with in decision KPCC/D/C/184/2012.

8. In six of the nine claims covered by the present decision, the claimants seek the resolution of an ownership claim. In the remaining three claims, the claimants seek the resolution of a claim for a right of use. All of these claims relate to commercial properties, including, as the case may be, the associated land, which, at the time of their notification, were found to be entirely destroyed.

9. The Commission notes that Claim Nos. 10057, 11560, 16203, 20045, 23593, 30985 and 50444, referred to in parts A and B of the attached Schedule, 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.

10. The Commission notes that Claim Nos. 08478 and 13795, referred to in part C of the attached Schedule, 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. Pursuant to section 10 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 respective claimant. In accordance with section 3.5 of Annex II to UNMIK/AD/2007/5 as adopted by Law No. 03/L-079, the claimants have been provided with a copy of the documents submitted

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.

by the respective Respondent in response to the claim. Both parties in each case have thus been given an opportunity to comment on the information provided by the other party, and any such comment or information has been taken into account during the processing and adjudication of the claim.

I. Claim granted

11. 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 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.

12. Claim No. 10057 has been filed by the Claimant in her capacity as a family household member of the alleged property right holder, namely her mother. The claim is uncontested. The Claimant seeks the confirmation of an ownership right over the claimed property (shop) and repossession. The Claimant submitted in support of the claim various types of documents including a judgment issued by the Commercial District Court of Prishtinë/Pristina and a possession list listing the alleged property right holder as owner of the claimed property. Both documents have been verified by the Executive Secretariat as being genuine.

13. The Commission is satisfied, based on the evidence before it, that the claim involves circumstances directly related to or resulting from the 1998-99 conflict. The Commission is also satisfied that the possession list submitted by the Claimant constitutes proof of ownership over the claimed property. The Commission notes that the claim is uncontested and no evidence has been received or obtained by the Executive Secretariat *ex officio* which would rebut the presumption of ownership based on the possession list. Accordingly, the claim stands to be granted.

II. Claims dismissed

14. 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.

15. 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.

16. 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.)

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 property loss involved circumstances surrounding the conflict.

19. Claim Nos. 11560, 16203, 20045, 23593, 30985 and 50444, referred to in part B of the attached Schedule, and Claim Nos. 08478 and 13795, referred to in part C of the attached Schedule, have been filed by the respective Claimant in his or her capacity as the alleged property right holder either in person or through an authorized natural person or as the case may be in his or her capacity as a family household member of the property right holder. The claims in part B are uncontested in the sense 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. The claims in part C are contested in the sense that the party occupying the claimed property, or a party that has expressed a legal interest in such property, submitted a defense in response to the claim.

20. In all of the above claims the Commission finds, on the basis of the evidence before it, that the respective property right holder acquired only a temporary use right over the claimed property and was therefore only authorized to build a moveable structure on the claimed properties. Accordingly, all of these claims relate to moveable property rather than to private immoveable property.

21. The Commission notes that pursuant to 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 commercial property. Accordingly, Claims Nos. 08478, 11560, 13795, 16203, 20045, 23593, 30985 and 50444 stand to be dismissed as they fall outside the Commission's jurisdiction. The Commission's decision is without prejudice to any right that the Claimants may have to seek compensation before local courts for any investments they may have made in the claimed properties or the resulting increase in their value.

B. Compensation claims

22. In Claim Nos. 10057, 11560 and 23593 the Claimant also seeks, in addition to the confirmation of the respective property right, compensation for physical damage to, or 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 for compensation must be dismissed.

C. Concluding remarks

23. 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.

24. 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.

The Supreme Court of Kosovo may levy court fees for the appeal procedures.

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

KPA10057

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

KPA16203

KPA20045

KPA30985

KPA50444

KPA11560

KPA23593

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

KPA08478

KPA13795
