



Kosovo Property Claims Commission
Komisioni i Kërkesave Pronësore të Kosovës
Komisija Kosovske Agencije za Imovinu

Nazim Gafurri 1 (Miladin Popovic)
Pristina
Tel: +381 (0) 38 249-918
Fax: +381 (0) 38 249-919
E-mail: mailbox@kpaonline.org

DECISION

PANEL NO: 1

DECISION NO.: KPCC/D/R/18/2008
DECISION DATE: 30/04/2008

ORDER

In each of the 28 (twenty eight) claims identified in the attached Schedule, the Commission decides that the claims be dismissed.

REASONS FOR THE DECISION

1. 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 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.)

2. Where the claimant makes an ownership claim pursuant to section 3.1(a) of UNMIK/REG/2006/50, the Commission must resolve the issue of ownership and, if ownership is proven to the satisfaction of the Commission, make an order for repossession in favour of the claimant. Where the claimant makes a claim for a property use right pursuant to section 3.1(b) of UNMIK/REG/2006/50, 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/DIR/2007/5.)

3. The Commission held its sixth session on 28-30 April 2008 in Prishtinë/Pristina. A total of 286 residential property claims were submitted by the Executive Secretariat of the Kosovo Property Agency (the "Executive Secretariat")

and “KPA,” respectively) to the Commission at its sixth session, together supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information.

4. 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. Use right claims

5. In all of the claims covered by the present decision the claimants seek the resolution of a user right claim, and all of them relate to residential property, namely apartments.

6. Based on its review of the claims and supporting documentation, and of the information provided and the verification conducted by the Executive Secretariat, two claims were referred by the Commission back to the Executive Secretariat for additional review and verification, or were withdrawn by the Executive Secretariat. These claims, which are identified in part B of the attached Schedule, will be considered by the Commission in due course. The present decision applies to the 28 claims referred to in the operative part of this decision;

7. 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 a use 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 circumstances directly relating to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

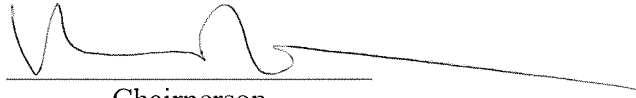
8. In all of the claims covered by the present decision the claimants have failed to submit any evidence to demonstrate that they ever had possession of the claimed property, or indeed any property right with respect to such property, during the relevant period. In all of the claims the claimant has submitted a lease agreement dated on the same date – 3 December 2007 – and each of the claimants acknowledges that he or she never entered into possession of the claimed property. No other evidence has been presented by the claimants, or could be found by the Executive Secretariat, that could show that the claimants had possession of the property concerned, or a property right which conferred the right to take possession of the property. Accordingly, these claims stand to be dismissed for want of compliance with section 3.1 of UNMIK/REG/2006/50 (see paragraph 1(b) above).

B. Concluding remarks

9. In view of the foregoing the Commission finds that the claims identified in the attached Schedule fail and that an order be made as set out above.

10. The Commission notes that where the properties concerned are unlawfully occupied, the above decision and order do not confer any rights on the respondents or current occupants.

11. Section 8.8 of Annex III of UNMIK/DIR/2007/5 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 provides 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.

*** 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

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