



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

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DECISION

PANEL NO: 1

DECISION NO.: KPCC/D/A/195/2013
DECISION DATE: 18/04/2013

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) In each of the 18 (eighteen) 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 18 (eighteen) claims referred to in paragraph (1) above, except for Claim Nos. 16491, 90130, 92863, 92864, 92865, 92866, 92867 and 92868, 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 columns in parts A and B 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-fourth session from 16 to 18 April 2013 in Prishtinë/Pristina. A total of 603 agricultural property claims were submitted by the Executive Secretariat of the KPA (the “Executive Secretariat”) to the Commission at its thirty-fourth 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, and two agricultural property claims referred back by the Commission. In addition, the Commission resolved nine claims which had previously been suspended pending the holding of an oral hearing. In sum, a total of 607 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 eighteen claims identified in the attached Schedule. Claim Nos. 15873, 15909 and 54896 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 them of the notification error and informing them that the claims will be re-determined following correct notification of the claimed properties. 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 589 claims for agricultural property dealt with by the Commission during the session are covered by two other decisions, namely decision KPCC/D/A/194/2013 and decision KPCC/D/A/196/2013.

9. All eighteen 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.

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

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 Nos. 15873 and 15909 were decided by the Commission’s decision KPCC/D/A/8/2008 dated 22 February 2008 and Claim No. 54896 was decided by the Commission’s decision KPCC/D/A/51/2009 dated 19 August 2009.

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 nine 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. 06670*

12. Claim No. 06670, has been originally filed by the Claimant in his capacity as the alleged property right holder. The Claimant seeks confirmation of an ownership right and repossession of the claimed property. In support of his claim, the Claimant submitted an inheritance decision from 2006 issued by a parallel court, pursuant to which he inherited the claimed properties in co-ownership from his deceased father. However, as the inheritance decision was issued by a parallel court, the Commission does not consider it as valid evidence of ownership. In further support of his claim, the Claimant submitted a possession list which however, does not identify the Claimant but the Claimant’s father as the owner of the claimed property. The possession list has been verified by the Executive Secretariat as being genuine. As the Claimant only submitted evidence in support of the ownership of his father, the claim has been processed by the Executive Secretariat as a claim submitted by the Claimant in his capacity as a family household member of the property right holder, namely his deceased father.

13. When the claimed property was initially notified, the Respondent, who was occupying the property at the time, alleged to have legal rights over it, asserting that the property belongs to his family based on a purchase contract concluded in 1959. The Respondent however failed to provide any evidence to support his assertion. As the initial notification was incorrect, it had to be carried out again in April 2012. The Executive Secretariat subsequently contacted the Respondent and requested from him to either submit a reply to the correctly notified property or to withdraw his previous reply to the claim. The Respondent did not respond to this request and refused to further cooperate with the Executive Secretariat.

14. 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.

b. *Claim No. 07813*

15. Claim No. 07813 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 and repossession of the claimed property. In support of his claim, the Claimant submitted an inheritance decision from 1996, according to which the property right holder inherited half of the claimed property and a possession list from 2007 listing the property right holder as a co-owner of the claimed property. Both documents have been verified by the Executive Secretariat as being genuine.

16. The Respondent asserts having had permission to use the claimed property. However, the Respondent has failed to provide any evidence to support his 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.13653

18. Claim No. 13653 has been filed by the Claimant in her capacity as a family household member of the property right holder, namely her spouse. The Claimant seeks confirmation of ownership and repossession of the claimed properties. In support of her claim, the Claimant submitted a possession list from 2002 identifying the property right holder as owner of the claimed properties. The possession list has been verified by the Executive Secretariat as being genuine.

19. When the claimed property was initially notified, 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 this allegation. As the initial notification was incorrect, it had to be carried out again and the claimed property was found in the course of the second notification unoccupied.

20. 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.

d. Claim Nos.15873 and 15909

21. Claim No. 15873 has been filed by the Claimant (the "First Claimant") in his capacity as the property right holder. The First Claimant seeks confirmation of a co-ownership right and repossession over the claimed property, land parcel Nos. 442 and 443. Claim No. 15909 has been filed by the Claimant (the "Second Claimant") in his capacity as the property right holder. The Second Claimant seeks confirmation of co-ownership right and repossession over the same land parcel No. 442. The Commission notes that the Second Claimant has already been granted a co-ownership right over land parcel No. 443 by the Commission's decision KPCC/D/A/186/2013 on 13/02/2013. In support of their claims, both Claimants submitted a possession list identifying them as co-owners with an ideal part of 1/3 over land parcel Nos. 442 and 443. The possession list has been verified by the Executive Secretariat as being genuine.

22. The Respondent asserts having had permission, given orally by the Claimants, to use the claimed property. However, this is denied by the Claimants, and the Respondent has failed to provide any evidence to support his assertion.

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

e. Claim No. 23052

24. Claim No. 23052 has been filed by the Claimant in her capacity as the property right holder. The Claimant seeks confirmation of co-ownership right and repossession of the claimed property. In support of her claim, the Claimant submitted an inheritance decision from 1985 and a possession list from 1999, identifying her as co-owner of the claimed property. Both documents have been verified by the Executive Secretariat as being genuine.

25. When the claimed property was notified in May 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 March 2010. During the second notification the claimed property was found unoccupied.

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

f. Claim Nos. 42042 and 42044

27. Claim Nos. 42042 and 42044 have been filed by the Claimant in his capacity as the property right holder. The Claimant seeks confirmation of co-ownership and repossession of the claimed properties, land parcel Nos. 318 and 319. In support of his claim, the Claimant submitted a possession list and certificate of immovable property rights identifying the claimed properties in the name of his father. The Executive Secretariat obtained *ex officio* an inheritance decision pursuant to which the Claimant inherited from his father an ideal part of 1/5 over land parcel No. 318/3, claimed in Claim No. 42042, and an ideal part of 1/5 over parcel Nos. 319/1, 319/6 and 319/7, claimed in Claim No. 42044. When contacted by the Executive Secretariat, the Claimant confirmed the validity of the inheritance decision, stating that the respective land parcel Nos. 318 and 319 had been sub-divided as parts of the claimed properties had been sold prior to the death of his father in 2007.

28. The Respondent claims to have legal rights over the claimed property. However, the Respondent has failed to provide any evidence to support his assertion.

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

g. Claim No. 50971

30. Claim No. 50971 has been filed by the Claimant in his capacity as a family household member of the property right holder, namely his brother. The Claimant seeks confirmation of ownership and repossession of the claimed property. In support of his claim, the Claimant submitted a possession list from 2001 identifying the claimed property in the name of the alleged property right holder. The possession list has been verified by the Executive Secretariat as being genuine.

31. The Respondent claims to have legal rights over the claimed property alleging that he purchased the claimed property in 1984 through an informal purchase contract. The Respondent however failed to provide any evidence to support his assertion. The Executive Secretariat subsequently contacted the Claimant, who denied the alleged sale of the claimed property to the Respondent or any third party.

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

2. Contested claims – other

33. In the nine claims identified in part B 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.54896

34. Claim No. 54896 has been filed by the Claimant Zivan Garic (the “First Claimant”) in his capacity as a family household member of the property right holder, namely his 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 2007, identifying the property right holder as the owner of the claimed property. The possession list has been positively verified by the Executive Secretariat as being genuine.

35. The Claimant Petkana Peric (the “Second Claimant”) has filed Claim No. 22874 for the same property, claiming ownership and repossession of the claimed property. The Second Claimant asserts that she acquired ownership over the claimed property through a contract on long life care concluded between her and her mother in 1998. The Executive Secretariat however was unable to verify the contract. The Executive Secretariat subsequently requested the Second Claimant to provide additional documents in order to prove her alleged property right. The Second Claimant however failed to provide any further evidence.

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

b. Claim Nos. 16491, 90130, 92863, 92864, 92865, 92866, 92867 and 92868

37. Claim Nos. 16491 and 90130 have been filed by the Claimant Mihajlo Stamenkovic as the alleged property right holder. Claim Nos. 92863, 92864, 92865, 92866, 92867 and 92868 have been filed by the same Claimant as a family household member of the property right holders, namely his three brothers. The claimed property in Claim Nos. 16491, 92863, 92864 and 92865 is comprised of land parcels Nos. 196/2 and 197/1, with the surface of 33 ares and 92 m², while the claimed property in Claim Nos. 90130, 92866, 92867 and 92868 is comprised of land parcels Nos. 197/3 and 197/6, with the a total surface of 29 ares and 75 m². The Claimant seeks in all claims confirmation of co-ownership and repossession. In support of the claims, the Claimant submitted *inter alia* an inheritance decision from 1994, issued by the Municipal Court in Prishtinë/Pristina. According to the inheritance decision, the Claimant together with his three brothers inherited the properties claimed in Claim Nos. 16491, 90130, 92863, 92864, 92865, 92866, 92867 and 92868 in co-ownership from their father, each of them with an ideal part of ¼ of the properties claimed. The inheritance decision has been verified by the Executive Secretariat as being genuine. The Executive Secretariat has also *ex officio* verified that the respective certificates for immovable property rights were updated and that they identify the Claimant and his three siblings as co-owners of the claimed properties.

38. The Respondent Selman Pajaziti (the “First Respondent”) challenges Claim Nos. 16491, 92863, 92864 and 92865, asserting that he purchased 10 ares of the claimed property in 1995 from Miroslav Stamenkovic based on an informal purchase contract with the latter. Miroslav Stamenkovic is the brother of the Claimant and one of the co-owners of the claimed properties according to the aforementioned inheritance decision. The First Respondent asserts that this transaction was undertaken in the presence of two witnesses, one of whom was named by the Respondent as Muharrem Ymeri.

39. The Respondent Halil Haziri (the “Second Respondent”) in Claim Nos. 90130, 92866, 92867 and 92868 alleges that he purchased part of the claimed property from Miroslav Stamenkovic. The Second Respondent’s son Ismet Haziri submitted in support of the

aforementioned allegation a handwritten informal preliminary contract from 2005 concluded between the son of the Second Respondent and Miroslav Stamenkovic. However, this contract does not specify the precise property covered by the contract.

40. The Claimant in his written statement acknowledged that his brother had sold part of the claimed properties to the Second Respondent, but that he was not aware of the details. However, when contacted by the Executive Secretariat, the Claimant changed his submission denying that the claimed properties had been sold.

41. During its 33rd session held on 13 February 2013, the Commission ordered that an oral hearing be held for these claims 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 Claimant's brother Miroslav Stamenkovic, the Respondents and the witness Muharrem Ymeri proposed by the First Respondent, were invited to attend the hearing. The hearing was held on 11 March 2013 in the KPA premises in Prishtinë/Priština. The Claimant however did not attend the hearing citing health reasons, and Miroslav Stamenkovic had in the meantime passed away as proven by his death certificate. The witness Muharrem Ymeri also failed to attend the hearing. Instead of the Second Respondent Halil Haziri, his son Ismet Haziri attended the hearing, together with his authorized representative Bejtush Isufi.

42. The First Respondent Selman Pajaziti stated that he purchased 10 ares of the property claimed in Claim Nos. 16491, 92863, 92864 and 92865 in 1995 from Miroslav Stamenkovic, and that the witness Muharrem Ymeri was present when he paid the amount of DM 5,000 to Miroslav Stamenkovic for the property. The First Respondent stated further that he remembers that the witness Muharrem Ymeri contacted Miroslav Stamenkovic who physically marked in execution of the informal purchase contract the respective 10 ares of the respective land parcel. The First Respondent further stated that in March 2001 he built a house on the purchased part of the claimed property.

43. Ismet Haziri, through his authorized representative, lawyer Bejtush Isufi, confirmed that a preliminary contract was concluded between Ismet Haziri and the seller Miroslav Stamenkovic, which was drafted by the authorized representative of Ismet Haziri, namely Bejtush Isufi. Ismet Haziri repeated his previous submission and explained that the purchased part of the claimed property is of the size of 4 ares and 75 m². He acknowledged that a proper division of the respective land parcel in execution of the aforementioned contract was never undertaken as this was the contractual obligation of the seller, Miroslav Stamenkovic. He further stated he has built a residential property on the purchased part of the claimed property.

44. The Commission finds that the statements of the Respondents during the oral hearing that they purchased parts of the claimed properties from the Claimant are credible and consistent with their previous statements to the KPA. The Commission further notes that the Claimant's statements were in part inconsistent and failed to rebut the detailed and elaborated statements of the Respondents. If the Claimant had indeed been the owner of the respective claimed properties, one would have expected him to take measures to protect his properties as both Respondents have built a residential property on the claimed properties.

45. In the light of the above and based on the evidence before it, the Commission finds that Claim Nos. 16491, 92863, 92864 and 92865 stand to be granted with the surface of 23 ares and 92 m² and Claim Nos. 90130, 92866, 92867 and 92868 stand to be granted with the surface of 25 ares. The remainder of the claims stands to be refused. The Commission notes however that the First Respondent Selman Pajaziti in Claim Nos. 16491, 92863, 92864 and 92865 and the Second Respondent Halil Haziri in Claim Nos. 90130, 92866, 92867 and

92868, referred to in the respective column in the attached Schedule, are *prima facie* the lawful co-owners of the respective claimed properties. In these circumstances, an order confirming the property right in favour of the respective property right holder in Claim Nos. 16491, 92863, 92864 and 92865 and in Claim Nos. 90130, 92866, 92867 and 92868 stands to be granted without an eviction order or any other form of ancillary relief as set out above.

46. 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.

47. 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, as set out above.

3. *Compensation claims*

48. 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*

49. 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.

50. 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.

51. 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

KPA07813	KPA15873 REP	KPA15909 REP	KPA13653	KPA42042	KPA42044	KPA23052
KPA50971	KPA06670					

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

KPA54896 REP	KPA16491	KPA90130	KPA92863	KPA92864	KPA92865	KPA92866
KPA92867	KPA92868					