

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/34/2008
DECISION DATE: 19/12/2008

ORDER

(1) *In Claim No. 10372, the Commission*

decides that

*(a) The Claimant has established ownership over the claimed property;
and*

orders that

(b) The Claimant be given possession of the claimed property;

*(c) The Respondent and any other person occupying the property vacate
the same within 30 (thirty) days of the delivery of this order; and*

*(d) 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.*

(2) *In Claim Nos. 10359 and 10480, the Commission decides that the claims be
dismissed.*

LEGAL FRAMEWORK

1. On 13 June 2008, the Assembly of the Republic of Kosovo (the "Assembly") enacted 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. The Law included an annex ("Annex I") as adopted and amended by 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 under Article 142 of the Kosovo Constitution 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 of the Republic of Kosovo.

2. Pursuant to Article 10 of Law No. 03/L-079, which amended section 7.1 of UNMIK/REG/2006/50, the Property Claims Commission (the "Commission") shall be appointed by the Assembly upon nomination by the President of the Supreme Court, with the proviso that until the end of international supervision of the implementation of the Comprehensive Proposal for the Kosovo Status Settlement of 26 March 2007, two of the three members, including its Chairperson, shall be appointed by the International Civilian Representative.

3. On 18 June 2008, the Commission wrote to the Special Representative of the Secretary General of the United Nations in Kosovo stating its understanding that Article 10 and other relevant provisions of Law No. 03/L-079 did not divest the current members of the Commission of their mandate and that, accordingly, the extensions of their appointments by the Special Representative on 22 April 2008 continued to be valid unless terminated prior to the expiry of their terms in accordance with the applicable law. The Commission has subsequently been advised by the Office of the International Civilian Representative that the new appointment procedures set forth in Article 10 of Law No. 03/L-079 do not affect the authority of the Commission in its current composition to exercise its functions. The Office of the International Civilian Representative confirmed that Article 10 merely provides a new appointment procedure in relation to future appointments of the members of the Commission.

4. In light of the above, the Commission considers that it is duly constituted and competent to continue to exercise its functions pursuant to UNMIK/REG/2006/50 and Law No. 03/L-079, and the relevant implementing directions and legislation, including UNMIK/ADM/DIR/2007/5 and Annex I, respectively.

REASONS FOR THE DECISION

5. 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.)

6. 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

7. The Commission held its tenth session from 15-19 December 2008 in Prishtinë/Pristina. A total of 138 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its tenth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information.

8. 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

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

10. The present decision applies to the three claims detailed below. In each of the claims the Claimant seeks the resolution of an ownership claim, and all of them relate to residential properties. All of these claims are contested in the sense that the parties occupying the claimed properties (the "Respondents") have 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. In each of the claims, the Respondents have made representations or submitted documents purporting to show ownership or use rights over the claimed property.

11. In each of the claims, the Claimant claims to have lost possession of the property in 1999. The Commission is satisfied that the claims involve circumstances

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.

directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

12. In Claim No. 10372, the Claimant, namely the Decani Monastery, is represented by Mr Teodosije Sibalic, who was given the authority to act as an authorized representative of the Monastery by letter of appointment issued by Archbishop Artemije of Raska and Prizren. The Commission considers that this document is sufficient to authorize the representative to act for the Claimant, who is also the property right holder. The possession list submitted by the Claimant has been verified as being valid by the Executive Secretariat. The Commission is satisfied that this document constitutes proof of ownership of the Claimant.

13. The Respondent to this claim states that he had been given permission to use the property by German KFOR but was unable to provide any documents in support of his claimed right to use the property. The Respondent does not even allege that the property right holder has given the Respondent permission to use the property. In these circumstances, and the Claimant having demonstrated its ownership of the claimed property as noted above, the claim stands to be granted.

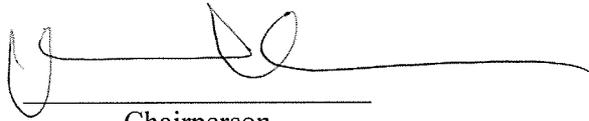
14. In Claim No. 10359, the Executive Secretariat has attempted to verify the documents submitted by the Claimant in support of his ownership claim at the relevant public offices, including the Public Housing Enterprise and the Department of Urbanisation. Two of the documents presented by the Claimant, namely the Lease Agreement and Administration Decision, could not be found in the records of the Public Housing Enterprise or the Department of Urbanisation. As to the third document presented by the Claimant, namely the Contract on Joining of Means, the Public Housing Enterprise indicated that the contract submitted by the Claimant never validly entered into force on account of the non-payment of monies due under the contract. As the payments were never made within the period of time specified in the contract, the property was subsequently contracted to a third party. Consequently, the claim stands to be dismissed.

15. In Claim No. 10480, the Claimant has submitted in support of his claim an allocation decision dated 12 June 1999 and a purchase contract entered into between the Claimant and the Army of the Federal Republic of Yugoslavia dated 18 June 1999. However, the Commission notes that, according to section 6 of UNMIK/REG/1999/1, which took effect on 10 June 1999, all moveable and immovable property registered in the name of the Federal Republic of Yugoslavia or the Republic of Serbia, which is in territory of Kosovo, was to be administered by UNMIK. Accordingly, after 10 June 1999, the Yugoslav Army could not have validly sold the property to the Claimant, and the transaction must be considered null and void. As the Claimant's purchase of the property was void, the Claimant cannot assert an ownership right over the property and the claim stands to be dismissed.

B. Concluding remarks

16. 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.

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-079 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

KPA10359

KPA10372

KPA10480
