

DECISION

PANEL NO: 1

DECISION NO.: KPCC/D/C/67/2010
DECISION DATE: 25/02/2010

ORDER

(1) In Claim Nos. 20101 and 27451, 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 the 2 (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 claimed property;

(b) The respondent and any other person occupying the property vacate the same within 30 (thirty) days of the delivery of this order; and

(c) Should the respondent or any other person occupying the property fail to comply with the order to vacate within the time stated, they be evicted from the property; and

(3) The above decisions and order do not affect the rights of any respective co-owners.

LEGAL FRAMEWORK

1. On 13 June 2008, the Assembly of the Republic of Kosovo (the “Assembly”) enacted 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. 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 under Article 142 of the Kosovo Constitution 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 of the Republic of Kosovo.

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 fifteenth session from 22 to 25 February 2010 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 fifteenth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. In addition, one residential property claim presented to the Commission was re-categorized by the Commission as a commercial property claim during the session.

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. The present decision applies to two commercial property claims, namely Claim Nos. 20101 and 27451. In both claims, the claimants seek the resolution of an ownership claim. Three further commercial property claims submitted to the Commission at its fifteenth session are covered by decision KPCC/D/C/68/2010. During the session, one commercial property claim was withdrawn by the Executive Secretariat for additional review and verification. This claim, which is listed in part B (“Claims referred back”) of the attached Schedule, will be considered by the Commission in due course.

8. The Commission notes that both 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 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 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.

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.

9. The Commission notes that both Claimants have submitted various types of documents in support of their ownership claims, including a possession list (Claim No. 27451) and an administrative decision and cadastral plan from the Department of Urbanisation in Prizren (Claim No. 20101). The Commission is satisfied that these documents constitute proof of ownership. The documents have also been verified by the Executive Secretariat as being valid.

10. The Claimants in both claims state that they lost possession of their properties in June 1999 in the circumstances surrounding the NATO air campaign. The claims thus involve circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999 and accordingly fall within the Commission's jurisdiction pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

11. Claim No. 20101 is filed by the Claimant in his capacity as the property right holder. The property in question is a shop and thus qualifies as commercial property.

12. Claim No. 27451 is filed by the Claimant in his capacity as a family household member, namely the son, of the property right holder. 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 states that his father has died but has not provided a death certificate. Instead, he has submitted an inheritance decision from a parallel court in Serbia. Consistent with its jurisprudence, the Commission is unable to accept that documents issued by parallel courts constitute evidence of entitlement to inheritance. The Claimant was asked by the Executive Secretariat to submit a valid inheritance decision, but he said that this would take time. However, he was agreeable to confirmation of the property right in the name of his father in the absence of valid evidence proving his succession to the property.

13. The property claimed in Claim No. 27451 was a mill, which is now destroyed and no longer in use. The Claimant advises that the property was previously used for milling corn on a commercial as well as personal basis for local villagers. In these circumstances, the Commission is satisfied that the claimed property qualifies as commercial property.

14. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in Claim Nos. 20101 and 27451:

- (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;

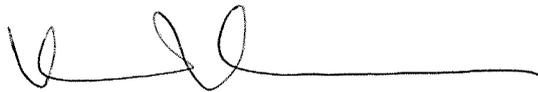
- (c) the claimant or the property right holder, as the case may be, in each case is not now able to exercise his or her ownership right; and
- (d) the claim in each case involves circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

B. Concluding remarks

15. In view of the foregoing, the Commission finds that the claims succeed and directs that an order be made in respect of each claim as set out above.

16. 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 property.

17. 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

KPA20101						
KPA14616						