



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/65/2010

DECISION DATE: 25/02/2010

ORDER

The Commission decides that Claim Nos. 25941, 31217, 50006, 51025, 51026 and 52473 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") 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 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 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 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 fifteenth session from 22 to 25 February 2010 in Prishtinë/Pristina. A total of 92 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its fifteenth session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. Two residential property claims presented to the Commission were re-categorized by the Commission during the session as agricultural property claims, and one residential property claim was re-categorized as a commercial property claim. The Commission also finalized the adjudication of four residential property claims which had been presented to the Commission by the Executive Secretariat in the thirteenth session but in which the Commission had suspended deliberations pending confirmation of the notification of the claimed properties.

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.

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.

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.

8. The present decision deals with six claims, namely Claim Nos. 25941, 31217, 50006, 51025, 51026 and 52473. Based on its review of the claims and of the supporting documentation during the session, and of the information provided and the verification conducted by the Executive Secretariat, one claim was referred by the Commission back to the Executive Secretariat for additional review and verification. This claim, which is listed in part A ("Claims referred back") of the attached Schedule to this decision will be considered by the Commission in due course. The remaining 86 claims are covered by three other decisions, namely decisions KPCC/D/R/63/2010, KPCC/D/R/64/2010 and KPCC/D/R/66/2010.

9. Claim Nos. 31217 and 52473 relate to claims for residential properties which, at the time of their notification, were not damaged, or, even if damaged, were still standing and potentially capable of repair or reconstruction. Claim Nos. 25941, 50006, 51025 and 51026 relate to claims for residential properties which, at the time of their notification were found to be entirely destroyed. However, the nature of the residential property, whether destroyed or not-destroyed, is immaterial to the Commission's findings in these claims, as set out below.

1. *Claims dismissed on account of lack of evidence of loss of possession*

10. 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.

11. 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 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 claimed property loss involved circumstances surrounding the conflict.

12. In Claim No. 31217, the Claimant, who filed the claim in his capacity as the property right holder, states that he left Kosovo in 1970 for Serbia and has continued to use the claimed property since that time. He acknowledges that he was never displaced and never lost possession of the claimed property because of the conflict. The Claimant states that he has filed the claim for the purposes of confirmation of his property right and to ensure the legal security of his title. Accordingly, like other claims filed by the same Claimant and previously resolved by the Commission, the

present claim stands to be dismissed as it falls outside the jurisdiction of the Commission (see the Commission decision KPCC/D/A/52/2009 of 19 August 2009).

13. Claim No. 52473 is filed by the Claimant in his capacity as family household member, namely grandchild, of the property right holder. While the Claimant asserts that the property right holder is deceased, he has not produced any evidence in support of his assertion. The Claimant acknowledges that neither he nor his family were displaced from their village as a result of the conflict and confirms that the claimed property was not unlawfully occupied by anyone during the conflict. Accordingly, like other claims filed by the same Claimant and previously resolved by the Commission, the claim stands to be dismissed as being outside the jurisdiction of the Commission (see the Commission decisions KPCC/D/A/56/2009 of 15 December 2009 and KPCC/D/A/61/2010 of 25 February 2010).

2. *Claims dismissed on account of the absence of a power of attorney*

14. Pursuant to section 5.2 of UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079, claims may be made by either the property right holder, a family household member of the property right holder, or an authorized natural person with a valid and duly executed power of attorney from either the property right holder or a family household member of that person. In exceptional cases where the provision of a power of attorney is problematic, the Secretariat may certify an alternative document authorizing representation of a claimant.

15. Section 1 of the UNMIK/ADM/DIR/2007/5 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. However by implication it does not cover in-laws, uncles, aunts, nephews, nieces or cousins, who must provide a POA authorising their representation on behalf of the property right holder.

16. The Claimants in Claim Nos. 25941, 50006, 51025 and 51026 are not family household members of the respective property right holders in accordance with the above definition and must consequently demonstrate their authorization to act on behalf of the property right holder. In all these claims the Claimant alleges that the property right holder has died but no acceptable evidence has been submitted that would establish death, nor has the Executive Secretariat been able to locate any such documents. In all of these cases the Executive Secretariat has contacted the Claimant on numerous occasions to request that he or she provide a power of attorney from a family household member of the Claimant, however no such power of attorney has been provided. All Claimants indicated that they would provide the required power of attorney, but none has been received by the Executive Secretariat. In none of these claims has the Claimant provided reasons justifying the certification of an alternative document by the Secretariat to confirm the Claimant's authorization to act in the

claim in lieu of a power of attorney where provision of a power of attorney has proved problematic.

17. The Commission notes that, in Claim No. 25941 (referred to in paragraph 17 above), the property right holder's son had previously filed a claim with the Housing and Property Directorate ("HPD") in relation to the same property. The claim was subsequently granted by the Housing and Property Claims Commission ("HPCC") by way of an order declaring that the property right holder satisfied the requirements for possession of the property as at the time of destruction of the property. This claim was filed by a family household member of the property right holder, namely his son, and accordingly no power of attorney was required in that claim.

18. Similarly, the Commission notes that in Claim Nos. 51025 and 51026 (also referred to in paragraph 17 above), the Claimant had previously filed a claim with the HPD in relation to the same property. The HPD claim was for repossession, and not for ownership, of the claimed property. As the property right holder was deceased at the time the HPCC took its decision, the claim was granted in the name of the possessor of the property, namely the property right holder's son, who is the husband of the Claimant in the present case. No power of attorney was required in the HPD claim as the Claimant was a family household member of the possessor, namely his wife. In Claim Nos. 51025 and 51026, however, the claims before the Commission are for confirmation of ownership of the claimed property. The Claimant is the daughter in law of the property right holder and accordingly does not qualify as a family household member of the property right holder. Consequently, she needs a power of attorney from a family household member of the property right holder in order to be able to pursue the claims. As noted above in paragraph 17, she has failed to submit such power of attorney.

19. Consequently, since the Claimants in Claim Nos. 25941, 50006, 51025 and 51026 have failed to establish their capacity to lodge a claim on behalf of the property right holder in accordance with the requirements of section 5.2 of UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079, these claims stand to be dismissed.

B. Concluding remarks

20. 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.

21. 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.

22. The Commission's decision is without prejudice to the right of the claimants or the property right holders, as the case may be, to seek confirmation of their property right over the claimed properties before the competent local authorities, such as the cadastral authorities or local courts, in accordance with the applicable law.



Chairperson

APPEALS

UNMIK/REG/2006/50 and the Law No. 03/L-79 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.

Information on the appeals procedures 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

KPA52473						
KPA31217						

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

KPA25941						
KPA50006						
KPA51025						
KPA51026						