



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/R/117/2011
DECISION DATE: 22/06/2011

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) In the 6 (six) claims, identified respectively in parts A, B, C and D of the attached Schedule, 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 Claim No. 13986, referred to in part E of the attached Schedule, the Commission

decides that

The Claimant has established a user right over the ideal part of 1/3 of the claimed property;

(3) In each of the 7 (seven) claims identified 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 associated land parcel on which the residential property stood;

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

(c) Should 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 each of the claims identified in the relevant columns of parts A, B, C, D and E of the attached Schedule, the Commission additionally decides that the claims be dismissed

insofar as the claimants seek compensation for physical damage to, or for loss of use of, the claimed property; and

(5) In cases in which there is more than one owner or use right holder, as the case may be, 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 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

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

5. The Commission held its twenty-third session from 20 to 22 June 2011 in Prishtinë/Pristina. A total of 54 residential 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. Ownership claims

7. With the exception of Claim No. 13896, in all of the claims covered by the present decision the claimants seek the resolution of an ownership claim, and all of them relate to residential properties, including the associated land. The present decision and decision KPCC/D/R/116/2011 deal with claims for residential properties which, at the time of their notification, were found not to be entirely destroyed, whereas decision KPCC/D/R/115/2011 deals with properties that were found to be entirely destroyed at time of their notification.

8. The present decision applies to the seven claims which are listed in parts A, B, C and D and E of the attached Schedule. The remaining 46 claims are covered by decisions KPCC/D/R/115/2011 and KPCC/D/R/116/2011.

1. Contested claim

9. The claim identified in part A of the attached Schedule is 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.

10. In Claim No. 44638, referred to in section A of the attached Schedule, the Claimant has submitted the certificate on immovable property rights showing the Claimant as being the property right holder. The Executive Secretariat has verified the document as being valid.

11. The Claimant alleges that he lost possession of the property when he left it on 11 June 1999 as a result of circumstances arising from the armed conflict in Kosovo during 1998-1999. Based on the evidence before it, the Commission is satisfied that this is the case.

12. The Respondent in this case is the current occupant of the property. He asserts that he is using the property with the permission of the Claimant but has failed to produce any evidence in support of his allegation. Consequently, in light of the evidence produced by the Claimant, which has been verified as being valid, the claim stands to be granted.

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.

2. *Uncontested claims*

13. The five claims identified in parts B, C and D 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. Decisions taken in claims that were incorrectly notified have been overturned by the Commission to ensure correct notification of the property and provide any persons who may have a legal interest in the property with an opportunity to respond to the claim pursuant to section 10.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. These claims are identified in the relevant columns in parts A, B, C and D of the Schedule to this decision. The Executive Secretariat has notified claims in a variety of ways including through the physical notification of the property and/or through notification of the property via publication in gazette and newspapers, through local municipal authorities, municipal courts, local village leaders and through other relevant institutions in Kosovo and Serbia. 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 as adopted by Law No. 03/L-079. Accordingly these claims must be considered uncontested.

14. The Commission notes that the claimants have submitted various types of documents in support of the ownership claims, including inheritance decisions and certificates on immovable property rights. The Commission is satisfied that inheritance decisions and certificates of immoveable property rights confirming an ownership interest indeed constitute proof of ownership. All claims identified in parts B, C and D of the attached Schedule are uncontested and no evidence has been received or obtained by the Secretariat ex officio which would rebut the presumption of ownership. Consequently the Commission is satisfied that the documents submitted prove the claimants' ownership over the claimed properties. The documents have been verified as being valid by the Executive Secretariat, as relevant. Many claimants have also submitted additional supporting documents, including tax decisions, witness statements, copies of plans and cadastral decisions.

15. In Claim Nos. 00862 and 56321, referred to in part B of the attached Schedule, the Claimants have filed the claim in the capacity of a property right holder. In light of the Commission's findings in paragraph 11 above, these claims stand to be granted.

16. In Claim Nos. 01372 and 37634, referred to in part D of the attached Schedule, the Claimants have filed the claim in the capacity of a family household member of the property right holder pursuant to section 1.2 of Annex II of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. 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 Commission has determined that, under the applicable law, this definition covers, in addition to spouses and children, parents, brothers, sisters, grandparents and grandchildren of the property right holder. All of the claimants in the claims identified in part D of the attached Schedule 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 the claims identified in the relevant column of part D of the Schedule, the claimant alleges that the property right holder has died but no acceptable evidence has been submitted by the claimant that would establish death, nor has the Executive Secretariat been able to locate any such documents. Accordingly a decision confirming the property right in favour of the property right holder also stands to be granted in each of these claims, as set out above.

17. In Claim No. 51882, referred to in part C of the attached Schedule, the Claimant was not the property right holder at the date of loss of possession of the claimed property, but has adduced evidence of having subsequently succeeded to the respective ownership right by virtue of inheritance. The Claimant must be considered as having succeeded to all the rights belonging to an owner, including the right to claim for confirmation of ownership and for repossession in the present proceedings. The claim therefore stands to be granted, as set out above.

18. In a number of claims the claimants or the property right holders, as the case may be, left the property outside the period 27 February 1998 and 20 June 1999, referred to in section 3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. The Commission has determined that, even though the date of loss in these claims fell outside the above period, the loss of property right in each case occurred in circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999, as required by section 3 of UNMIK/REG/2006/50 and section 3 of Law No. 03/L-079.

19. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that:

- (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. User right claim

20. Claim No. 13986 was initially submitted by the Claimant as the family household member of the property right holder with respect to a property with a house, garden and yard. He alleges that he subsequently became the owner of the claimed property based on an inheritance decision. In support of his claim, the Claimant has submitted a possession list dated 17 June 2003, listing his father as the property right holder and an inheritance decision in his favour dated 18 April 2008. Both documents have been found being valid by the Executive Secretariat.

21. The Executive Secretariat has physically notified the claimed property and 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.

22. The inheritance decision shows that the Claimant has inherited an ideal part of 1/3 of a user right to the claimed socially owned property. The Commission therefore finds that the Claimant has sufficiently proven the user right over the claimed residential property and the associated land thereto in accordance with the inheritance decisions. Consequently, the Commission grants the claim as set out above.

D. Concluding remarks

23. In view of the foregoing, the Commission finds that the claims listed in parts A, B, C, D and E of the attached Schedule succeed and directs that an order be made in respect of each claim as set out above.

24. The Commission's above decisions and orders 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 residential property.

25. 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. When the property right holder is alive, the Commission grants the right of possession in the name of the property right holder. When the property right holder is deceased and the death is proven but no valid inheritance decision has been provided, the Commission grants possession to the claimant as a family household member of the property right holder. In cases where the property right holder dies after filing the claim and there is no family household member claimant, the Commission grants the right to possession in the name of the deceased 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).

26. 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-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

KPA44638

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

KPA00862

KPA56321

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

KPA51882

Spreadsheet /Lista /Prilog
Part D/Pjesa D/Deo D

KPA01372

KPA37634

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KPA13986