

Department of Human Rights and Communities

Legal System Monitoring Section

Conflicting Jurisdiction in Property Disputes

Monthly Report – April 2009

I. Introduction

As a response to the large number of persons whose property rights were affected by discriminatory property laws promulgated between 1989 and the 1999 conflict, the United Nations Interim Administration in Kosovo (UNMIK) established mass-claim mechanisms to efficiently, impartially, and independently resolve property disputes: first the Housing and Property Directorate/Housing and Property Claims Commission and later the Kosovo Property Agency/Kosovo Property Claims Commission.¹ In establishing these entities, UNMIK assumed jurisdiction over certain types of property cases from Kosovo's courts.²

Though the Housing and Property Directorate (HPD), the Housing and Property Claims Commission (HPCC), the Kosovo Property Agency (KPA), and the Kosovo Property Claims Commission (KPCC) are primarily responsible for all property claims arising from discriminatory laws promulgated between 1989 and the 1999 conflict, the Kosovo courts still play a role in property disputes. This creates confusion in property cases as to which institution has jurisdiction, courts, KPA/KPCC or HPD/HPCC.

This report identifies at least three major issues which arise in the relationship between HPD/HPCC, KPA/KPCC, and the Kosovo courts. First, cases referred from HPCC to the courts often resulted in conflicting decisions, leaving the parties in a state of limbo as to the fate of their claim. Second, in many cases the courts were unaware of, ignored, or made poor use of previous decisions on contested property by the HPCC. Third, the courts have improperly accepted jurisdiction in cases that clearly fall within the exclusive jurisdiction of the HPCC or KPCC.

II. The mass-claim mechanisms: HPD/HPCC and KPA/KPCC

A. The Housing and Property Directorate and the Housing and Property Claims Commission

Considering the large number of persons whose property rights had been affected by the 1999 conflict and discriminatory property laws, UNMIK on 15 November 1999 established the Housing and Property Directorate and the Housing and Property Claims Commission to adjudicate housing and property rights in Kosovo and to resolve disputes over residential property.³ This removed jurisdiction over certain property claims from the courts and established unique bodies, meant to be impartial, independent, and efficient mechanisms for resolving claims using local and international legal expertise.⁴

¹ UNMIK Regulation 1999/23 on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission (15 November 1999); UNMIK Reg. 2006/10 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property (4 March 2006).

² Sec. 1.2, UNMIK Regulation 1999/23.

³ UNMIK Regulation 1999/23.

⁴ *Id.* sec. 1.2 and sec. 2.

HPD was charged with “provid[ing] overall direction on property rights in Kosovo”, including conducting an inventory of abandoned housing, renting such abandoned property, providing guidance, and conducting research on policies addressing property rights.⁵ HPD also “received and registered” the following categories of residential property claims:

Category A Claims: Claims by natural persons whose ownership, possession, or occupancy rights to residential property were revoked after 23 March 1989 on the basis of discriminatory legislation.

Category B Claims: Claims by natural persons who entered into informal transactions of residential property on the basis of the free will of the parties after 23 March 1989.

Category C Claims: Claims by natural persons who were the owners, possessors, or occupancy right holders of residential real property prior to 24 March 1999, who do not enjoy possession of the property and where the property has not voluntarily been transferred.⁶

HPCC had exclusive jurisdiction to decide these claims although it could transfer claims or parts of claims to courts or administrative bodies when it deemed the claim or part of the claim did not fall under its mandate.⁷ Decisions of the HPCC were final and legally enforceable and not subject to review by any other judicial or administrative authority.⁸ However, there was a possibility of reconsideration of HPCC decisions by HPCC.⁹ In addition to adjudicating ownership claims, HPCC assessed possession rights for residential property.¹⁰

The deadline set for individuals to file claims with HPD was 1 July 2003.¹¹ By early 2007, HPCC had decided on all 29,160 filed claims and its mandate ended.¹²

B. The Kosovo Property Agency

In March 2006, the HPD/HPCC was succeeded by the KPA.¹³ In addition to resolving residential property claims, KPA’s mandate also included the resolution of claims relating to agricultural and commercial property.¹⁴ The deadline for receiving claims expired on 3 December 2007. KPA has since stopped receiving new claims, though it

⁵ *Id.* sec. 1.1.

⁶ *Id.* sec. 1.2 (a-c).

⁷ *Id.* sec. 2.5; Sec. 22.1, UNMIK Regulation 2000/60 on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission (31 October 2000).

⁸ Sec. 2.7, UNMIK Regulation 1999/23.

⁹ Sec. 14.1, UNMIK Regulation 2000/60.

¹⁰ *Id.* sec. 22.5.

¹¹ Final Report of the Housing and Property Claims Commission (2007), page 40, *available at* http://www.hpdkosovo.org/pdf/HPCC-Final_Report.pdf.

¹² *Id.* page 72.

¹³ UNMIK Regulation 2006/10; UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property (16 October 2006). KPA came into existence while HPCC was still addressing claims filed by HPCC’s 1 July 2003 deadline.

¹⁴ *Id.*

continues to proceed with pending claims.¹⁵ Any property claim filed after December 2007 falls now under the jurisdiction of the Kosovo courts.

Initially, KPA's primary function was to receive, register and assist the courts in resolving ownership claims over private immovable property and claims to rights of use over private immovable property when the owner could not exercise those rights.¹⁶ KPCC would submit its conclusions to the competent court for confirmation or rejection or to request additional information or action.¹⁷ The parties could appeal the commission's conclusion or the court's decision to the Supreme Court of Kosovo.¹⁸

KPA's initial structure only existed for six months, from March to October 2006. A subsequent UNMIK regulation substantially extended KPA's power to, among other things, receive, register and *resolve* property claims under its jurisdiction.¹⁹ This meant that KPCC issued decisions which were subject to review only by the Supreme Court of Kosovo and not a regular court's decision.²⁰

As of the 3 December 2007 deadline, a total of 40,487 claims had been submitted to the KPA: 3,206 for residential property, 995 for commercial property with improvements, and 36,285 for commercial property without improvements.²¹ Of these claims 40,100 were for ownership and 387 were for the right to use property.²²

III. The interaction between the Kosovo courts, the HPCC, and the KPCC

A. HPD/HPCC and the courts: competing Category A and Category C claims

Despite the final and binding nature of HPCC decisions, they did not constitute the final resolution of all legal issues attached to a property dispute. Local courts retained jurisdiction "to adjudicate any legal issues not decided by the HPCC".²³ The HPCC could "refer issues arising in connection with a claim" which were not within its own jurisdiction "to a competent local court or administrative board or tribunal".²⁴

For example, the HPCC referred category C claims in which the original purchase contract may have been flawed to local courts for a ruling on the validity of the contract. HPCC also referred unsuccessful category A claims to local courts when the claimant could not show a valid contract of use or never had possession of the contested property. Courts often reached conclusions on these extraneous issues that competed with HPCC findings and left all parties without an effective resolution of their claim.

¹⁵ Sec. 8, Administrative Direction 2007/5 (1 June 2007) implementing UNMIK Regulation 2006/50.

¹⁶ Sec. 2, UNMIK Regulation 2006/10.

¹⁷ *Id.* sec. 10.3 and 12.2.

¹⁸ *Id.* sec. 13.

¹⁹ UNMIK Regulation 2006/50.

²⁰ *Id.* sec. 14.

²¹ Available at <http://www.kpaonline.org/claimProp.asp>.

²² *Id.*

²³ Sec. 2.5, UNMIK Regulation 1999/23.

²⁴ Sec. 22.1, UNMIK Regulation 2000/60.

On 15 July 2006, a Kosovo Albanian category A claimant (Party A) obtained a decision from the HPCC that the right to use an apartment belonged to the respondent, a Kosovo Serb category C claimant (Party C) in the same case. That HPCC decision referred Party A to the courts to determine whether he was entitled to relief resulting from the fact that his user rights were allegedly revoked on a discriminatory basis and given to Party C. In September 2006, Party A sued Party C in a Prishtinë/Priština region court asking for an annulment of the HPCC decision, an annulment of the government decision granting user rights to Party C, an annulment of the contract by which Party C purchased the property from the Yugoslav Ministry of Finance, and a confirmation that Party A held the right to use the apartment. The court granted Party A's claim in its entirety. In doing so, the court effectively overturned the HPCC decision which declared Party C to be the current holder of user rights over the apartment, ignoring the fact that the HPCC decision was final and enforceable.²⁵ In this case, both Party A and Party C had presumptively valid claims. Instead of acknowledging the HPCC decision and granting Party A an alternate form of relief, the court rendered a judgment contradicting the HPCC decision, leaving both parties without a full and final resolution of their property dispute.

In another case, in March 2006, HPCC rejected a Kosovo Albanian's (Party A) category A claim on an apartment. The claim was that the apartment had originally been allocated to Party A, but the allocation was revoked after Party A lost his job due to discriminatory practices. The HPCC found that a Kosovo Serb category C claimant (Party C) held the user rights. The use of the apartment was granted to Party C, who eventually purchased it from the Ministry of Finance in Belgrade. In its decision the HPCC referred Party A to the local courts to determine if there was any legal relief available. Party A sued Party C in a Prishtinë/Priština region court. The court annulled the HPCC decision citing the discriminatory provisions that led to the termination of Party A and thus the loss of his rights to use the apartment. The court also annulled the contract by which Party C bought the property. The court held Party A to have the user rights over the apartment and referred Party C to KPA to file a claim for monetary damages. This decision was in direct conflict with the previous HPCC decision.

While it is clear that local courts have no jurisdiction to quash final and binding decisions of the HPCC, a question remains as to what remedies, if any, are available to local courts in cases of competing category A and C claims.

Similar issues also arise when a category A claimant loses property due to discriminatory practices by socially-owned or publically-owned enterprises. These claims now fall under the jurisdiction of the Kosovo Trust Agency (KTA).²⁶ In cases filed with the KTA, the only relief available for discrimination is monetary

²⁵ Sec. 2.7, UNMIK Regulation 1999/23

²⁶ Sec. 2, UNMIK Regulation 2002/12 on the Establishment of the Kosovo Trust Agency (13 June 2002).

compensation. Restitution of the property is not an option.²⁷ In such cases, if the local court determines that a category A claimant is unable to perfect his occupancy right due to discrimination, it is unclear what claim should supersede and what remedies are available.

Competing claims filed with HPCC, KPCC, and the courts result in a very complicated and often ineffective method of vindicating property rights. Conflicting judgments leave parties without a true resolution of their claims and damage the rule of law.

B. Courts do not make use of existing HPCC decisions

In addition to determining discrimination and/or irregular allocation in a competing category A and C claim, local courts have begun to adjudicate claims relating to underlying ownership rights for successful category C claimants.

Article 7 of the applied Law on Contested Procedure authorizes courts to “[...] verify also the facts not submitted by the parties as well as evidence which was not proposed by the parties [...]”.²⁸ The OSCE monitored cases in which local courts, when deciding ownership rights, were not aware of existing HPCC or KPCC decisions regarding the contested property. And even if aware of those decisions, the courts ignored the HPCC or KPCC findings. If for example, results of investigations by HPCC or KPCC to ascertain the veracity of documentary evidence are not considered, the courts fail to fully and truthfully use all means necessary to adjudicate the disputed facts.

A Kosovo Serb (Party C) filed a category C claim with HPD/HPCC against a Kosovo Albanian (Party A). During the HPCC proceedings, Party A maintained that she purchased the property in March 1999. The HPD officials attempted to verify the purchase contract and found it *not* to be genuine. HPCC also held (on a request for reconsideration) that Party C bought the property pursuant to a verified contract in February 1999. HPCC granted Party C’s claim. Later in 2006 before a Prishtinë/Priština region court, Party A sued to confirm her right of ownership to the same property disputed in the HPD/HPCC claim. Party A claimed to have bought the property from the respondent in March 1999 with an unverified sales contract. In May 2006, in direct conflict with the HPCC decision, the court approved Party A’s claim. Given that the court’s file contained no information about the HPCC decision, it seems the court had no knowledge of HPCC’s prior assessment as to the authenticity of the documents.

In a claim filed in Pejë/Peć region court in December 2005 , a Kosovo Serb (Party C) requested annulment of a 2002 property contract signed by the Kosovo Albanian (Party A). In February 2005, the HPCC granted Party C user rights as a category C claimant. During the proceedings, HPCC investigated into whether or not the documents proffered by Party

²⁷ Sec. 10.3, UNMIK Regulation 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (13 June 2002).

²⁸ Law No. 03/L-006 on Contested Procedure, Kosovo Official Gazette, 20 September 2008.

A were genuine. The HPCC found the documents were *not* genuine. During a subsequent court trial, the same documents were again presented as evidence. During the course of 12 trial sessions, neither the court nor Party A referred to the HPCC decision regarding the authenticity of the documents. In addition the court never investigated the authenticity of the documents used by HPCC. Instead, the court relied solely on witness testimony.

Despite HPCC decisions being final, courts should make use of existing HPCC decisions, in particular those that include findings of fact relevant to cases before the courts.

C. Exercise of court jurisdiction in cases falling under the KPA/KPCC or HPD/HPCC mandate

Despite provisions on jurisdiction over conflict-related property claims, the OSCE monitored cases in which the courts presided over claims where the KPCC or HPCC clearly had exclusive jurisdiction. Proceeding over cases which another entity holds exclusive jurisdiction violates the right to a tribunal established by law.²⁹

In a Gjilan/Gnjilane region case filed in January 2007, the plaintiff sued to evict the respondents from his property. He claimed to have left the premises in 1999 and returned in December 2006 to find it occupied by the respondents. In June 2007, the court issued a judgment.

According to the law establishing KPA and KPCC, the KPA likely had jurisdiction over this case. The plaintiff said he left his house in 1999 and returned three weeks before filing the claim. Therefore, the case could have involved a claim resulting from the armed conflict between 27 February 1998 and 20 June 1999.³⁰ During the proceedings, the judge never considered when in 1999 the plaintiff left the premises in order to determine whether KPA had jurisdiction over the case.

IV. Conclusion and Recommendations

Kosovo's mass-claim mechanisms were intended to contribute to an efficient and fair resolution of property disputes resulting from the 1999 conflict and discriminatory state acts during the Yugoslav era. In spite of these agencies' existence, courts continued to try cases over which they did not have jurisdiction, failed to fully consider prior determinations of HPCC and KPCC, and reached conclusions conflicting with legally-binding and enforceable decisions of those two agencies. As such, confusion has often been the rule when addressing conflict-related property claims in Kosovo. In light of the above, the OSCE makes the following recommendations:

- Judges and lawyers should be trained by the Kosovo Judicial Institute on the legal status of HPCC and KPCC decisions in property disputes.

²⁹ Art. 6(1), European Convention on Human Rights and Fundamental Freedoms (the Convention).

³⁰ Sec. 3, UNMIK Regulation 2006/50.

- Judges and lawyers should also be trained by the Kosovo Judicial Institute to acknowledge and search for preexisting KPCC and HPCC decisions.
- In cases involving the same claims and claimants, courts should take into consideration the conclusions made by the HPCC and KPCC.
- In cases where competing category A and C claims are brought before the courts after an HPCC or KPCC adjudication, the courts should consider ordering monetary damage compensation rather than restitution of ownership or use of rights to a claimant presenting a valid claim.
- In the event the KPA re-starts its claim intake procedure, courts should *sua sponte* assess their jurisdiction in conflict-related property claims, including claims related to property loss due to the imposition of discriminatory measures.
- The KPA should take all necessary action to provide local courts with a comprehensive database on all claims and decisions rendered by the HPCC and the KPCC.