



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/122/2011

DECISION DATE:

07/09/2011

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

- (1) In each of the two (2) claims identified in part A of the attached Schedule, the Commission decides that the claim be dismissed;*
- (2) In each of the seven (7) claims identified in part B of the attached Schedule, the Commission decides that the claim be refused; and*
- (3) In Claim No. 54406, the Commission additionally decides that the claim be dismissed insofar as the Claimant seeks compensation for physical damage to 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 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 twenty-fourth session from 5 to 7 September 2011 in Prishtinë/Pristina. A total of 78 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-fourth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. Four residential property claims which had been presented to the Commission were referred by the Commission back to the Executive Secretariat for further verification and one claim was withdrawn by the Executive Secretariat during the session. In sum, a total of 73 residential property claims were resolved by the Commission 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. In the nine claims covered by the present decision the claimants seek the resolution of an ownership claim and all of them relate to residential property, including the associated land.

8. The present decision covers the nine residential property claims which are listed in parts A and B of the attached Schedule. The remaining 64 claims for residential property are covered by decisions KPCC/D/R/123/2011 and KPCC/D/R/124/2011.

9. All the claims covered by the present decision 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. 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 the Schedule to this

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.

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 the Secretariat's 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.

B. Claims dismissed

10. 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.

11. 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.

12. 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.)

13. 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.

14. 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.

1. Claim No. 01127

15. In Claim No. 01127 the Claimant filed the claim in her capacity of property right holder. The Claimant had previously submitted a category C claim to the Housing and Property Directorate ("HPD") for repossession of the claimed apartment. Before the HPD, the Claimant's category C claim was contested by another individual who had submitted a category A (restitution) claim seeking an occupancy right over the claimed property. The category A claim was granted by the Housing and Property Claims Commission ("HPCC") by decision HPCC/D/196/2005/A&C of 18 June 2005, whereas the current Claimant's category C claim was refused.

16. Pursuant to section 11.4 of UNMIK/REG/2006/50, as adopted by Law No. 03/L-079, the Commission may dismiss a claim which has previously been considered and decided in a final administrative or judicial decision. The Commission notes that section 2.7 of UNMIK Regulation 1999/23 provides that final decisions of the HPCC are binding and enforceable and are not subject to review by any other judicial or administrative authority in Kosovo. The Commission further notes that the HPCC decision HPCC/D/196/2005/A&C of 18 June 2005 was rendered in a contested (and not a summary) procedure and must therefore be considered final and determinative of the subject matter of the Claimant's claim before the present Commission. Accordingly the Claimant stands to be dismissed as *res judicata*.

2. Claim No. 13478

17. Claim No. 13478 was filed by the Claimant in his capacity of property right holder. The Claimant alleges that he left Kosovo during the 1970s and moved to Belgrade where he continues to reside. The Claimant states that the claimed property has been occupied by persons unknown to him since then. Accordingly, if the claimed property was occupied already in the 1970s, the Claimant's alleged loss of possession cannot be related to the 1998-99 conflict.

18. 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 light of this, and as noted above, there has been no loss of possession of the claimed property as a result of the 1998-99 conflict, the claim stands to be dismissed.

C. Claims refused

19. Pursuant to section 8.6 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-07907/50, the Commission may refuse or dismiss a claim on any

grounds. Claims may be refused by the Commission if the claimant or the property right holder, as the case may be, have been unable to prove their ownership or use right interest over the claimed property.

20. Pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission has jurisdiction to determine ownership or use right claims over private immovable property. In reaching its decisions, the Commission may consider any reliable evidence which it considers relevant to a claim, including evidence presented by the Executive Secretariat concerning the reliability of any public record (section 6.2 of Annex III to UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079). The Commission may also require that the Executive Secretariat obtain more information from a party or conduct additional investigations in relation to any claim (section 6.3 of Annex III to UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079). In making its determinations, the Commission may be guided but is not bound by the rules of evidence applied in the local courts in Kosovo (section 6.1 of Annex III to UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079).

1. *Claim No. 07692*

21. In Claim No. 07692 the Claimant filed the claim in his capacity as the property right holder. The Claimant acknowledges that he sold the property on 12 September 1999 to the Respondent, however, he contends that he sold it for less than the market value and seeks an order from the Commission directing the Respondent to pay him compensation in the amount of the difference between the sales price and the alleged market value of the claimed property.

22. Under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the Commission has no jurisdiction to deal with claims for compensation or adjustment of sales price. Accordingly this aspect of the claim must be dismissed.

23. As to the claim for confirmation of ownership and repossession, the Claimant acknowledges that he has voluntarily disposed of the claimed property by selling it to the Respondent. Consequently he has no ownership right over the claimed property and the claim stands to be refused.

2. *Claim No. 30510*

24. In Claim No. 30510 the Claimant submitted the claim in her capacity of property right holder. She claims that the claimed apartment was allocated to her in 1994 by the socially owned enterprise "T.I. Polet," and that she purchased the property in 1997. In support of her claim the Claimant has submitted various documents, including an allocation decision, a contract on use and a purchase contract. The Executive Secretariat has not been able to find any corresponding originals or copies of these documents in the respective archives of the socially owned enterprise, the Public Housing Enterprise or the Municipal Court, and accordingly has been unable to verify any of them.

25. The Commission notes that the son and the daughter-in-law of the Claimant filed a claim for the same property with the HPD under Claim No. DS301037. In

support of this claim, the HPD claimants produced different documents in support of their alleged property right. While the body of the text of the allocation decision and the purchase contract were identical, they were issued for the son of the Claimant in the HPD claim and for the Claimant in the current KPA Claim No. 30150. Moreover, in the HPD claim the issuing authority was the Municipality of Vushtrri, whereas in the KPA claim it was the socially owned enterprise "Polet." The HPCC dismissed the HPD Claim No. DS301037 by decision No. HPCC/D/204/2005/C of 18 June 2005 on the grounds that none of the submitted documents could be found in the respective archives, and that the officials at the Public Housing Enterprise and the Municipal Court had indicated that the documents did not appear to be genuine.

26. While the Claimant alleges that the claimed property was subsequently allocated to and purchased by her son and his wife, which allegedly explains the differing documentation, the Commission does not consider the Claimant's allegation credible, given that the documents produced by the Claimant in the present KPA case could not be verified either.

27. Given that the Claimant has failed to demonstrate ownership or any other property right over the claimed property, the claim stands to be refused.

3. *Claim No. 00567*

28. The Claimant submitted the claim in his capacity of a family household member of the alleged property right holder, namely his father. The Claimant alleges that the claimed property was allocated to his father during the 1980s by the socially owned enterprise "Ramiz Sadiku." The Claimant asserts that his father lived in the claimed property until 1989 when the Claimant was imprisoned, however, he also alleges that his family lost possession in 1999 as a result of the conflict but fails to further substantiate this allegation.

29. The Commission notes that the Claimant has failed to produce any evidence or plausible explanation that his father had a property right or that he was in possession of the claimed property until the conflict. Accordingly the claim stands to be refused.

4. *Claim No. 01186*

30. The claim was submitted by an authorized person on behalf of the Claimant who lodged the claim in her capacity as the property right holder. The Claimant asserts that she inherited the claimed property from her father who, according to the Claimant, had previously purchased the property. However, the Claimant has failed to provide any credible evidence in support of her claim.

31. The Commission notes that a claim for the claimed property was also made before the HPD under Claim No. DS201244. The HPD claim was resolved by the HPCC by decision HPCC/REC/76/2006 dated 18 October 2006. In the HPD claim, the claimant was the Respondent of the current KPA claim, and the current Claimant was the respondent. The HPCC dismissed the current Claimant's defense in the claim on the basis that he had failed to establish a property right over the claimed property.

32. In the circumstances, as the Claimant has failed to establish a property right, the claim stands to be refused.

5. *Voluntary disposal – lack of ownership*

33. In Claim No. 23385 the Claimant lodged the claim in her capacity as a family household member of the alleged property right holder, namely her husband. She subsequently acknowledged that her husband had sold the claimed property to the Respondent in 1997, however, she did not withdraw the claim.

34. In Claim No. 54400 the Claimant filed the claim in her capacity as the property right holder. However, she subsequently admitted that she had sold the property to the Respondents, but refused to withdraw the claim.

35. In Claim No. 54406 the Claimant filed the claim in his capacity as the property right holder. He admitted to having sold the property to the Respondent in 2001, however, he has not withdrawn the claim.

36. In all of the claims covered by this section C.5, the Claimants initially claimed that they or their families have lost the properties as a result of the 1998-1999 conflict. However, as noted above, the Claimants later advised the Executive Secretariat that they or their families, as the case may be, disposed of the properties voluntarily. Accordingly the claims stand to be refused for the Claimants' failure to establish a current property right over the claimed property.

37. In Claim No. 54406 the Claimant also seeks compensation for physical damage to the claimed property, however, under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the Commission has no jurisdiction over such claims. Accordingly this aspect of the claim stands to be dismissed.

C. *Concluding remarks*

38. In view of the foregoing, the Commission finds that the claims listed in part A of the attached Schedule must be dismissed and directs that an order be made in respect of each claim as set out above. The claims listed in part B of the attached Schedule stand to be refused pursuant to section 8.6 of Annex III to UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 and accordingly the Commission directs an order be made in respect of each claim as set out above.

39. 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 residential property.

40. 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**

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