



Kosovo Property Claims Commission  
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Komisija Kosovske Agencijeza Imovinu

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## DECISION

PANEL NO:1

DECISION NO.:KPC/D/A/114/2011

DECISION DATE: 22/06/2011

Commissioners Heiskanen (Chairperson),  
Vokshi and Wühler

## ORDER

*(1) In each of the twenty claims identified in part A, 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 five claims identified in part B of the attached Schedule, the Commission decides that the claim be dismissed;*

*(3) In each of the twenty claims identified in part A referred to 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) Any person occupying the property vacate the same within 30 (thirty) days of the delivery of this order; and*

*(c) Should the any person occupying the property fail to comply with the order to vacate within the time stated, they be evicted from the property;*

*(4) In each of the claims identified in the relevant columns in part A 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;*

- (5) *In cases in which there is more than one owner, the above decisions and order 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 or the property right holder, as the case may be, 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>

5. The Commission held its twenty-third session from 20 to 22 June 2011 in Prishtinë/Pristina. A total of 2,548 agricultural property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-third session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information.

6. At the Commission's twenty-third session, the Executive Secretariat presented the claims to the Commission and reported on the processing of and the legal and evidentiary issues raised by the claims. At the Commission's request, the Executive Secretariat provided additional information and explanations, as required.

#### *A. Ownership claims*

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 deals with the 25 agricultural property claims which are listed in parts A and B of the attached Schedule. 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, a total of five agricultural claims were referred by the Commission back to the Executive Secretariat for additional review and verification, and three claims were withdrawn by the Executive Secretariat during the session. These claims, which are listed in Part C ("Claims referred back") of the Schedule attached to this decision will be considered by the Commission in due course. The Commission suspended the consideration of one claim pending the holding of an oral hearing. The remaining 2,517 claims for agricultural property dealt with by the Commission during the session are covered by two other decisions, namely decision KPCC/D/A/112/2011 and decision KPCC/D/A/113/2011.

9. A total of 21 of the 25 claims covered by the present decision had not previously been considered by the Commission, while four of the claims were the subject of an earlier Commission decision. However the earlier decisions in these claims had been overturned by the Commission on account of an incorrect notification of the claimed properties during claims processing by the Executive Secretariat. These claims consequently stand to be re-determined following correct notification of the claimed property and taking into account the information provided by any respondents to the claim or any current occupants of the properties. In the claims in which previous decisions have been overturned by the Commission, the Executive

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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 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.

Secretariat has written to each claimant advising them of the notification error and informing them that their claims will be re-determined following correct notification of the claimed property. The claimants, as well as the relevant cadastral authorities, have been advised that the previous Commission decisions are invalid and cannot be used for the purposes of any legal transaction.

10. All claims covered by the present decision are contested in the sense that the party 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. Pursuant to section 10 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, each of the Respondents has been provided with a copy of the claim submitted by the respective Claimant. In accordance with section 3.5 of Annex II to UNMIK/AD/2007/5 as adopted by Law No. 03/L-079, the Claimants have been provided with a copy of the documents submitted by the respective Respondent in response to the claim. Both parties in each case have thus been given an opportunity to comment on the information provided by the other party, and any such comment or information has been taken into account during claim processing and adjudication.

11. In the twenty claims listed in part A of the attached Schedule, the Commission notes that the claimants have submitted various types of documents in support of the ownership claims, including possession lists, purchase contracts, contracts on gift, contracts on division of property, inheritance decisions, court decisions recognizing ownership, contracts on long life care and certificates of immovable property rights. The Commission is satisfied that final court decisions and certificates of immovable property rights confirming an ownership interest indeed constitute proof of ownership. The other documents submitted by claimants, including possession lists and contracts involving property transactions create a rebuttable presumption of ownership. The documents have been verified as being valid by the Executive Secretariat, as relevant. Some claimants have also submitted additional supporting documents, including tax decisions, witness statements, copies of plans and cadastral decisions.

*1. Claim Nos. 23728, 23747, 23745, 27936, 54720, 54723, 54736 and 48541*

12. In Claim Nos. 23728, 23747, 23745, 27936, 54720, 54723 and 54736 the Claimants have submitted their claims in the capacity as a family household member of the property right holder, namely the children of the property right holder. In Claim No. 48541 the Claimant has filed the claim in his capacity of property right holder.

13. The respective Respondents are the current occupants of the properties. They signed a notice of participation but have not claimed a legal right over the property. However they all contend that the relevant Claimants or property right holders, as the case may be, have given them permission to use the properties. The Respondents were contacted by the Executive Secretariat and asked to provide evidence supporting their allegations, however they have failed to produce any such evidence.

14. The Claimants deny that they or the property right holders, as the case may be, have given the Respondents permission to use the claimed properties.

15. As the Claimants have proven their ownership of the claimed properties, or the ownership of the property right holders as the case may be, and in the absence of any valid defence on the part of the Respondents, the claims stand to be granted.

*2. Claim No. 16008*

16. In Claim No. 16008 the Claimant Nadezda Jovanovic has filed the claim in the capacity of a property right holder. The Claimant states that she is the owner of the claimed property based on possession list No.361 and contract on gift dated 1980 issued by her late mother Leposave-Savke. Both documents have been positively verified by the Executive Secretariat. The Claimant also asserts that the property is occupied against her consent, and that a residential construction has been erected on the property without her permission. Based on the notification of the claimed property by the Executive Secretariat, such a construction exists. The current occupant of the property, Luan Fazliu (the "Respondent"), alleges that sometime in 2000 he was contacted by an unknown person who presented himself as the owner of the claimed property. He concluded a purchase contract with this individual and alleges to have paid DM 2,000 deposit to him. No further payments have been made. The Respondent states that he later found out that the individual from whom he purchased the claimed property was not the owner of the property and alleges to be in contact with the Claimant through a lawyer to negotiate the purchase of the property.

17. When contacted by the Executive Secretariat again on 25 January 2011, the Respondent alleged that in 2000 he had been in contact with members of the Claimant's family in order to negotiate a purchase contract. However, no final written agreement has been reached between the parties.

18. When contacted again by the Executive Secretariat, the Claimant confirmed her original statement that she never, either personally or through a representative or family household member, has consented to the transfer of ownership of the property or permitted the Respondent the use of the property.

19. The Commission considers that the Respondent was aware when occupying the claimed property that the property did not belong to him, and that he had no permission to use the property. The Respondent therefore must also have understood that the erection of a residential property on the property was unlawful, and that he therefore has no right to the claimed property. Accordingly, the Claimant's claim stands to be granted and an eviction order issued as set out above.

*3. Claim Nos. 11646, 11647, 11648, 11651 and 11652 vs. 13823, 13824, 13825 and 13828*

20. Claim Nos. 13823, 13824, 13825 and 13828 are submitted by the same Claimant in respect of the same properties as those claimed by the Claimant in Claim Nos. 11646, 11647, 11648, 11651 and 11652, respectively. The Claimant in Claim Nos. 11646, 11647, 11648, 11651 and 11652 (the "First Claimant") submitted the claims in his capacity as a family household member, whereas the Claimant in Claims Nos. 13823, 13824, 13825 and 13828 (the "Second Claimant") lodged the claims in

his capacity of a property right holder. Both Claimants contest each other's property rights.

21. The Second Claimant submitted his claims initially in his capacity of family household member of his father Trajko Nikolic, the alleged the property right holder. After the filing of the claim, and pursuant to an inheritance procedure, the Claimant became the co-owner with his siblings with 1/5 of ideal part of the claimed property. In support of his allegation he submitted possession list No.138 in the name of his father and the inheritance decision dated 22 November 2010 which lists the Claimant as co-owner of the ideal part of 1/5 of the claimed property. Both documents were positively verified by the Executive Secretariat.

22. The First Claimant submitted his claims in his capacity of family household member of his father Serif Kurtisaj. The First Claimant alleges that the claimed properties belonged to his grandfather until 1938 when the ownership was awarded to the family of the Second Claimant by decision of the Supreme Court of Skopje. The First Claimant also contends that during 1990 the Nikolic family forced the family of the First Claimant to purchase the property back, however, the First Claimant failed to produce any evidence in support of the alleged transaction.

23. The Second Claimant asserted that he lost possession of the claimed properties as a result of conflict, while the First Claimant alleges that his grandfather lost possession in 1938 and only re-possessed the property after the conflict in 1999. The Secretariat has verified the inheritance decision in the name of the Second Claimant *ex officio* listing him as the co-owner of an ideal part of 1/5 of the claimed properties together with his brothers and found it being valid.

24. The Commission is satisfied that the Second Claimant has demonstrated that he is the co-owner of the ideal part of 1/5 of the disputed properties, and that he is not able to exercise his property right due to circumstances originating from the 1998-99 conflict. Consequently, the claims submitted by the Second Claimant stand to be granted.

25. As to the claims submitted by the First Claimant, it is apparent that his alleged loss is unrelated to the 1998-99 conflict; indeed the First Claimant himself states that his grandfather lost possession in 1938. Accordingly the First Claimant's claims fall outside the jurisdiction of the Commission and stand to be dismissed.

#### 4. Claim Nos. 25513, 25514, 25515, 25516, 25517, 25518 and 90078

26. Claim Nos. 25513, 25514, 25515, 25516, 25517, 25518 and 90078 were initially filed by Miroslav Mihajlovic in his capacity of family household member of the property right holder, namely his father Bozidar Mihajlovic. During the claims process, on 16 April 2009, Miroslav Mihajlovic passed away and Bozidar Mihajlovic declared that his son Branislav Mihajlovic (the current "Claimant") would be acting on his behalf in his capacity as family household member.

27. The Claimant seeks confirmation of ownership right over and repossession of the claimed properties. The Claimant submitted possession list No. 438 dated 24 September 2001 listing the Claimant's father as owner of the claimed properties, a purchase contract dated 15 April 1994, allegedly concluded between the Claimant's father and Xhelal Halabaku with regard to the claimed properties, and a powerful

judgment rendered by the Municipal Court of Viti dated 14 September 2009 declaring null and void a purchase contract No. 329/02 concluded between the alleged authorized representative of the Claimant's father and Mr Halabaku. The Court found that the contract was concluded based on a forged POA. Furthermore, a cadastral decision has been issued by the Municipal Cadastre Office of Viti which granted the Claimant's father's request to register the claimed properties in his name, based on the Judgment of the Municipal Court of Viti .

28. The Respondent (Xhelal Halabaku) alleges that he purchased the claimed properties from the Claimant's father Bozidar Mihajlovic. The Respondent alleges that he purchased the claimed parcels in the presence of a lawyer and several witnesses. In support of his allegation the Respondent submitted a purchase contract dated 10 May 2002 between Afrim Halabaku as representative of the Claimant's father and the Respondent. This purchase contract was, however, declared null and void by the decision 185/2007 dated 14 September 2009 of the Municipal Court of Viti.

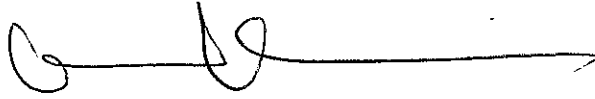
29. In light of the evidence submitted by the Claimant, the Commission concludes that the Claimant has established his ownership claim, and the Commission is also satisfied that the Claimant lost possession of the claimed property as a result of the armed conflict 1998-99 and the claims stand to be granted.

*B. Concluding remarks*

30. The Commission's above decisions 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.

31. Pursuant to section 8.5 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079, the Commission may in its decision determine any property right in the name of the property right holder and make an order for possession in favour of the claimant. When the property right holder is alive, the Commission grants the right of possession in the name of the property right holder. When the property right holder is deceased and the death is proven but no valid inheritance decision has been provided, the Commission grants possession to the claimant as a family household member of the property right holder. The right to possession is granted pursuant to the applicable provisions of the law governing family relations in Kosovo, which includes the administration of family property, as well as by reference to the applicable law on inheritance. The Commission's decision on the entitlement to possession by the family household member claimant is without prejudice to the rights of other family household members or heirs of the property right holder who have not filed claims with the KPA but who may have a joint right to possession pursuant to the applicable law or as a consequence of future inheritance proceedings (section 8.5 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079).

32. Section 8.8 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 allow the Chairperson of the Commission to sign a cover decision approving all individual claims identified in the cover decision, if the number of claims decided in a session is high. The Commission considers that this is appropriate in the present case.



Chairperson

#### APPEALS

UNMIK/REG/2006/50 and the Law No. 03/L-079 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.

Further information on the appeals procedure 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.**