



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/A/121/2011

DECISION DATE:

07/09/2011

Commissioners Heiskanen (Chairperson),  
Vokshi and Wühler

## ORDER

- (1) In each of the 54 (fifty four) claims identified in parts A and B of the attached Schedule, the Commission decides that the claimant has established ownership of the claimant or the property right holder, as the case may be, over the claimed property.*
- (2) In each of the 54 (fifty four) claims referred to in paragraph (1) above, the Commission*  
*orders that*
  - (a) The claimant or the property right holder, as the case may be, be given possession of the claimed property;*
  - (b) The respondent and any other person occupying the property vacate the same within 30 (thirty) days of the delivery of this order; and*
  - (c) 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.*
- (3) In each of the claims identified in the relevant columns of parts A and B of the attached Schedule, the Commission additionally decides that the claim be dismissed insofar as the claimant seeks 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, the above decisions and orders 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 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.)<sup>1</sup>

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<sup>1</sup> 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

5. The Commission held its twenty-fourth session from 5 to 7 September 2011 in Prishtinë/Pristina. A total of 2,499 agricultural property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-fourth session, together with supporting documentation, claims processing reports, verification reports, and other relevant information. Two agricultural property claims which had been presented to the Commission were referred by the Commission back to the Executive Secretariat for further verification and thirty four claims were withdrawn by the Executive Secretariat during the session. The Commission suspended the consideration of three claims pending the holding of an oral hearing. In sum, a total of 2,460 agricultural 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. Claims covered by the present decision*

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 agricultural properties, including agricultural land, pasture and forests.

8. The present decision applies to the 54 claims identified in the attached Schedule. The remaining 2,406 claims for agricultural property dealt with by the Commission during the session are covered by two other decisions, namely decision KPCC/D/A/119/2011 and decision KPCC/D/A/120/2011.

9. A total of 47 of the 54 claims covered by the present decision have not previously been considered by the Commission, while seven claims (Claim Nos. 11400, 24006, 24007, 24015, 24018, 53828 and 53831) were the subject of an earlier Commission decision. However the earlier decisions in these claims were overturned by the Commission on account of an incorrect notification of the claimed property during claims processing by the Executive Secretariat or on account of other processing errors by the Executive Secretariat which were identified after the decision had been taken. These claims consequently stand to be re-determined following correct notification of the claimed property. The Executive Secretariat has written to the claimant advising him of the notification error and informing him that the claim will be re-determined following correct notification of the claimed property. The claimants, as well as the relevant cadastral authority, have been advised that the previous Commission decisions are invalid and cannot be used for the purposes of any legal transaction.

10. 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

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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.

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

11. All 54 claims covered by the present decision are contested in the sense that the party or parties 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.

*1. Contested claims – simple defense*

12. In the 39 claims identified in part A of the Schedule attached to the present decision, the party occupying the claimed property, or a party that has expressed a legal interest in such property (the "Respondent"), has either not submitted any legally valid defence in response to the claim or has merely claimed to have the claimant's permission to use the property, without providing any evidence in support of the allegation. In the absence of any valid defense on the part of the respondents, the Commission finds that the claims stand to be granted.

13. In Claim No. 06054 the Respondent claims no legal right to the claimed property but asserts that he is using it with the Claimant's consent and permission. The Respondent has not submitted any evidence in support of his assertion, and the Claimant denies that he ever granted any permission.

14. In Claim No. 06057, which is filed by the same Claimant as Claim No. 06054, a different Respondent alleges that he has the Claimant's permission to use the claimed property and that he has paid rent to the Claimant. The Respondent has not submitted any evidence in support of his assertion, and the Claimant denies that he ever granted any permission or received any rent payments.

15. In Claim No. 17653 the Claimant states that his now deceased father and the Respondent used to cultivate and farm the land jointly before 1999. When the Claimant's family left Kosovo as a result of the conflict in 1999, the Claimant requested the Respondent to pay rent for the use of the claimed property, however, the Respondent refused to do so. Therefore, any permission that the Respondent may have had to use the claimed property must be considered to have ceased since 1999.

16. In Claim Nos. 13194, 13305, 13306 and 13307 the Respondent asserts that he has permission from the Claimant to use the claimed properties. The Claimant denies that he ever provided any permission. The Respondent subsequently submitted a statement confirming that he no longer uses the claimed properties but wishes to purchase parts of them.

17. In Claim No. 21778 the Respondent initially claimed a legal right to the claimed property, but did not submit any evidence in support of his assertion. He subsequently refused to participate in the proceedings.

18. In Claim No. 21817 the Respondent initially claimed a legal right to the claimed property, but subsequently confirmed that he does not claim any right but is interested in purchasing the claimed parcel.

19. In Claim No. 27188 the Respondent asserts that he has a verbal permission from the Claimant to use the claimed property but has not submitted any supporting evidence. The Claimant denies that he ever provided any permission.

20. In Claim No. 27531 the Respondent asserts that he has a verbal permission from the Claimant to use the claimed property but has not submitted any supporting evidence. The Claimant denies that he ever provided any permission.

21. In Claim No. 27568 the Respondent asserts that the claimed property belongs to his father, but failed to provide any evidence in support of his assertion. The Respondent's son subsequently confirmed that the Respondent has no documents to submit.

22. In Claim Nos. 35611, 35616, 35622 and 35623 the Respondent states he uses the claimed properties with the permission of the Claimant. The Claimant acknowledges that he granted the Respondent a temporary verbal permission to use the properties, however, the permission has not been extended.

23. In Claim Nos. 48123 and 48125 the Respondent alleges that he has permission from the Claimant to use the claimed property. The Claimant confirms that he had granted a verbal permission to the Respondent, but that the permission has now been terminated. The Claimant seeks confirmation of ownership and an eviction order.

24. In Claim No. 53821 and 52823 the Respondent asserts that he has a permission from the Claimant to use the claimed property but has not submitted any supporting evidence. The Claimant denies that he ever provided any permission.

25. In Claim Nos. 06660, 06663, 07886, 13498, 13499, 19013, 25736, 30557, 44898, 48954, 48955, 48959, 48960, 49048, 53828, 53831, 90403, 90404 and 91196 the claims were initially wrongly notified and responded to by the Respondent. When the claims were re-notified the actually claimed properties were found un-occupied. However, the Respondent did not withdraw their defenses although the claims concerned relate to different properties and not to those initially notified.

26. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in the claims identified in part A of the attached Schedule:

- (a) the property right holder has an ownership right in respect of the claimed properties;
- (b) neither the claimant or the property right holder are now able to exercise the ownership right over the property; and
- (c) 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.

27. Accordingly, since the Claimants in each of the claims identified in part A of the attached Schedule have proven their ownership right over the claimed property, and in the absence of any valid defence on the part of the Respondents, all of these claims stand to be granted.

## 2. *Contested Claims – Other*

28. In the 15 claims identified in part B of the Schedule attached to the present decision, the party occupying the claimed property, or a party that has expressed a legal interest in such property (the “Respondent”), has contested the validity of the claim, however, the Commission has reached the conclusion that the claims stand to be granted for the reasons set out below.

### *a. Claim No. 00081*

29. In Claim No. 00081 the Claimant submitted the claim in her capacity as the property right holder. She is seeking confirmation of ownership and repossession of the claimed property, including the building that has been built illegally on the claimed property after the Claimant lost possession. The Claimant submitted various documents in support of her claim, including a purchase contract dated 28 December 1965, possession list No. 786 dated 8 August 2005 and a certificate for immovable property rights dated 18 May 2005. The possession list and the certificate for immovable property rights show the Claimant as the property right holder. The Executive Secretariat verified both documents as being genuine.

30. The Respondent claims that his family used to own the claimed property but that it was expropriated from his grandfather in 1944. He submitted documents that show the transfer of the claimed properties to a third party on 18 February 1941. However, the Respondent has failed to establish any family relationship with such third party or to provide any other proof in support of his property right.

### *b. Claim Nos. 00661 and 00662*

31. In Claim Nos. 00661 and 00662 the Claimant lodged the claims in his capacity of the property right holder. The Executive Secretariat has confirmed that the Claimant is registered as the co-owner of the claimed properties in the cadastre records. The Commission is satisfied that the Claimant is co-owner of the claimed property and lost possession of the property as a result of the conflict.

32. The Respondents claim that the claimed properties were expropriated from their family in the 1940s, after the end of the Second World War. The Commission has no jurisdiction to assess the validity of the Respondents’ defense, and in any event it is undisputed that the Claimant has established a valid claim under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

### *c. Claim Nos. 00899*

33. In Claim No. 00899 the Claimant submitted the claim in her capacity as the property right holder. She submitted in support of her claim a possession list No. 356 dated 2006, listing her as the property right holder of the claimed property.

34. The Respondent asserts that his now deceased father bought the claimed property from another person named “Miljo” in 1991 or 1992. The Respondent states that he lost all documents related to the sale during the conflict apart from a copy of an uncertified possession list from 1985 listing a third party as the property right holder.

35. The Executive Secretariat has verified the more recent possession list submitted by the Claimant as being genuine. This document shows that the Claimant is the current property right holder.

*d. Claim Nos. 11399, 11400 and 11401*

36. In Claim Nos. 11399, 11400 and 11401 the Claimant filed the claims in her capacity as the property right holder, namely co-owner. The Claimant maintains that she left Kosovo in 1995 and moved to New Zealand where she is still residing today. Her brother who is the co-owner was using the claimed property until 1999 when he left Kosovo as a result of the conflict. The Claimant submitted various documents in support of her claim, including an inheritance decision dated 2 October 1994, a contract on gift dated 19 August 1994 and a certificate of immovable property rights dated 30 October 2007. These documents show the Claimant as being the property right holder and have been verified by the Executive Secretariat to be genuine.

37. The Respondent alleges that the brother of the Claimant authorized their aunt Olivera Dimitrijevic to sell his ideal part of one half of the claimed property on 18 September 2000. Olivera Dimitrijevic then on 27 October 2000 authorized Nikola Aslimovski to sell the ideal part of one half of the claimed property, and the latter entered into a sales contract with the Respondent on behalf of the Claimant's brother. The Claimant's brother revoked his authorization of Olivera Dimitrijevic on 28 May 2001.

38. On 15 December 2010 the Municipal Court of Pristina declared the purchase contract concluded between the Respondent and Nikola Aslimovski on behalf of the Claimant's brother null and void on the grounds that Nikola Aslimovski had acted without authorization. According to the Court, Olivera Dimitrijevic had no mandate to authorize Nikola Aslimovski to sell the claimed property on behalf of the Claimant's brother and therefore exceeded her authority. The Court also found that the fact that the Respondent had paid the full purchase price was irrelevant since neither the Claimant nor her brother had received the money.

*e. Claim Nos. 24006, 24007, 24009, 24011, 24012, 24014, 24015 and 24018*

39. The Claimant submitted the claims in his capacity of a family household member of the alleged property right holder, namely his father. He is seeking confirmation of ownership, repossession and compensation for physical damage to the property. In support of his claim he submitted possession list No. 49 dated 30 September 1997 and possession list No. 39 dated 30 September 2007. Both documents show the father of the Claimant as the property right holder of the claimed properties, and both have been verified by the Executive Secretariat to be genuine.

40. The Respondent maintains that his father was the owner of the claimed properties until they were expropriated from him in the 1940s when he was expelled to Albania. The Commission has no jurisdiction to assess the validity of defense, and in any event it is undisputed that the Claimant has established a valid claim under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

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41. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in the claims identified in part B of the attached Schedule:

- (a) the property right holder has an ownership right in respect of the claimed properties;
- (b) neither the claimant or the property right holder are now able to exercise the ownership right over the property; and
- (c) 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.

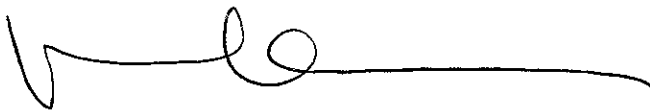
42. Accordingly, since the Claimants in each of the claims identified in part B of the attached Schedule have proven their ownership right over the claimed property, and in the absence of any valid defence on the part of the Respondents, all of these claims stand to be granted.

43. The Commission notes that in some of the claims covered by the present decision the claimants seek compensation for damage to, or loss of use of, the claimed properties. Under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the Commission has no jurisdiction over compensation claims. Accordingly the claims for compensation of loss of use must be dismissed.

*B. Concluding remarks*

44. 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.

45. 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-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

KPA13306	KPA13307	KPA06057	KPA06054	KPA07886	KPA17653	KPA21817
KPA27188	KPA27531	KPA28568	KPA35611	KPA35616	KPA35622	KPA35623
KPA48125	KPA49048	KPA91196	KPA13498	KPA13499	KPA25736	KPA48955
KPA53828	KPA53831	KPA06660	KPA06663	KPA21778	KPA13194	KPA13305
KPA19013	KPA30557	KPA44898	KPA48954	KPA48959	KPA48960	KPA90403
KPA90404	KPA53821	KPA53823	KPA48123			

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

KPA00081	KPA24006	KPA24007	KPA24009	KPA24011	KPA24012	KPA24014
KPA24015	KPA24018	KPA11399	KPA11400	KPA11401	KPA00661	KPA00662
KPA00899						