



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/187/2013
DECISION DATE: 13/02/2013

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) In each of the 34 (thirty-four) claims identified in parts A and B of the attached Schedule, the Commission

decides that

The claimant or the property right holder, as the case may be, has established ownership over the claimed property, or such part thereof as specified in the respective individual decision;

(2) In each of the 34 (thirty-four) claims referred to in paragraph (1) above, except for Claim Nos. 47126 and 52144, 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 unlawfully 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 unlawfully 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 column of the attached Schedule, the Commission additionally decides that the claims be dismissed insofar as the claimants seek 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.)¹

¹There 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

5. The Commission held its thirty-third session from 11 to 13 February 2013 in Prishtinë/Pristina. A total of 690 agricultural property claims were submitted by the Executive Secretariat of the KPA (the “Executive Secretariat”) to the Commission at its thirty-third session, together with supporting documentation, claims processing reports, verification reports, and other relevant information. One agricultural property claim which had been presented to the Commission was withdrawn by the Executive Secretariat during the session. The Commission suspended the consideration of nine agricultural property claims pending the holding of an oral hearing. In addition, the Commission resolved ten claims which had previously been suspended pending the holding of an oral hearing. In sum, a total of 690 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 34 claims identified in the attached Schedule. Of these 34 claims, Claim Nos. 06160, 06174, 06176, 06178, 06179, 06181, 06182, 06184 and 06186 were subject of an earlier Commission decision.² 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 properties. The Executive Secretariat has written to the claimants advising the claimants of the notification error and informing the claimants that the claims 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. The remaining 656 claims for agricultural property dealt with by the Commission during the session are covered by two other decisions, namely decision KPCC/D/A/186/2012 and decision KPCC/D/A/188/2012.

9. All 34 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.

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.

² Claim No. 06160 was decided by KPCC/D/A/36/2009 dated 23 April 2009, Claim Nos. 06174, 06179, 06181, 06182 and 06184 were decided by KPCC/D/A/5/2007 dated 19 December 2007, Claim No. 06176 was decided by KPCC/D/A/2/2007 dated 11 March 2007, Claim No. 06178 was decided by KPCC/D/A/3/2007 dated 7 November 2007 and Claim No. 06186 was decided by KPCC/D/A/13/2008 dated 30 April 2008.

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 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.

1. Contested claims – simple defence

11. In the four claims identified in part A of the attached Schedule, 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 defence on the part of the respondents, the Commission finds that the claims stand to be granted.

a. Claim Nos. 11742, 47126 and 52144

12. Claim No. 11742 has been filed by the Claimant in his capacity as a family household member of the property right holder, namely his mother. Claim Nos. 47126 and 52144 have been filed by the Claimant in his capacity as a family household member of the property right holder, namely his deceased father. In support of the claims, the Claimant in Claim No. 11742 and the Claimant in Claim Nos. 47126 and 52144 submitted each a possession list identifying the respective alleged property right holder as owner of the respective claimed property. Both possession lists have been positively verified by the Executive Secretariat.

13. The Respondent in Claim No. 11742 and the Respondent in Claim Nos. 47126 and 52144 assert having legal rights over the respective claimed property, but have failed to submit any evidence in support of their assertions.

14. Based on the evidence before it, and in the absence of any valid defense by the Respondents, the Commission finds that the claims stand to be granted.

b. Claim No. 90133

15. Claim No. 90133 has been filed by the Claimant in his capacity as a family household member of the property right holder, namely his deceased father. The Claimant seeks confirmation of ownership and repossession of the claimed property. In support of his claim, the Claimant submitted a possession list from 2002 identifying the alleged property right holder as owner of the claimed property. The possession list has been verified positively by the Executive Secretariat.

16. The Respondent initially asserted that the Claimant had conferred him with permission to use the claimed property, however, he subsequently admitted that he had never been authorized to use the claimed property.

17. In light of the above, and based on the evidence before it, the Commission finds that the claim stands to be granted.

2. Contested claims – other

18. In the 30 claims identified in part B of the attached Schedule, the party or the 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, however, the

Commission has reached the conclusion that the claims stand to be granted for the reasons set out below.

a. *Claim Nos. 06160, 06174, 06176, 06178, 06179, 06181, 06182, 06184 and 06186*

19. Claim Nos. 06160, 06174, 06176, 06178, 06179, 06181, 06182, 06184 and 06186 have been filed by the Claimant in his capacity as a family household member of the property right holder, namely his father. In support of his claims, the Claimant submitted a possession list from 2001 identifying the alleged property right holder as the rightful owner of the claimed properties. The possession list has been positively verified by the Executive Secretariat.

20. The Respondent claims to have legal rights over the claimed properties. The Respondent states that his family owned the claimed properties until 1929 when they were confiscated by the state authorities. In support of his assertion, the Respondent submitted as evidence a purchase contract from 1929 which is however unreadable. The Commission does not consider that this is sufficient evidence to rebut the Claimant's claim.

21. Based on the evidence before it, and in the absence of a valid defense by the Respondent, the Commission finds that the claims stand to be granted in the name of the property right holder.

b. *Claim Nos. 21465, 21466, 21467, 21468, 29895, 29896, 29897 and 29898*

22. Claim Nos. 21465, 21466, 21467, 21468, 29895, 29896, 29897 and 29898 have been filed by the Claimant in his capacity as a family household member of the property right holder, namely his deceased father. The Claimant seeks confirmation of co-ownership and repossession over the claimed properties. In support of his claims, the Claimant submitted a positively verified possession list from 2000 identifying the alleged property right holder as owner of the claimed properties. In further support, the Claimant submitted an inheritance decision from 2003 according to which the Claimant inherited the claimed properties from his father. The inheritance decision has been positively verified by the Executive Secretariat.

23. The Respondent claims legal rights over the claimed properties stating that he purchased the claimed properties in 2001 from the alleged property right holder. However, the Respondent did not submit any evidence in support of his assertion. When contacted by the Executive Secretariat, the Respondent stated that he had already submitted the relevant documentary evidence to the KPA Regional Office, however, he then asserted that these documents were destroyed when his house burnt down a few years ago.

24. The Executive Secretariat located *ex officio* an updated certificate for the immoveable property rights from 2008 listing the claimed properties in the name of the Respondent. However, when contacted by the Executive Secretariat, the competent verification officer could not explain on what basis the changes in the cadastral records had been made. The verification officer could only confirm the existence of a purchase contract concluded between the Claimant, represented by a third person on the basis of a power of attorney as seller, and the Respondent as buyer, however, the purchase contract related to properties other than the claimed properties.

25. When contacted by the Executive Secretariat the Claimant confirmed that he had sold, through the aforementioned third party as his representative on the basis of a valid power of attorney, certain properties to the Respondent, but explicitly denied that the claimed

properties were included in these transactions. According to the Claimant, the power of attorney could have been misused for the purpose of transferring the claimed properties into the name of the Respondent. However, the Claimant subsequently admitted that there had been an oral agreement between him and the Respondent, and that he had already received an advance payment from the Respondent for the claimed properties. However, as he had only received a small part of the agreed sales price, the Claimant did not consider such an oral agreement to be legally valid.

26. During its 32th session held in December 2012, the Commission ordered that an oral hearing be held in this claim by one of its members pursuant to section 5.4 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. The Claimant, the Respondent and two witnesses proposed by the Respondent, namely the Respondent's brothers Beshkim and Besim Nuha, were invited to attend the hearing. Only the Claimant attended the hearing held on 15 January 2013 in the KPA premises in Prishtinë/Priština. The Respondent, who had been duly summoned, explained his non-appearance by stating that he was in Austria until May 2013. As to the witnesses, the Respondent, who had received the invitations addressed to the witnesses at their common address, informed the Executive Secretariat that his brothers would not be able to attend as they currently lived in Austria.

27. At the hearing, the Claimant initially repeated his previous statement that he had only sold certain other properties but not the claimed properties to the Respondent. He explicitly denied having authorized any third party to sell the claimed properties to the Respondent. In support of his statement, the Claimant submitted *inter alia* an uncertified purchase contract from April 2001 which showed that the Claimant had sold certain other land parcels to the Respondent, as well as a receipt of payment of the purchase price from April 2001 for these land parcels. The Claimant also stated that certain land parcels which he had sold to another third party were also wrongly listed in the name of the Respondent in the respective cadastral records, and that therefore the respective cadastre records listed erroneously numerous land parcels including the claimed properties in the name of the Respondent.

28. The Commission finds the statement of the Claimant made during the oral hearing that he did not sell the claimed properties to the Respondent to be detailed and credible and consistent with the Claimant's previous statement to the KPA. The Commission notes further the statement by the competent verification officer that no documents have been found to clarify the basis on which the claimed properties were registered in the name of the Respondent. The Respondent himself could not submit any evidence in this regard either and failed to rebut the Claimant's detailed and elaborate statements. The Commission further notes that the Respondent's statements were inconsistent in that he initially explained that he had submitted all documentary evidence to the KPA but subsequently explained that all the relevant documents had burnt. The Commission finds that, in the circumstances, the certificate for the immovable property rights from 2008 listing the Respondent as the owner of the claimed properties cannot not be taken into consideration for purposes of the present decision.

29. Based on the evidence before it and in the absence of a valid defense by the Respondent, the Commission finds that the claims stand to be granted in the name of the property right holder.

c. Claim Nos. 27691 and 44771

30. Claim No. 27691 has been filed by the Claimant Dragan Seslija in his capacity as a family household member of the alleged property right holder, namely his spouse, Leposava Seslija. Claim No. 44771 has been filed by the Claimant Milutin Nikola Seslija in

his capacity as a family household member of the alleged property right holder, namely his brother Dragan Seslija, the Claimant in Claim No. 27691. Both claims relate to the same property. During the processing of the claim Dragan Seslija's wife Leposava Seslija informed the Executive Secretariat that Dragan Seslija had passed away, and that she had inherited the claimed property from her husband. Leposava Seslija requested that the KPA confirm ownership of the claimed property in her name. She subsequently submitted an inheritance decision from 2011 issued by the Municipal Court of Ferizaj/Uroševac according to which she inherited the claimed property from her husband, and a certificate for the immovable property rights from 2011 listing the claimed property in her name. Both documents have been positively verified by the Executive Secretariat. The Claimants Dragan Seslija and Milutin Nikola Seslija submitted further a court decision from 1999 issued by the Municipal Court of Ferizaj/Uroševac according to which the socially owned enterprise "DP Poloprivredno Dobro" was ordered to return possession of the claimed property to Dragan Seslija whose ownership of the claimed property was also confirmed by the aforementioned decision. In further support of the claim, Dragan Seslija and Milutin Nikola Seslija submitted a possession list from 2003 listing Dragan Seslija as owner of the claimed property.

31. The Respondent states that he was renting the claimed property from the socially owned enterprise "KB Pasuria Shoqërore," the successor of the socially owned enterprise "DP Poloprivredno Dobro." In support of his allegation the Respondent submitted a contract on lease from 2002, concluded between the socially owned enterprise "KB Pasuria Shoqërore" and the Respondent regarding the claimed property for a period of five years. The Commission considers, however, that the lease contract cannot have any legal effect as the socially owned enterprise was not a lawful owner at the time of the conclusion of the agreement. This follows from the abovementioned court decision from 1999 pursuant to which the socially owned enterprise "DP Poloprivredno Dobro" was obliged to return the claimed property to Dragan Seslija.

32. Based on the evidence before it, and in the absence of a valid defense by the Respondent, the Commission finds that the claims stand to be granted in the name of Leposava Seslija.

d. Claim No. 38107

33. Claim No. 38107 has been filed by the Claimant in his capacity as the alleged property right holder. The Claimant seeks confirmation of ownership and repossession over the claimed property, which encompasses land parcel No. 235 with a surface of 21 are 44 m². In support of his claim the Claimant submitted a judgment from 1994 issued by the Municipal Court of Kursumlija. The judgment declared a purchase contract from 1967 concluded between the Claimant's father and the socially owned enterprise "Sloga" null and void and confirmed the ownership of the Claimant's father over the claimed property. The Claimant furthermore submitted a judgment from 1995 issued by the District Court of Prokuplje which upheld the judgment of the Municipal Court of Kursumlija. Both documents have been positively verified by the Executive Secretariat. The Claimant furthermore submitted a possession list from 2007 from the dislocated cadastre in Serbia, which lists the Claimant's father as owner of the claimed property, namely land parcel No. 235 with a surface of 21 are 44 m². The possession list has been positively verified by the Executive Secretariat. The Claimant also submitted an inheritance decision from 2002 according to which the Claimant inherited the claimed property from his father. Also the inheritance decision has been verified positively by the Executive Secretariat.

34. The Respondents, namely the Municipality of Podujevë/Podujevo and the football club "Besiana," claim legal rights over the claimed property stating that the claimed property

belonged to the Municipality and was allocated to the football club “Besiana” for a ten year period. In support of their assertion, the Respondents submitted a decision from 2001 by the Municipal Assembly of Podujevë/Podujevo as well as a contract on temporary use from 2002 concluded between the Municipality of Podujevë/Podujevo and the football club “Besiana.” According to these documents the football club “Besiana” was given a temporary use right over the claimed property for a ten year period. Both documents have been positively verified by the Executive Secretariat. The Executive Secretariat *ex officio* located in the Kosovo cadastre a certificate for the immoveable property rights from 2012 listing land parcel No. 235 in the name of the Municipality of Podujevë/Podujevo, however with a larger surface, namely 4 ha.

35. The Commission notes that the aforementioned certificate for the immoveable property rights from 2012 has not been updated in the name of the Claimant’s family on the basis of the positively verified decisions by the Municipal respectively District Court of Kursumlija on restituting the ownership of the claimed property to the Claimant’s family. It can therefore not be taken into consideration as proof of a property right of the Respondents. The Commission considers further that the contract on use and the decision by the Municipality Podujevë/Podujevo allegedly granting the Respondents a temporary use right cannot have any legal effect as the Municipal Assembly of Podujevë/Podujevo was not at the time of the conclusion of the agreement and issuance of the decision the lawful owner. This also follows from the abovementioned court decision from 1995 pursuant to which the socially owned enterprise “DP Poloprivredno Dobro” was obliged to return the claimed property to the Claimant’s family.

36. The Commission notes that, while the Claimant claims confirmation of ownership and repossession for parcel No. 235 with a surface of 21 are 44 m², the certificate for the immoveable property rights from 2012 lists land parcel 235 with a larger surface of 4 ha. The Commission furthermore notes that there is no discrepancy in the size of the claimed property in the various documents submitted by the Claimant as evidence, in the judgments from 1994 and 1995 and in particular the possession list from 2007 as updated in the dislocated cadastre, which is taken as the relevant cadastral data for the present decision.

37. Based on the evidence before it and in the absence of a valid defense by the Respondent, the Commission finds that the claim stands to be granted with the surface of 21 are 44 m².

e. Claim No. 38112

38. Claim No. 38112 has been filed by the Claimant in his capacity as the alleged property right holder. The Claimant seeks confirmation of ownership and repossession of land parcel No. 238/1 with a surface of 88 are 90 m². In support of his claim, the Claimant submitted a judgment from 1996 issued by the Municipal Court of Kursumlija. The judgment declared a sales contract from 1967 concluded between the Claimant’s grandmother as seller and the socially owned enterprise “Sloga” as purchaser null and void and confirmed the ownership of the Claimant’s grandmother over the claimed property. The Claimant also submitted a judgment from 1996 issued by the District Court of Prokuplje which upheld the judgment of the Municipal Court of Kursumlija. Both documents have been positively verified by the Executive Secretariat. The Claimant furthermore submitted an inheritance decision from 1996 according to which the Claimant’s mother inherited the claimed property from the Claimant’s grandmother, which has been positively verified by the Executive Secretariat, and a possession list from 2007 from the dislocated cadastre in Serbia which lists the Claimant’s mother as owner of the claimed property, namely land parcel no. 238/1 with a surface of 88 are 90 m². The possession list has been verified positively by the Executive Secretariat. The

Claimant also submitted an inheritance decision from 2002 according to which the Claimant inherited the claimed property from his mother. This inheritance decision has also been verified positively by the Executive Secretariat.

39. The Respondent, the socially owned enterprise "Perparimi," which is the successor of the socially owned enterprise "Sloga," claims legal rights over the claimed property. However, the Respondent did not submit any evidence in support of its assertion. The Executive Secretariat *ex officio* located a certificate for the immoveable property rights from 2008 from the Kosovo cadastre still listing the claimed property as socially owned property in the name of the "Agricultural Cooperative" of Podujevë/Podujevo.

40. The Commission considers that the aforementioned *ex officio* obtained certificate for the immoveable property rights dated 2008 from the Kosovo cadastre has not been updated in the name of the Claimant's family on basis of the positively verified judgment from 1996 issued by the District Court of Prokuplje which upheld the judgment of the Municipal Court of Kursumlija confirming the ownership right of the Claimant's family. It therefore cannot be taken into consideration as proof of a property right of the Respondent.

41. The Commission notes that, while the Claimant claims confirmation of ownership and repossession for parcel No. 238 with a surface of 88 are 90 m², whereas the certificate for the immoveable property rights from 2008 from the Kosovo Cadastre lists land parcel No. 238 with a surface of 59 are 24 m². The Commission however notes that the various documents submitted by the Claimant as evidence note the size of the claimed property as 88 are 90 m², in particular the judgments from 1996 and in particular the possession list from 2007 as obtained in the dislocated cadastre, which is taken as the relevant cadastral data for the present decision.

42. Based on the evidence before it and in the absence of a valid defense by the Respondent the Commission finds that the claim stands to be granted with the surface of 88 are 90 m².

f. Claim No. 48225

43. Claim No. 48225 has been filed by the Claimant in his capacity as a family household member of the alleged property right holder, namely his father. The Claimant seeks confirmation of ownership and repossession over the claimed parcel No. 550 with a total surface of 52 are 29 m². In support of his claim, the Claimant submitted a possession list from 2002 listing the alleged property right holder as owner of the claimed property. This possession list has been positively verified by the Executive Secretariat.

44. The Respondent claims legal rights over the claimed property. In support of his assertion, the Respondent submitted a statement from 2012 certified by the Municipal Court of Malishevë/Mališevo and signed by two witnesses. According to the statement, the Respondent purchased from the Claimant in 1976 one part of the claimed parcel consisting of 17 are.

45. When contacted by the Executive Secretariat, the Claimant admitted that the alleged property right holder indeed sold part of the claimed property, namely 17 are, to the Respondent in 1976.

46. Based on the evidence before it, the Commission finds that the claim stands to be granted in the name of the claimant with a total surface of 35 are 29 m². The remainder of the

claim stands to be refused since the property right holder was not the owner of this part of the claimed property immediately prior to or during the 1998-99 conflict.

g. Claim Nos. 51690, 51691, 51692, 51693, 51694, 51696 and 51697

47. Claim Nos. 51690, 51691, 51692, 51693, 51694, 51696 and 51697 have been filed by the Claimant in his capacity as a family household member of the alleged property right holder, namely his father Radosav Dumanovic. In support of his claims, the Claimant submitted an inheritance decision from 1961 issued by the Regional Court in Podujevë/Podujevo according to which Radosav Dumanovic inherited the claimed properties with an ideal part of 2/3 of the claimed properties. The Claimant also submitted a possession list from 2008 listing Radosav Dumanovic as co-owner of the claimed properties.

48. The Respondents claim legal rights to the claimed properties, however, the first Respondent and the second Respondent have claimed legal rights over properties other than the claimed properties as these were wrongly notified. Their defenses therefore do not relate to the claimed properties. The third Respondent, Sharif Halimi, asserts that he purchased in 1985 parts of the claimed properties from a third party, Bajram Bajra. In support of his assertion, the third Respondent only submitted a handwritten statement from him and his son. However, the Commission considers that a mere handwritten statement from a party with no further corroborative documentary evidence is not sufficient to prove a legal right to the claimed properties.

49. Based on the evidence before it, and in the absence of a valid defense by the Respondents, the Commission finds that the claims stand to be granted.

h. Claim No. 91514

50. Claim No. 91514 has been submitted by the Claimant in her capacity as the alleged property right holder. The Claimant seeks confirmation of ownership and repossession over land parcel Nos. 130 and 131. In support of her claim, the Claimant submitted a possession list from 2003 listing the claimed properties in the name of the Claimant's father. The Claimant furthermore submitted an inheritance decision from 2003 according to which the Claimant inherited the claimed properties from her father. Both documents have been verified positively by the Executive Secretariat.

51. The Commission notes that the Municipal Court of Mitrovicë/Mitrovica issued a judgment in 2005 deciding upon the division of the claimed properties and acknowledging the ownership of a third party Momir Stojic for a part of land parcel Nos. 130 and 131. The decision has been positively verified by the Executive Secretariat. The Executive Secretariat furthermore *ex officio* located a certificate for the immovable property rights from 2010 listing the Claimant's father as owner of land parcel Nos. 130/2 and 131/2, and Momir Stojic as owner of land parcels Nos. 130/1 and 131/1.

52. The Respondents claim legal rights over the claimed property. The first Respondent, Afrim Durmishi, submitted in support of his assertion a court certified purchase contract from 2009 concluded between Momir Stojic and Afrim Durmishi according to which Afrim Durmishi acquired land parcel Nos. 130/1 and 131/1. The purchase contract has been positively verified by the Executive Secretariat. The second Respondent, Abit Avdiu, submitted in support of his assertion a purchase contract from 2009, which, however, does not relate to the claimed property.

53. The Claimant's brother, when contacted by the Executive Secretariat after the Claimant's death in 2011, confirmed that the claimed properties were partially sold to the third party Momir Stojic. He furthermore agreed to process the claim with the land parcels as subdivided in accordance with the cadastre, namely for land parcel Nos. 130/2 and 131/2.

54. Based on the evidence before it and in the absence of a valid defense by the Respondents, the Commission finds that the claim stands to be granted for land parcel Nos. 130/2 and 131/2. The remainder of the claim stands to be dismissed since the property right holder disposed of these parts of the claimed parcels after the conflict.

55. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in the claims identified in parts A and B of the attached Schedule:

- (a) the claimant or the property right holder, as the case may be, had an ownership right in respect of the claimed property, or such part thereof as specified in the respective individual decision;
- (b) the claimant or the property right holder, as the case may be, in each case is not now able to exercise his or her ownership right or, as the case may be, use right; 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.

56. Accordingly, since the Claimants in each of the claims identified in parts A and B of the attached Schedule have proven their ownership 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.

57. In Claim Nos. 47126 and 52144, referred to in the respective column in the attached Schedule, the current occupant of the claimed property has been given an oral permission by the Claimant to use the claimed properties. In these circumstances, an order confirming the property right in favour of the property right holder stands to be granted without an eviction order or any other form of ancillary relief as set out above.

B. Compensation claims

58. 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 these claims must be dismissed.

C. Concluding remarks

59. 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.

60. 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.

61. 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.

The Supreme Court of Kosovo may levy court fees for the appeal procedures.

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

KPA11742	KPA47126	KPA52144	KPA90133			
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Spreadsheet /Lista /Prilog
Part B/Pjesa B/Deo B

KPA48225	KPA51690	KPA51691	KPA51692	KPA51693	KPA51694	KPA51696
KPA51697	KPA06160 REP	KPA06174 REP	KPA06178 REP	KPA06179 REP	KPA06181 REP	KPA06182 REP
KPA06184 REP	KPA06186 REP	KPA27691	KPA44771	KPA91514	KPA06176 REP	KPA38107
KPA38112	KPA21465	KPA21466	KPA21467	KPA21468	KPA29895	KPA29896
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