



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

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DECISION

PANEL NO: 1

DECISION NO: KPCC/D/R/130/2011
 DECISION DATE: 26/10/2011

Commissioners Heiskanen (Chairperson),
 Vokshi and Wühler

ORDER

(1) In each of the 20 (twenty) claims, identified in parts A, B, C, D and E 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 each of the 16 (sixteen) claims identified in parts A, B, C and D of the attached Schedule, 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;

(3) In each of the claims identified in the relevant columns of part 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*

- (4) 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

5. The Commission held its twenty-fifth session from 24 to 26 October 2011 in Prishtinë/Prishtina. A total of 145 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-fifth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. Two residential property claims which had been presented to the Commission were referred by the Commission back to the Executive Secretariat for further verification. In sum, a total of 143 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 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 deals with claims for residential properties which, at the time of their notification, were found not to be entirely destroyed.

8. The present decision applies to the twenty claims which are listed in parts A, B, C, D and E of the attached Schedule. The remaining 123 residential property claims are covered by decisions KPCC/D/R/129/2011 and KPCC/D/R/131/2011.

1. Contested claims

9. The six claims identified in parts D and E 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.

a. Claim No. 01473

10. Claim No. 01473 has been submitted by the Claimant in his capacity of the property right holder. The claim covers two apartments in the same apartment complex. The Claimant has submitted a contract on joining of means between his company "Marigona-commerce" and the Public Housing Enterprise dated 27 November 1996. The Executive

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 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.

Secretariat has verified the document as being genuine against the records of the Public Housing Enterprise. The Claimant states that he fulfilled his contractual obligation of paying 85% of the purchase price of the apartment. This was confirmed by the officer-in-charge of the Public Housing Enterprise. The Claimant's company was established pursuant to Articles 133 and 138 of the Law on Companies (Official Gazette of the SFRY No. 77/89) applicable at the time of its establishment, with the Claimant being the sole and only founder and owner of the company. As such he was the only person authorized to act on behalf of the company, and subsequent to the company's dissolution in 1999, the rights over the remaining assets, namely the claimed properties, subrogated to the Claimant.

11. Two Respondents have disputed the Claimant's claim, each of them occupying one of the two apartments. Both Respondents assert that they are using the claimed properties because their houses were destroyed during the conflict 1998-99. The First Respondent asserts that he found the claimed apartment unoccupied, took possession and made investments to make it habitable. The Second Respondent claims that he made investments on the property and wishes to buy the apartment. The Respondents do not assert ownership rights. Accordingly the Claimant's claim stands to be granted.

b. Claim No. 36972

12. Claim No. 36972 has been filed by the Claimant in his capacity as a family household member of the property right holder, namely his grandfather who died in 2006. The Claimant submitted a possession list dating from 2007 which shows his grandfather as the property right holder of the claimed property. The possession list has been verified by the Executive Secretariat as being valid.

13. The Respondent, who is the uncle of the Claimant and son of the property right holder, is currently occupying the property. The Claimant acknowledges that his grandfather had divided the property informally between his two sons, the Claimant's father and the Claimant's uncle, the latter being the current occupant. Accordingly the claim stands to be granted, however, since the Respondent cannot be considered an unlawful occupant, no eviction order is to be issued.

c. Claim No. 14170

14. Claim No. 14170 has been filed by the Claimant in his capacity as a family household member of the property right holder, namely his late grandfather. The Claimant seeks confirmation of ownership of the property right holder and repossession of the property. In support of his claim, the Claimant has submitted a possession list dated 13 April 1988 and a possession list dated 3 October 2009. Both documents list the Claimant's late grandfather as the property right holder of the claimed property, and both have been verified by the Executive Secretariat as being genuine.

15. The Respondent maintains that his late grandfather was the owner of the claimed properties until 1918, when the properties were expropriated and his grandfather was expelled to Albania. The Respondent further states that his father returned in 1940 and took possession of the property until 1945/46, when he was evicted from the properties by the Yugoslavian Communist Party. The Commission has no jurisdiction to assess the validity of such a defence, and in any event it remains undisputed that the Claimant has established a valid claim under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

d. Claim Nos. 15127, 24782 and 27487

16. Claim Nos. 15127 and 24782 have been submitted by Bosiljka Mistic (the "First Claimant") in her capacity as the property right holder of the claimed houses. Claim No. 27487 has been submitted by the son of the First Claimant, Nebojsa Mistic (the "Second Claimant"), in his capacity as the property right holder of a different house located on the same parcel as the house claimed in Claim No. 15127. The First Claimant seeks confirmation of the ideal part of 2/15 of the claimed houses. In support of their assertions, the First and the Second Claimant have produced an inheritance decision dated 15 February 1996 issued by Municipal Court of Prishtinë/Pristina declaring the First Claimant co-owner of the ideal part of 2/15 of the properties claimed by her and the Second Claimant co-owner of the ideal part of 1/15 of the property claimed by him. The Claimants further submitted a possession list dated 14 August 2008, which was updated after the issuance of the inheritance decision listing the First Claimant as co-owner of the properties claimed by her with ideal parts of 2/15 and the Second Claimant as co-owner of the ideal part of 1/15 of the property claimed by him. Both submitted documents were positively verified by the Executive Secretariat.

17. The Respondent is the brother-in-law of the First Claimant and uncle of the Second Claimant. He claims to be the sole owner of the claimed properties, and that he has never lost possession of those properties. However, the verified documents show that the First Claimant, the Second Claimant and the Respondent are co-owners of the claimed properties. Both Claimants have lost possession as a result of the conflict, when they left Kosovo in June 1999 in the circumstances directly related to or resulting from the armed conflict. All three claims stand to be granted insofar the Claimants seek confirmation of ownership. Since the properties are currently occupied by one of the co-owners, the Commission does not issue an eviction order.

2. Uncontested claims

18. The fourteen claims identified in parts A, B and C 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.

19. The Commission notes that the claimants have submitted various types of documents in support of their ownership claims, including certificates on immovable property rights, possession lists and a court decision on the division of property. The Commission is satisfied that certificates of immovable property rights confirming an ownership interest indeed constitute proof of ownership. The other documents submitted by claimants, including possession lists create a rebuttable presumption of ownership. All claims identified in parts A, B and C 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.

20. In Claim Nos. 44990, 47790, 91246 and 91482, referred to in part A 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 19 above, these claims stand to be granted.

21. In Claim Nos. 16260, 91481, 52145, 56489 and 52294, referred to in part B of the attached Schedule, the Claimant has filed the claim in the capacity of a family household member, namely the wife, 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 Claimant falls 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 these claims, as set out above.

22. In Claim Nos. 00818, 48383, 50975, 91568 and 39968, 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 asserts to having succeeded to the property right. In each of these claims the claimant has established that she or he is a family household member of the deceased property right holder. However, no valid inheritance decision or other documentary evidence has been submitted by the claimants that would establish any of the claimants as being an heir to the claimed property, nor has the Executive Secretariat been able to locate any such documents. Some claimants have submitted as evidence "inheritance decisions" purportedly issued by parallel courts in Serbia. The Commission does not consider that such documents establish 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 each of these cases, as set out above. The Commission's decision with respect to all of the claims identified in this part C of the attached Schedule is without prejudice to the determination by the competent court as to how the heirs will succeed to the property right of the deceased. Accordingly a decision confirming the property right in favour of the deceased property right holder stands to be granted in each of these cases.

23. In Claim No. 48383 the Claimant 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 fell outside the above period, the loss of property right 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.

24. 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. Claims for compensation

25. In the claims identified in the relevant columns of part E of the attached Schedule, the claimants also seek, in addition to ownership, compensation for physical damage to, or for 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 must be dismissed.

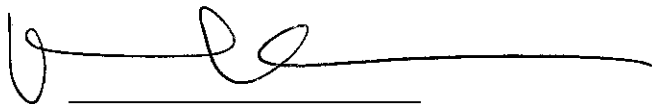
C. Concluding remarks

26. 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.

27. 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.

28. 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).

29. 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

KPA91482
KPA44990
KPA91246
KPA47790

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

KPA16260
KPA91481
KPA52145
KPA56489
KPA52294

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

KPA00818
KPA48383
KPA50975
KPA91568
KPA39968

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

KPA01473
KPA14170

Spreadsheet /Lista /Prilog
Part E/Pjesa E/Deo E

KPA36972
KPA15127