



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/120/2011
DECISION DATE: 07/09/2011

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

- (1) In each of the three (3) claims referred to in part A of the attached Schedule, the Commission decides that the Claimant has established ownership over the claimed property as specified in the respective individual decision.*
- (2) In each of the three (3) claims referred to in paragraph 1 above, the Commission orders that
 - (a) The Claimant 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 any person occupying the property fail to comply with the order to vacate within the time stated, they be evicted from the property.**
- (3) In each of the eleven (11) claims identified in parts B and D of the attached Schedule, the Commission decides that the claim be dismissed.*
- (4) In each of the seventy (70) claims identified in parts C and E of the attached Schedule, the Commission decides that the claim be refused.*

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.)¹

¹ 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.

5. The Commission held its twenty-fourth session from 5 to 7 September 2011 in Prishtinë/Pristina. A total of 2,499 agricultural property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-fourth session, together with supporting documentation, claims processing reports, verification reports, and other relevant information. Two agricultural property claims which had been presented to the Commission were referred by the Commission back to the Executive Secretariat for further verification, and 34 claims were withdrawn by the Executive Secretariat during the session. The Commission suspended the consideration of three claims pending the holding of an oral hearing. In sum, a total of 2,460 agricultural property claims were resolved by the Commission during the session.

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

A. Claims covered by the present decision

7. In all the claims covered by the present decision the claimants seek the resolution of an ownership claim, and the claims relate to agricultural property, including agricultural land, pasture and forests.

8. The present decision covers a total of 84 claims, as identified in the attached Schedule. The remaining 2,376 claims for agricultural property dealt with by the Commission during the session are covered by two other decisions, namely decisions KPCC/D/A/119/2011 and KPCC/D/A/121/2011.

9. A total of 72 of the 84 claims covered by the present decision had not previously been considered by the Commission, while twelve claims (Claim Nos. 06142, 06147, 06149, 06158, 06161, 06166, 30830, 30834, 30835, 30836, 31471 and 31476) were the subject of an earlier Commission decision. However the earlier decisions in these claims 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. These claims consequently stand to be re-determined following correct notification of the claimed property. No respondent to the claim or current occupants of the property has come forward in the claim. The Executive Secretariat has written to the claimant advising him of the notification error and informing him that the claim will be re-determined following correct notification of the claimed property. The claimants, as well as the relevant cadastral authority, have been advised that the previous Commission decisions are invalid and cannot be used for the purposes of any legal transaction.

10. In order to satisfy the requirements for a valid claim, the claimant or the property right holder, as the case may be, must show that he or she had an ownership or 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.

11. The 74 claims listed in part A, D and E of the attached Schedule to this 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 the processing and adjudication of the claim.

12. In the ten claims listed in parts B and C of the attached Schedule to the decision are uncontested in the sense that at the time the claimed properties were notified there was no evidence of illegal occupation, use or cultivation of these properties by any person or, even if there was such evidence, no party 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 any later stage during the proceedings, pursuant to section 10.3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. The Executive Secretariat has notified claims in a variety of ways including through the physical notification of the property and/or through notification of the property via publication in gazette and newspapers, through local municipal authorities, municipal courts, local village leaders and through other relevant institutions in Kosovo and Serbia. Based on the information provided by the Executive Secretariat, the Commission is satisfied that the Executive Secretariat has made reasonable efforts to notify the claimed properties, the persons who may be currently occupying the properties, and any other persons who may have a legal interest in such properties, as required by section 10.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. Accordingly these claims must be considered uncontested.

B. Claim Nos. 11650 and 13826

13. Claim Nos. 11650 and 13826 are submitted by two different claimants in respect of the same property. The Claimant in Claim No. 11650 (the "First Claimant") has submitted the claim in his capacity as a family household member of the alleged property right holder, whereas the Claimant in Claim No. 13826 (the "Second Claimant") alleges to be the property right holder. Both Claimants contest each other's asserted property right.

14. The First Claimant submitted his claim in his capacity of family household member of his father Serif Kurtisaj. The First Claimant alleges that the claimed property 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 the 1990s the family of the Second Claimant pressured the family of the First Claimant to purchase the property back, by threatening to sell it to another person. The Claimant further stated that his family considered the purchase price at the time being unreasonably high, and the transaction was not concluded.

15. The Second Claimant submitted his claim initially in his capacity of family household member of his father Trajko Nikolic, the alleged property right holder. After the filing of the claim, and pursuant to an inheritance procedure, the Second Claimant became a co-owner with his siblings with 1/5 ideal part of the claimed property. In support of his allegation the Second Claimant submitted a possession list in the name of his father and an inheritance decision dated 22 November 2010 which lists the Second Claimant as co-owner of the ideal

part of 1/5 of the claimed property. Both documents were positively verified by the Executive Secretariat.

16. The Second Claimant asserts that he lost possession of the claimed property as a result of the conflict, while the First Claimant alleges that his grandfather lost possession in 1938 and only re-possessed the property after the conflict in 1999. Both Claimants state that they agreed on a pre-purchase contract during the 1990s, and that the First Claimant did not fulfil his contractual obligations. The First Claimant stated that he considered the requested purchase price to be too high.

17. 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 property, and that he is not able to exercise his property right due to circumstances surrounding the 1998-99 conflict. Consequently, the claim submitted by the Second Claimant stands to be granted.

18. As to the claim 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. The First Claimant also acknowledges that the contemplated purchase contract in the 1990s was never concluded. Accordingly the First Claimant's claim falls outside the jurisdiction of the Commission and stands to be dismissed.

C. Claim Nos. 26383, 31224, 49267 and 49278

19. In Claim Nos. 26383 and 49267, on the one hand, in Claim Nos. 31224 and 49278, on the other hand, the Claimants seek confirmation of ownership over the same properties, respectively. In Claim Nos. 26383 and 31224, the Claimant has submitted the claims in her capacity of family household member, namely daughter, of the alleged property right holder Branislav Jaric. Claim Nos. 49267 and 49278 are submitted by the brother of Branislav Jaric in his capacity of family household member, namely son, of the alleged property right holder Dusan Jaric.

20. The Claimant in Claim Nos. 26383 and 31224 has submitted an inheritance decision dated 27 August 2007 which indicates that Branislav Jaric has inherited the claimed parcels from his father Dusan Jaric. The inheritance decision also shows that the Claimant in Claim Nos. 49267 and 49278, who is the brother of Branislav Jaric, has inherited different parcels. The decision has been verified as being valid by the Executive Secretariat. The decision is also powerful as the relevant parties, Branislav Jaric and the Claimant in Claim Nos. 49267 and 49278, have waived their right to appeal.

21. Accordingly, as the evidence establishes that the claimed property belongs to Branislav Jaric, a decision confirming the property right in favour of the property right holder Branislav Jaric stands to be granted in Claim Nos. 26383 and 31224.

22. It follows from this decision that the Claimant in Claim Nos. 49267 and 49278 has failed to prove a property right and accordingly his claims stands to be refused pursuant to section 8.6 of Annex III to UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079.

D. Claims dismissed

23. Pursuant to section 11.4 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission shall dismiss the whole or part of a claim where:

- (a) The claimant has failed to file a complete claim in accordance with the procedures set out in the Regulation;
- (b) The claim is not within the scope of jurisdiction of the KPA; and
- (c) The claim has previously been considered and decided in a final administrative or judicial decision.

24. Section 8.6 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-07907/50 provides the Commission with the power to dismiss or refuse a claim on any ground, including those set down in section 11.4 of UNMIK Regulation 2006/50.

25. Claims which are dismissed as falling outside the Commission's jurisdiction or for procedural reasons and not on account of the merits of the claim may be capable of resolution through the local courts, subject to the applicable law. In such claims the Commission's decision does not constitute a *res judicata*. Section 3.2 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 confirms the claimants' right to pursue before courts of competent jurisdiction claims that do not fall within the mandate of the Commission, as set out in section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. (See also section 8.1 of Annex III of UNMIK/ADM/DIR/2007/5 concerning the Commission's authority to refer issues arising in connection with a claim which are not within its jurisdiction, to a competent local court or administrative board or tribunal.)

26. Pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the jurisdiction of the Commission is limited to property claims that are conflict-related in the sense that they involve circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999, where the claimant is not now able to exercise such property rights. In order to establish whether or not a claim falls within its jurisdiction, the Commission must determine whether the claimant or the property right holder, as the case may be, has been displaced from the claimed property, or has lost possession or control over such property, as a consequence of the conflict. The Commission must also establish whether the claimant or the property right holder, as the case may be, is now able to exercise his or her rights over the claimed property.

27. While the Commission has taken the view that a loss of possession that occurred outside the period 27 February 1998 and 20 June 1999 may nonetheless be considered to be directly related to or result from the conflict, depending on the circumstances of the case, it must be satisfied that there is some evidence indicating that the property loss involved circumstances surrounding the conflict.

1. *Claim No. 00257*

28. In Claim No. 00257 the Claimant, who is represented by an authorized representative, seeks confirmation of ownership and repossession of the claimed property.

29. The Respondent claims that he bought the claimed property in 1976 and has been in possession of the property ever since. He states he lodged two lawsuits with the Municipal Court of Gjilan in August 2003 in respect of the claimed property, including one in which he sought confirmation of ownership over the claimed property. The Respondent's claims were refused by the Municipal Court on 12 July 2011 as ungrounded.

30. Pursuant to Section 18 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission's jurisdiction is excluded if judicial proceedings in respect of the claim have been commenced prior to 16 October 2006, the date on which UNMIK/REG/2006/50 entered into force. As the judicial proceedings in respect of the claimed property were commenced by the Respondent in 2003, the claim is not within the jurisdiction of the Commission and stands to be dismissed.

2. *Claim No. 01021*

31. In Claim No. 01021 the Claimant lodged the claim in his capacity of property right holder and seeks confirmation of ownership and repossession of the claimed property.

32. The Claimant asserts that he bought the property in 1984. He states that he left Kosovo in 1999 during the armed conflict and went to Macedonia. He states that upon his return the property was occupied by the Respondent. The Claimant filed a lawsuit in the Municipal Court of Viti in 2005 in respect of the claimed property seeking confirmation of ownership over the claimed property. These proceedings are still on-going, and various court decisions have been rendered, including by the Supreme Court of Kosovo.

33. Pursuant to Section 18 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission's jurisdiction is excluded if judicial proceedings in respect of the claim have been commenced prior to 16 October 2006, the date on which UNMIK/REG/2006/50 entered into force. As the judicial proceedings in respect of the claimed property were commenced by the Claimant in 2005, the claim is not within the jurisdiction of the Commission and stands to be dismissed.

3. *Claim No. 01081*

34. In Claim No. 01081 the Claimant filed the claim in his capacity as a family household member, namely son, of the alleged property right holder.

35. The Respondent lodged a lawsuit seeking confirmation of ownership of the claimed property with the Municipal Court Gjilan in October 2005.

36. Pursuant to Section 18 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission's jurisdiction is excluded if judicial proceedings in respect of the claim have been commenced prior to 16 October 2006, the date on which UNMIK/REG/2006/50 entered into force. As the judicial proceedings in regard of the claimed property were commenced in 2005, the claim is not within the jurisdiction of the Commission and stands to be dismissed.

4. *Claim No. 06220*

37. Claim No. 06220 was lodged by an authorized representative of the alleged property right holder.

38. The Claimant contends that he lost possession of the claimed property in June 1999, however he has failed to provide any evidence or even any explanation to that effect. The Executive Secretariat requested the Claimant several times to explain the circumstances in which he lost possession of the claimed property, however, the Claimant refused to participate in the process and to provide any evidence. Accordingly, the Claimant having failed to demonstrate that he lost possession of the claimed property as a result of the 1998-99 conflict, the claim stands to be dismissed for lack of jurisdiction.

5. *Claim No. 10749*

39. Claim No. 10749 was submitted by the Claimant in his capacity of alleged property right holder. The Commission notes that the Claimant has also submitted another claim, Claim No. 46202, seeking confirmation of ownership over the same property as in Claim No. 10749.

40. Claim No. 46202 has been granted by the Commission by cover decision KPCC/D/A/76/2010 dated 16 June 2010. The Commission considers that the previous decision on the same subject matter constitutes *res judicata*, and accordingly Claim No. 10749 stands to be dismissed.

6. *Claim Nos. 13473, 13474, 13475, 13476 and 13477*

41. These claims were submitted by the Claimant in his capacity as property right holder. The Claimant states that he left Kosovo with his family in 1970 and resettled in Belgrade.

42. When contacted by the Executive Secretariat, the Claimant confirmed that he did not lose possession of the claimed properties as a result of the conflict in Kosovo in 1998-1999. Accordingly the Claimant's claims fall outside the jurisdiction of the Commission and stand to be dismissed.

E. *Claims refused*

43. Pursuant to section 8.6 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-07907/50, the Commission may refuse or dismiss a claim on any grounds. Claims may be refused by the Commission if the claimant or the property right holder, as the case may be, has been unable to prove their ownership or use right interest over the claimed property.

44. Pursuant to section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission has jurisdiction to determine ownership or use right claims over private immovable property. In reaching its decisions, the Commission may consider any reliable evidence which it considers relevant to a claim, including evidence presented by the Executive Secretariat concerning the reliability of any public record (section 6.2 of Annex III to UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079). The Commission may also require that the Executive Secretariat obtain more information from a party or conduct additional investigations in relation to any claim (section 6.3 of Annex III to UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079). In making its determinations, the Commission may be guided but is not bound by the rules of evidence applied in the local courts in Kosovo (section 6.1 of Annex III to UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079).

1. *Voluntary disposal – lack of ownership*

45. In Claim No. 44394 the Claimant filed the claim in his capacity as a family household member of the alleged property right holder, namely his mother. During a telephone conversation with the Executive Secretariat on 15 April 2011 the Claimant stated that the property had been sold, and that he was not interested in pursuing the claim. However, the Claimant has failed to withdraw the claim.

46. In Claim No. 00667 the Claimant filed the claim in his capacity as property right holder, namely as co-owner. However, the Claimant subsequently acknowledged that he had sold the claimed property to a third party.

47. In Claim No. 31370 the Claimant filed the claim in the capacity of a family household member, namely the grandchild of the alleged property right holder. The Respondent alleges that he purchased the claimed property from the Claimant's father in 1997. When confronted with this allegation, the Claimant confirmed that the property had been sold and indicated that he was not interested in pursuing the claim. However, the Claimant did not withdraw the claim.

48. Claim Nos. 52384 and 52386, on the one hand, and Claim Nos. 54931 and 54933, on the other, relate to the same property. The Claimant in Claim Nos. 52384 and 52386 has submitted the claim in his capacity of the property right holder, and the Claimant in Claim Nos. 54931 and 54933 has submitted the claim in her capacity as the property right holder, namely co-owner of the Claimant in Claim Nos. 52384 and 52386. The two Claimants are siblings. However, both Claimants subsequently admitted that the properties are sold, and that they had no interest in pursuing their respective claims. Both Claimants failed to withdraw their claims.

49. In Claim No. 25769 the Claimant filed the claim in his capacity as a family household member, namely the son of the alleged property right holder. However, he subsequently confirmed that the property has been sold and that he had no interest in pursuing the claim. The Claimant did not withdraw the claim.

50. In Claim No. 51770 the Claimant submitted the claim in his capacity as a family household member of the alleged property right holder, namely the spouse. However, he admitted that the property had been sold but did not withdraw the claim.

51. In Claim No. 25958 the Claimant submitted the claim in her capacity as a family household member of the alleged property right holder, namely the granddaughter. However, she subsequently confirmed that the property had been sold. The Claimant did not withdraw the claim.

52. In Claim No. 30509 the Claimant submitted the claim in his capacity as a family household member of the alleged property right holder, namely his father. The Claimant stated that the property had been sold but he did not withdraw the claim.

53. In Claim Nos. 37064, 37065 and 37085 the Claimant submitted the claims as a family household member, namely as the great-grandchild, of the alleged property right holder. However, she subsequently confirmed that the properties had been sold, but did not withdraw the claims.

54. In Claim Nos. 51762, 51766, 51768 and 51769 the Claimant submitted the claim in his capacity of a family household member, namely the spouse of the alleged property right holder. The Claimant stated that the properties were sold. However, he did not withdraw the claims.

55. In Claim Nos. 06140, 06142, 06143, 06147, 06149, 06153, 06156, 06158, 06161, 06162, 06166, 06167, 06169 and 06171, the Claimant submitted the claims in his capacity of a property right holder. The Claimant stated that he had sold properties but he was not certain whether or not all the claimed parcels were included in the sale. The Executive

Secretariat verified in the cadastral records *ex officio* which show that indeed all the claimed properties had been sold. The Claimant has not withdrawn the claims.

56. In Claim Nos. 30830, 30834, 30835 and 30836 the Claimant submitted the claim in her capacity of a family household member, namely the spouse of the alleged property right holder. The Claimant stated that the properties were sold. However, she did not withdraw the claims.

57. In Claim Nos. 52384 and 52386 the Claimant lodged the claims in his capacity as the property right holder. The Respondent, who is the current occupant of the claimed properties, alleges that his father bought the properties in 1972 from Milojka Jovanovic, the brother of the Claimant. The Respondent contends that his family has been in undisturbed possession of the properties since then, however, the change of ownership has not been registered in the cadastral records because no physical division of the claimed parcel has been made. During a telephone conversation on 2 August 2011 with the Executive Secretariat, the Claimant confirmed the sale of the properties by his brother in 1972. However, the Claimant refused to withdraw the claims.

58. In Claim Nos. 50193, 50194 and 50195 the Claimant submitted the claims in his capacity as the property right holder. The Claimant admits that his uncle sold the properties to the current occupant in 1988, however, he failed to withdraw the claims.

59. In Claim Nos. 07883, 07891 and 07895 the Claimant submitted the claims in his capacity as the property right holder. The Claimant confirmed that he sold the properties to the current occupant in 2007, however, he did not withdraw the claims.

60. In Claim Nos. 25501, 25502, 25503 and 25506 the Claimant filed the claims in his capacity as the property right holder. The son of the Claimant confirmed that his father sold the properties to the current occupant in 1985. The Claimant did not withdraw his claims.

61. In Claim No. 48151 the Claimant submitted his claim in his capacity of a property right holder. In a telephone conversation with the Executive Secretariat, the Claimant confirmed the Respondent's allegation that he, the Claimant, had sold the property over 40 years ago to the grandfather of the Respondent. However, the Claimant did not withdraw the claim.

62. In Claim Nos. 38158, 38159, 38160, 38161 and 38162 the Claimant submitted the claim as a family household member of the property right holder, namely his grandfather. However, the Claimant admitted that his grandfather had sold the properties in 1979 and 1983 to the current occupants who are both Respondents to the claims. The Claimant did not withdraw the claims.

63. In Claim No. 54401 the Claimant lodged the claim in her capacity as the property right holder. She confirmed the current occupants' allegation that she had sold the claimed property to them in 1984. However, the Claimant did not withdraw the claim.

64. In Claim Nos. 06212, 06213, 06214, 06217 and 06221 the claims were lodged by an authorized representative of the alleged property right holder. The Claimant confirmed the Respondent's allegation that he sold the property in 1972 to the Respondent, but refused to participate in the process or to provide any evidence.

65. In all the claims covered by this section E.1 the Claimants originally claimed that they or their families had lost the claimed properties as a result of the 1998-1999 conflict. However, the Claimants later advised the Executive Secretariat that they or their families, as they case may be, disposed of the properties voluntarily. Accordingly, the claims stand to be refused by the Commission for the Claimants' failure to establish a current property right over the claimed property.

2. *Claim Nos. 15538, 15539, 15540, 15541, 15542, 15543, 15544 and 15545*

66. In Claim Nos. 15538, 15539, 15540, 15541, 15542, 15543, 15544 and 15545 the Claimant submitted the claims in her capacity as a family household member, namely the daughter, of the alleged property right holder. The daughter of the Claimant subsequently informed the Executive Secretariat that her mother had passed away after the submission of the claims.

67. In Claim Nos. 15544 and 15545 the Claimant asserted that her mother acquired ownership over the claimed and other properties in 1964. In support of her allegations the Claimant submitted a contract on exchange dated 28 September 1964 in which the Claimant's mother transferred ownership over two properties to the company "Poljoprivredno Dobro, Hvosno" in return for the two claimed parcels. However, the Executive Secretariat was unable to verify the authenticity of this document. Moreover, the Executive Secretariat has obtained *ex officio* a possession list which shows that the claimed properties are in the name of a different person, namely Mirka Racic-Kazic. The daughter of the Claimant subsequently acknowledged that some properties had been sold to a third party in 1979, however, she alleges that the transaction allegedly did not include the two claimed parcels.

68. In Claim Nos. 15538, 15539, 15540, 15541, 15542 and 15543 the Respondent alleges that the Claimant's mother had sold the properties to the Respondent in 1979. The Claimant subsequently confirmed the Respondent's allegation.

69. In light of the above, the Commission concludes that the Claimant in Claim Nos. 15538, 15539, 15540, 15541, 15542, 15543, 15544 and 15545 has failed to establish ownership of the alleged property right holder over the claimed properties. Accordingly the claims stand to be refused.

3. *Claim Nos. 31471 and 31478*

70. In Claim Nos. 31471 and 31478 the Claimant alleges that he purchased the claimed property and submitted a possession list in support of his claim. However, the document does not show him or any of his family household members as owner of the claimed property.

71. The Claimant was subsequently requested by the Executive Secretariat to provide a copy of the purchase contract and was given a deadline within which to provide it. The Claimant indicated that he would provide the document but did not produce it. No other evidence has been presented by the Claimant or could be found by the Executive Secretariat that would show that the Claimant had enjoyed ownership right or indeed any property right over the claimed property. Accordingly, in the absence of any supporting evidence, the Claimant has failed to establish any property right over the claimed properties and the claims stand to be refused.

F. Concluding remarks

72. 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.

73. Section 8.8 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 allows 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.

74. 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.

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.**