



Kosovo Property Claims Commission  
Komisioni i Kërkesave Pronësore të Kosovës  
Komisija Kosovske Agencije za Imovinu

Perandori Justinian 5  
Pristina  
Tel: +381 (0) 38 249-918  
Fax: +381 (0) 38 249-919  
E-mail: mailbox@kpaonline.org

## DECISION

PANEL NO: 1

DECISION NO.: KPCC/D/A/179/2012  
DECISION DATE: 14/12/2012

Commissioners Heiskanen (Chairperson),  
Vokshi and Wühler

## ORDER

*(1) In each of the 31 (thirty-one) 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 Claim Nos. 53873 and 91787, referred to in part C of the attached Schedule, the Commission*

*decides that*

*The property right holder has established a use right over the claimed property, or such part thereof as specified in the respective individual decision;*

*(3) In each of the 33 (thirty-three) claims referred to in paragraph (1) and (2) above, except for Claim Nos. 13120 and 91342, 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;*
- (4) *In each of the claims identified in the relevant columns in parts A, B and C 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*
- (5) *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>

5. The Commission held its thirty-second session from 12 to 14 December 2012 in Prishtinë/Pristina. A total of 626 agricultural property claims were submitted by the Executive Secretariat of the KPA (the “Executive Secretariat”) to the Commission at its thirty-second session, together with supporting documentation, claims processing reports, verification reports, and other relevant information. A total of three agricultural property claims which had been presented to the Commission were withdrawn by the Executive Secretariat during the session. The Commission suspended the consideration of ten agricultural property claims pending the holding of an oral hearing. In addition, the Commission resolved four claims which had previously been suspended pending the holding of an oral hearing. In sum, a total of 617 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 33 claims identified in the attached Schedule. Claim No. 50227 was subject of an earlier Commission decision.<sup>2</sup> However the earlier decision in this claim was 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. This claim consequently stands to be re-determined following correct notification of the claimed properties. The Executive Secretariat has written to the claimant advising the claimant of the notification error and informing the claimant that the claim will be re-determined following correct notification of the claimed property. The claimant, as well as the relevant cadastral authority, has been advised that the previous Commission decision is invalid and cannot be used for the purposes of any legal transaction. The remaining 584 claims for agricultural property dealt with by the Commission during the session are covered by two other decisions, namely decision KPCC/D/A/178/2012 and decision KPCC/D/A/180/2012.

9. All 33 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

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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.

<sup>2</sup> Claim No. 50227 was decided by KPCC/D/A/42/2009 dated 11 June 2009.

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.

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 or, as the case may be, use 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 three 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 No. 39600*

12. Claim No. 39600 has been filed by the Claimant in his capacity as the property right holder of the claimed property. The Claimant seeks confirmation of ownership and repossession of the claimed property. In support of his claim, the Claimant submitted a possession list from 1978 which shows the claimed property in the name of the Claimant’s father, as well as a contract on division from 1985 according to which the Claimant acquired the claimed property from his father. The documents have been verified by the Executive Secretariat as being genuine.

13. The Respondent asserts having had permission, given orally by the Claimant, to use the claimed property. However, the Respondent has failed to provide any evidence to support his assertion.

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

*b. Claim No. 47869*

15. Claim No. 47869 has been filed by the Claimant in his capacity as a family household member of the property right holder, namely his deceased mother. The Executive Secretariat located *ex officio* a certificate of immovable property rights from 2008 according to which the alleged property right holder is the owner of the claimed property.

16. The Respondent asserts having purchased the claimed property in 1957. However, the Respondent has failed to submit any evidence to support this assertion.

17. Based on the evidence before it, and in absence of any valid defense by the Respondent, the Commission finds that the claim stands to be granted.

*c. Claim No. 49049*

18. Claim No. 49049 has been filed by the Claimant in his capacity as the property right holder. 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 listing the property right holder as owner of the claimed property. This possession list has been verified by the Executive Secretariat as being genuine.

19. When the claimed property was notified in July 2008, the Respondent, who was occupying the property at the time, alleged to have legal rights over it, but failed to submit any evidence to support his allegations. As the initial notification was incorrect, it had to be carried out again in August 2012, when the claimed property was found occupied by an unknown person who could not be identified by the Executive Secretariat.

20. 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*

21. In the 30 claims identified in parts B and C of the attached Schedule, 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, however, the Commission has reached the conclusion that the claims stand to be granted for the reasons set out below.

*a. Claim No. 06043*

22. Claim No. 06043 has been filed by the Claimant in his capacity as the property right holder of the claimed property. The Claimant seeks confirmation of co-ownership and repossession. In support of the claim, the Claimant submitted a possession list from 1988 listing the Claimant’s father as owner of the claimed property, as well as an inheritance decision from 1988 according to which the Claimant inherited the claimed property from his deceased father in co-ownership with 1/5 ideal parts. These documents have been positively verified by the Executive Secretariat as being genuine.

23. The Respondent claims to have legal rights over the claimed property and asserts that part of the claimed property was originally owned by his grandfather before World War II. According to the Respondent, however, his grandfather was forced to sell the claimed property due to pressure from the governing regime. The Respondent has not submitted any evidence to substantiate his assertion.

24. The Commission notes that it has no jurisdiction to consider the legality of acts of land nationalization or expropriation by previous regimes. Consequently, 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 in the name of the property right holder.

*b. Claim No. 08559*

25. Claim No. 08559 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 co-ownership over the claimed property. In support of the claim, the Claimant submitted numerous documents including a possession list from 2007 listing the

property right holder as co-owner of the claimed property. This possession list has been verified as being genuine by the Executive Secretariat.

26. The Respondent contests the claim, asserting that his brothers purchased the claimed property in 2001. In support of his assertion, the Respondent submitted various documents, including a contract on sale from 200, and a possession list from 2002. However, none of the documents offered by the Respondent relate to the claimed property.

27. 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.

*c. Claim No. 08710*

28. Claim No. 08710 has been filed by the Claimant in his capacity as the property right holder of the claimed property. In support of his claim, the Claimant submitted an inheritance decision from 2003, according to which the Claimant inherited the claimed property from his father. This decision has been verified as being genuine by the Executive Secretariat, which also located *ex officio* a certificate of immovable property rights from 2008 listing the Claimant as the owner of the claimed property.

29. The Respondent during the initial notification claimed to have legal rights over the claimed property, but admitted that he had no documents to support his allegations. As the first notification was incorrect, the notification was carried out again. During the second notification, the claimed property was found unoccupied.

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

*d. Claim No. 28039*

31. Claim No. 28039 has been filed by the Claimant in his capacity as a family household member of the alleged property right holder, namely his father Spasa Kuzman Jovanovic. In support of his claim, the Claimant submitted a possession list from 2007 listing the Claimant's grandfather as the sole owner of the claimed property. The Claimant also submitted a positively verified cadastral decision approving the request by Spasa Kuzman Jovanovic to update the cadastre on the basis of an inheritance decision from 2006. According to the inheritance decision, Spasa Kuzman Jovanovic inherited an ideal part of 1/5 of the claimed property from the Claimant's grandfather.

32. In 2012, the Executive Secretariat located *ex officio* a certificate for immovable property rights, listing the Claimant's uncle Cvetko Kuzman Jovanovic as sole owner of the claimed property. When contacted by the Executive Secretariat, the Claimant admitted that the claimed property, once the inheritance procedure had been concluded in 2006, was sold to a third party, Muharrem Ahmetaj. The latter then sold it to the Claimant's uncle Cvetko Kuzman Jovanovic in 2009. The Claimant subsequently submitted a power of attorney from 2012 given to him by Cvetko Kuzman Jovanovic, enabling him to process the claim in Cvetko Kuzman Jovanovic's name.

33. The Respondent claims legal rights over the claimed property asserting that the claimed property was originally owned by his family before World War II, however, they were subsequently forced to leave the claimed property due to pressure from the governing regime at the time. The Respondent has not submitted any evidence to substantiate his assertion.

34. The Commission notes that it has no jurisdiction to consider the legality of acts of land nationalization or expropriation by previous regimes. Consequently, based on the evidence before it and in absence of a valid defense by the Respondent, the Commission finds that the claim stands to be granted in the name of Cvetko Kuzman Jovanovic.

*e. Claim Nos. 35177, 35178, 92423, 92871, 92872, 92873, 92874, 92875, 92876, 92877, 92878, 92879, 92880, 92881, 92882, 92883, 92884, 92885, 92886 and 92887*

35. Claim Nos. 35177, 35178, 92423, 92871, 92872, 92873, 92874, 92875, 92876, 92877, 92878, 92879, 92880, 92881, 92882, 92883, 92884, 92885, 92886 and 92887 have been filed by the Claimant in his capacity as the property rights holder. The Claimant seeks confirmation of ownership and repossession. In support of his claims, the Claimant submitted two possession lists from 2008 which list the Claimant as owner of the claimed properties. The possession lists have been verified by the Executive Secretariat as being genuine.

36. The Respondents assert to have purchased the claimed properties from a third party, Xhemajl Kamberi. Mr Kamberi in turn had purchased the claimed properties in 2003 from the Claimant through Qasim Belija who allegedly had been given a power of attorney by the Claimant to sell the claimed properties. The power of attorney was allegedly certified by the basic court in Podgorice. The Claimant states that the power of attorney has been forged, and that he never sold the claimed properties. The Executive Secretariat located *ex officio* certificates for immovable property rights from 2012 listing the Respondents as owners of the respective claimed property.

37. The Commission notes that the aforementioned power of attorney could not be verified by the Executive Secretariat as it could not be found in the court archives of Podgorice, where it allegedly had been certified. In the circumstances, the Commission finds that it cannot rely on this document as evidence. It follows that Qasim Belija did not have a valid legal authority to sell the claimed property on behalf of the Claimant to Xhemajl Kamberi and, accordingly, the Claimant never lost ownership over the claimed property as a result of the 2003 transaction between Qasim Belija and Xhemajl Kamberi.

38. In these circumstances, and based on the evidence before it, the Commission finds that the claims stand to be granted.

39. The Commission notes that pursuant to Section 22.3 of UNMIK/Administrative Direction 2007/5 as amended by Law 03/L-079, the Executive Secretariat may, in coordination with the Chairperson of the Commission or the Presiding Judge of the Supreme Court panel respectively, delay the execution of an eviction order for a reasonable period of time when it considers that circumstances so warrant. The Executive Secretariat may consider exercising its authority in the present case, in order to allow an amicable resolution of the dispute.

*f. Claim No. 50227*

40. Claim No. 50227 has been submitted by the Claimant in his capacity as a family household member of the property right holder, namely his deceased father. In support of the claim, the Claimant submitted a possession list from 2008 listing the claimed property in the name of the property right holder. The possession list has been verified as being genuine by the Executive Secretariat.

41. The Respondent asserts to have legal rights over the claimed property, contending that the claimed property was unlawfully expropriated from his family in 1946. In support of his assertion, the Respondent submitted a possession list from 1929 listing the alleged ancestors of the Respondent as owners of a number of properties, including the claimed property. He also submitted two decisions from 1946 issued by the Commission on Verification of Allocation of Land to Colonists, which granted ownership to the Claimant's family over unspecified properties, including allegedly the claimed property.

42. The Commission notes that it has no jurisdiction to consider the legality of acts of land nationalization or expropriation by previous regimes. Consequently, 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 in the name of the property right holder.

*g. Claim Nos. 53873 and 91787*

43. Claim Nos. 53873 and 91787 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 ownership and repossession of an ideal part of 1/30 of the claimed properties. However, the Executive Secretariat located *ex officio* a certificate of immoveable property rights from 2003 which lists the property right holder as a use right holder with an ideal part of 4/120 of the claimed property. The Respondent's brother is also listed on the certificate as a use right holder of an ideal part of 60/120 of the claimed property.

44. The Respondent asserts that his brother purchased the claimed properties in 1996. In support of his defense, the Respondent submitted a purchase contract from 2001. However, the Commission notes that the purchase contract does not relate to the claimed properties.

45. Based on the evidence before it, and in the absence of a valid defence by the Respondent, the Commission finds that in these claims a use right stands to be granted over 1/30 ideal part of the claimed properties.

*h. Claim No. 55231*

46. Claim No. 55231 has originally been filed by the Claimant (the "First Claimant") in his capacity as the alleged property right holder. In Claim No. 90096 the Claimant (the "Second Claimant") filed a claim in her capacity as the alleged property right holder for the same property.

47. The First Claimant originally asserted to have purchased the claimed property from Miodrag Kostic in 1971 through an informal purchase contract. The Second Claimant originally claimed to have acquired the claimed property through a contract on gift in 2006 signed by Miodrag Kostic and the Second Claimant, with the latter being given numerous properties, including the claimed property. The First Claimant, when confronted with the allegations of the Second Claimant, stated that the claimed property was transferred to the Second Claimant by way of a mistake. Changing his previous submission the First Claimant asserted that his brother, Dragisa Kostic, is the rightful owner of the claimed property as his brother acquired the claimed property from the Second Claimant based on a contract on gift in 2010. The First Claimant also stated that he wanted to continue processing the claim in the name of his brother Dragisa Kostic. Subsequently, the Second Claimant also confirmed she had transferred the claimed property to Dragisa Kostic based on a contract on gift from 2010. The Executive Secretariat, upon final verification of the cadastral records in 2012, found the claimed property indeed registered in the name of Dragisa Kostic.



48. In light of above, the Commission finds that it has been sufficiently proven that Dragisa Kostic is the owner of the claimed property. Consequently, the claim stands to be granted in his name as the property right holder.

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49. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in the claims identified in parts A, B and C 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.

50. Accordingly, since the Claimants in each of the claims identified in parts A, B and C of the attached Schedule have proven their ownership or, as the case may be, use 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.

51. In Claim Nos. 13120 and 91342 referred to in the respective column in the attached Schedule, the current occupant of the claimed property is prima facie a lawful co-owner of the claimed property. 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.

### 3. *Compensation claims*

52. 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.

### B. *Concluding remarks*

53. 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.

54. 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.

55. 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

KPA39600
KPA47869
KPA49049

Spreadsheet /Lista /Prilog

Part B/Pjesa B/Deo B

KPA06043	KPA08559	KPA08710	KPA55231	KPA13120	KPA50227	KPA91342
KPA35177	KPA35178	KPA92423	KPA92871	KPA92872	KPA92873	KPA92874
KPA92875	KPA92876	KPA92877	KPA92878	KPA92879	KPA92880	KPA92881
KPA92882	KPA92883	KPA92884	KPA92885	KPA92886	KPA92887	KPA28039

Spreadsheet /Lista /Prilog

Part C/Pjesa C/Deo C

KPA53873
KPA91787