

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/74/2010

DECISION DATE: 21/04/2010

ORDER

(1) In Claim No. 17552, the Commission

decides that

The property right holder has established his ownership over the claimed property

(2) In Claim Nos. 27451 and 44767, the Commission

decides that

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

(3) In the claims referred to in paragraphs (1) and (2) 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;

(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.

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

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

5. The Commission held its sixteenth session from 20 to 21 April 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 sixteenth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. One of these claims was re-categorized by the Commission as a residential property claim during the session. In sum, four commercial property claims were considered by the Commission during the sixteenth 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 three claims, namely Claim Nos. 17552, 27451 and 44676. The remaining commercial property claim (Claim No. 01389) is covered by decision KPCC/D/C/75/2010.

8. In all three claims covered by the present decision the claimants seek the resolution of an ownership claim, and all relate to commercial properties, including the associated land. The property in Claim No. 17552 was formerly a shoe shop which has now been converted into a café by the current occupant. The property in Claim No. 27451 is a watermill, previously used for both personal and commercial purposes, which the Claimant states was destroyed during the armed conflict in Kosovo in 1998-1999. The claimed property in Claim No. 44767 is office space which, at the time of notification, was found to be destroyed. The Commission considers that all three properties may be characterized as commercial properties.

9. 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.

10. The Commission notes that all three claims are uncontested in the sense that at the time the claimed properties were notified there was no evidence of illegal occupation, use or cultivation 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

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.

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.

11. The Commission notes that the Claimants have submitted various types of documents in support of their ownership claims. In Claim No. 17552, the Claimant has submitted a purchase contract between himself and the public municipal enterprise "Tikves" dated 2 July 1997. In Claim No. 27451, the Claimant has submitted a possession list relating to the claimed property. In Claim No. 44767, the Claimant has submitted a purchase contract between the property right holder and the socially owned enterprise "Ramiz Sadiku" dated 14 December 1990, as well as a utility bill in the name of the property right holder. The Commission is satisfied that these documents indeed constitute proof of ownership. All of these relevant documents have been verified as being valid by the Executive Secretariat.

12. In Claim No. 17552, the Claimant has filed the claim in the capacity of a property right holder. In light of the Commission's findings in paragraph 11 above, the claim stands to be granted. The property is currently in use but the current occupant did not claim a legal right in relation to the claimed property or sign a notice of participation.

13. Claim Nos. 27451 and 44767 have been filed by the Claimants in their capacity of family household members of the property right holders pursuant to section 1.2 of Annex II of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. In both claims the claimants are the sons of the respective property right holders. Section 1 of the Administrative Direction as adopted by Law No. 03/L-079 define "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 Claimants in both cases are sons of the property right holders and consequently fall 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 each of the claims, as set out above. In Claim No. 27451, the Claimant states that the property right holder has died, but has not provided a death certificate confirming the fact. While he has provided an inheritance decision from a parallel court in Serbia, the Commission does not consider that such a document establishes entitlement to inheritance. The Commission itself has no jurisdiction to resolve issues relating to inheritance. Accordingly a decision confirming the property right in favour of the deceased property right holder stands to be granted in this case.

14. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in Claim Nos. 17552, 27451 and 44767:

- (a) the Claimant or the Property Right Holder, as the case may be, has an ownership right in respect of the claimed property, or such part thereof as specified in the respective individual decision;

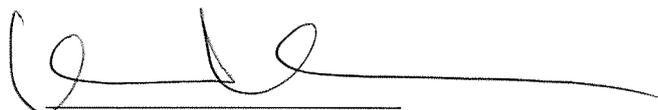
- (b) the Claimant in each case is not now able to exercise his rights to the property; and
- (c) the claim in each case involves circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

B. Concluding remarks

15. 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.

16. 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. In situations in which the property right holder is alive, the approach of the Commission is to grant in the name of the property right holder. In situations in which 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).

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-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

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

KPA17552

KPA27451

KPA44767