



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/128/2011
DECISION DATE: 26/10/2011

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

- (1) In each of the forty seven (47) claims identified in parts A and C of the attached Schedule, the Commission decides that the claim be dismissed;*
- (2) In each of the seventeen (17) claims identified in parts B and D of the attached Schedule, the Commission decides that the claims be refused; and*
- (3) In each of the claims identified in the relevant columns in parts B and D 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.*

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-fifth session from 24 to 26 October 2011 in Prishtinë/Pristina. A total of 2,261 agricultural property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-fifth session, together with supporting documentation, claims processing reports, verification reports, and other relevant information. Two agricultural property contested claim which had been presented to the Commission was referred by the Commission back to the Executive Secretariat for further verification. In sum, a total of 2,259 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 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 64 claims, as identified in the attached Schedule. The remaining 2,195 claims for agricultural property dealt with by the Commission during the session are covered by two other decisions, namely decisions KPCC/D/A/126/2011 and KPCC/D/A/127/2011.

9. A total of 63 of the claims covered by the present decision had not previously been considered by the Commission, while one claim (Claim No. 15123) was the subject of an earlier Commission decision. 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 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 Claimant, as well as the relevant cadastral authority, have been advised that the previous Commission decision is 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 54 claims listed in parts A and B 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 claim processing and adjudication.

12. In the ten claims listed in parts C and D 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. Claims dismissed

13. 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.

14. Section 8.6 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079/50 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.

15. 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.)

16. 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.

17. 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. No loss of possession as a result of the conflict

18. Claim No. 00042 has been submitted by the Claimant in his capacity of the property right holder. The Claimant seeks repossession of the claimed property and states that he lost possession of a part of the property in 2003-2004 when the Respondent occupied it and constructed a house on the land without the Claimant's permission. The Claimant initiated a court procedure against the Respondent to remove the Respondent's illegal construction from the claimed property. The Claimant acknowledges that he has not lost possession of the claimed property as a consequence of the 1998-1999 conflict.

19. Claim No. 00237 has been submitted by the Claimant in his capacity as a family household member of the property right holder, namely his son. The Claimant's son is a co-owner of the claimed property based on a purchase contract concluded in September 1999. The Claimant and the Respondent, who is the current occupant of the claimed property, confirm that the claimed property is not divided among the co-owners. The Claimant is not claiming a confirmation of ownership or re-possession but merely seeks the division of the property into the respective ideal parts of the co-owners. The Claimant acknowledges that neither he nor his son lost possession of the claimed property as a result of the 1998-99 conflict.

20. Claim No. 06328 has been filed by the Claimant in his capacity as property right holder. In support of his claim, the Claimant has provided a number of documents including a possession list establishing the Claimant's property right over the claimed parcel. The possession list has been verified by the Executive Secretariat as being genuine. The Claimant states that he moved to Krusevac in Serbia in 1997, which is when he ceased using the claimed property. In these circumstances where the Claimant has lost possession in 1997 when he moved to Krusevac in Serbia, the Commission finds that the Claimant's loss of possession of the claimed property does not involve circumstances directly related to or resulting from the 1998-99 conflict. Accordingly the claim falls outside the jurisdiction of the Commission and stands to be dismissed.

21. Claim No. 00889 has been filed by the Claimant in his capacity as the alleged property right holder. In support of his claim, the Claimant has provided a possession list dated 8 September 2008. This document, however, shows that the claimed property is registered in the name of the Forestry Office "Radusha." The Claimant asserts that the

property was transferred from the ownership of his father to the Forestry Office in 1955, and that his father has lost possession at this time. In these circumstances, it is evident that the Claimant's loss of possession of the claimed property was not a result of the circumstances directly related to or resulting from the 1998-99 conflict. Accordingly the claim falls outside the jurisdiction of the Commission and stands to be dismissed.

22. Claim No. 11721 has been submitted by the Claimant in his capacity of the property right holder. The Claimant seeks confirmation of ownership and repossession of the claimed property. The Claimant alleges that the property was occupied by the Respondent in 1992 without the Claimant's permission and he has not had possession since then. The Claimant states that there is an ongoing court procedure for ownership of the claimed property, which was initiated in 1992. The Respondent's authorized representative states that the claimed property was confiscated from the Respondent in 1953, and that the Respondent had his property rights restored in 1993. In the circumstances it is evident that the Claimant's alleged loss is not related to or resulting from the armed conflict in 1998-1999.

23. Claim Nos. 51808, 51811 and 51812 have been submitted by the authorized representative of the Claimant, the alleged property right holder. The Claimant initially requested confirmation of his ownership right, but later confirmed that he lost the claimed properties as a result of expropriation, and that he was compensated for loss. The claimed property is occupied by the Kosovo Power Corporation (KEK). The authorized representative of the Respondent states that the claimed property belongs to the Respondent and has submitted a Certificate for the Immovable Property Rights in support of his contention. This document shows that the claimed parcels are indeed registered in the name of the Respondent. He has also submitted a copy of the Decision on the Expropriation rendered on 5 March 1984 by the relevant body of the Municipal Assembly of Prishtinë/Pristina. In the circumstances it must be considered established that the Claimant's alleged loss is not related to or resulting from the armed conflict in 1998-1999.

2. Voluntary disposal or ability to exercise property right

24. Claim No. 27409 is filed by the Claimant in his capacity of family household member, namely the grandchild of the alleged property right holder. The Respondent, who is currently occupying the claimed property, alleges that he purchased the claimed property from the Claimant in 2008. The Respondent states that the purchase contract is certified in the court, and that the claimed property is registered in the name of his son in the cadastre. Confronted with the allegations of the Respondent, the Claimant confirmed that he sold the property to the Respondent and confirms that he no longer claims a legal right to the property. However, the Claimant did not withdraw the claim.

25. Claim No. 40100 is filed by the Claimant in his capacity as a family household member, namely the son, of the alleged property right holder. The Respondent who is the current occupant of the claimed property states that the Claimant's mother sold the property to him in 2000. When the Respondent's statement was disclosed to the Claimant, he confirmed that his mother had sold the property to the Respondent in 2000. However, the Claimant did not withdraw the claim.

26. Claim No. 51723 has been submitted by the Claimant in his capacity as the family household member, namely the son of the alleged property right holder. The Respondent, who currently occupies claimed property, states that he bought the property from the Claimant in 2005 or 2006. The Claimant acknowledges the sale but has not withdrawn the claim.

27. Claim Nos. 51761, 51764, 51765, 51771 and 51772 have been filed by the Claimant in his capacity as a family household member, namely the husband of the alleged property right holder. The Claimant initially requested repossession of the claimed property, however he later confirmed that the claimed property was sold in 2002 and that he would withdraw the claim, however, he has failed to do so.

28. Claim Nos. 20062 and 44393 are related to the same property. Claim No. 20062 has been submitted by the Claimant in his capacity of a family household member of the property right holder, namely her husband, whereas Claim No. 44393 is submitted by another Claimant in his capacity of a family household member of the property right holder, namely his mother. Both alleged property right holders used to be co-owners of the claimed property, however, they both acknowledge that the property has been sold in 2009. The Claimants did not withdraw the claims.

29. Claim Nos. 24235 and 24236 have been filed by the Claimant in her capacity as the property right holder. The Claimant acknowledges that the properties were sold to the Respondent in 2007, however, she contends that the Respondent does not allow her to use a common road that passes through the claimed parcel. The Commission considers that, to the extent that the Claimant seeks confirmation of her right to use the common road, the Claimant's alleged loss cannot be considered a related to or resulting from the 1998-99 conflict.

30. Claim No. 26018 has been filed by the Claimant in his capacity as a family household member of the alleged property right holder, namely his father. The Claimant acknowledges that the claimed property was recently sold but he did not withdraw the claim. The Commission notes that the claimed property is already registered in the cadastral records in the name of Respondent.

31. Claim No. 37510 has been filed by the Claimant in her capacity as a family household member of the alleged property right holder, namely her father-in-law. The Respondent who is currently in possession of the property states that he bought the claimed property from the Claimant's father-in-law in 2008 and submitted a contract on sale between himself and the Claimant's father-in-law in support of his statement. When confronted with the Respondent's statement, the Claimant acknowledged that her father-in-law, the alleged property right holder, had sold the claimed property in 2008 to the Respondent. The Commission notes that the claimed property is already registered in the cadastral records in the name of Respondent.

3. *Voluntary disposal or ability to exercise property right: Claim Nos. 01001, 01002, 01003 and 91701*

32. Claim Nos. 01001, 01002, 01003 and 91701 were lodged by the Claimant in her capacity as the alleged property right holder. The Claimant states that her father entered into a purchase contract with the Respondent in 2000 in respect of the claimed property, however, she alleges that her father did not enter into the agreement out of free will, but that he was pressured by the Respondent to sign the contract. She also asserts that the purchase price, DM 120'000, was below the market value and that the purchase price was not paid in full. The Claimant seeks either an order directing the Respondent to pay the outstanding purchase price or to annul the contract and grant her repossession of the claimed property.

33. The Respondent asserts that he purchased the claimed properties in 2000, and that the transaction was based on the free will of both parties. According to the Respondent, the purchase contract was certified in court on 12 February 2002, and that the purchase price was fully paid on the day the contract was signed. The claimed property is registered in cadastral records in the name of Respondent.

34. The Commission notes that the Claimant had previously submitted a claim with the Housing and Property Directorate for a related parcel that is also included in the above-mentioned purchase contract. The Housing and Property Claims Commission in its decision No. HPCC/D/74/2003/C dated 11 April 2003 dismissed the claim and referred it to the local competent court on the basis that the issue of revision of the terms of the sales contract as to the market price fell outside its jurisdiction.

35. The Commission finds that the Claimant has failed to provide plausible evidence that the Claimant's father entered into the contract under duress. Pursuant section 4.3 of UNMIK Administrative Direction No. 2007/5 duress is assumed if the market value of the property at the time of the sale bears no reasonable relation to the actual purchase price. In the present case, such incongruity between the market value at the time of sale and the actual purchase price of DM 120'000 is not apparent.

4. Claim Nos. 23466 and 47551

36. Claim No. 23466 has been filed by the Claimant Marina Korac on behalf of her grandfather's brother, Ratomir Stevic. Claim No. 47551 has been filed by the same Claimant in her capacity as the alleged property right holder.

37. The Respondent Sevdajet Sadriu responded to the claims on behalf of his brother Behxhet Sadriu who is currently residing in Germany. The Respondent claims that Bexhet Sadriu purchased the claimed properties from the Claimant in 2008.

38. In support of her claim, the Claimant has submitted several documents relating to her alleged property right, namely possession list Nos. 32 and 121 identifying Ratomir Stevic as owner of the claimed properties. The Claimant has also submitted two inheritance decisions issued by the Municipal Court of Podujevë/Podujevo dated 1984 and 1989 which show that Dragoljub Stevic inherited $\frac{1}{2}$ of the property that belonged to his brother Ratomir Stevic. The Executive Secretariat has verified all the above mentioned documents against cadastral records and records held in the Municipal Court in Podujevë/Podujevo. The Claimant has also submitted an inheritance decision issued by the Court of Kursumlija in Serbia by which she inherited $\frac{1}{10}$ of her grandfather's properties. However, this inheritance decision cannot be considered as valid since Dragoljub Stevic died in Revuce in Podujevë/ Podujevo and the Kursumlija court did not have the requisite competence to deal with the inheritance proceedings.

39. The Claimant confirms that she and her family entered into a transaction with Behxhet Sadriu, the brother of the Respondent, in 2008 for the sale of the claimed parcels. However she alleges that the transaction was not finalized since the final part of the purchase price was not paid by Behxhet Sadriu.

40. The Respondent states that his brother Behxhet Sadriu concluded a purchase contract with Zoran, Milutin and Mica Stevic on 4 January 2008 for the claimed parcels at a purchase price of € 250'000. Milutin and Mica are the grandchildren of Dragoljub and the cousins of the Claimant. The Claimant confirms having given oral permission to Milutin and Mica to

sell the claimed parcels on her behalf. The Respondent states that all sellers were present when the contract was concluded and that the amount of € 200,000 of the purchase price was paid to them at the time. The remainder of the purchase price was to be paid within six months by which time the “heirs” would have obtained the necessary documentation confirming their property ownership through inheritance. It appears that the inheritance proceedings were not finished and the remainder of the purchase price is outstanding. The Claimant confirms that an amount of money was paid as part of the purchase transaction. A copy of the purchase contract has been provided to the Executive Secretariat, but the contract was not certified by the court since the inheritance proceedings were not completed.

41. In order to satisfy the criteria for confirmation of ownership by the Commission as set out in section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, claimants must demonstrate that the claim is conflict-related in the sense that it involves circumstances directly related to or resulting from the 1998-99 conflict. This has not been demonstrated by the Claimant in these claims, nor has the Claimant demonstrated that there has been any conflict related loss of possession or inability to exercise property rights. Indeed the Claimant has exercised, or purported to exercise, property rights over the claimed parcels. The Claimant has purported to sell some of her grandfather’s parcels to the Respondent. While the Commission makes no determination on the Claimant’s alleged inheritance of the claimed properties from the deceased property right holder, there is no evidence of any impediment to her exercise of property rights. Rather the main impediment appears to be the lack of completed inheritance proceedings leading to confusion over who are the rightful heirs to the properties, and thus which persons possess the legal capacity to sell the land parcels. Since there is no evidence of any conflict-related loss of possession or inability to exercise property rights over the claimed properties, the Claimant’s claims stand to be dismissed as falling outside the jurisdiction of the Commission.

5. *Voluntary disposal or ability to exercise property right: Claim No. 53998*

42. Claim No. 53998 has been filed by the Claimant in his capacity of family household member, namely the son of the alleged property right holder. He seeks repossession and confirmation of the property rights over the claimed property. There are two Respondents to this claim. The First Respondent alleges that the claimed property was originally owned by his family until 1953 and expresses his wish to purchase the property. The Second Respondent alleges that he purchased the property from the alleged property right holder in 2009.

43. The Claimant and the alleged property right holder acknowledge that they entered into a pre-contract on sale with the Second Respondent, but contend that this contract was not fulfilled since only a part of the purchase price was paid. The Claimant requests repossession and annulment of the sales contract. The Commission considers that the Claimant’s claim involves a contractual dispute and does not arise out of the circumstances directly related to or resulting from the 1998-99 conflict. Accordingly it stands to be dismissed for lack of jurisdiction.

6. *Res judicata*

44. Claim No. 18320 was submitted by the Claimant in his capacity of the property right holder. The Commission notes that the Claimant has also submitted Claim No. 18319, seeking confirmation of ownership and repossession over the same property as in Claim No. 18320. Claim No. 18319 has been granted by Commission decision KPCC/D/A/92/2010 on

28 October 2010. The Commission considers that the previous decision on the same subject matter constitutes *res judicata*, and accordingly Claim No. 18320 stands to be dismissed.

45. Claim No. 30698 has been submitted by the Claimant in his capacity as family household member of the alleged property right holder, namely his father. The Commission notes that the Claimant has also submitted another claim, Claim No. 19217, seeking confirmation of ownership and repossession over the same property as in Claim No. 30698. Claim No. 19217 has been granted by Commission decision KPCC/D/A/92/2010 dated 28 October 2010. The Commission considers that the previous decision on the same subject matter constitutes *res judicata*, and accordingly Claim No. 30698 stands to be dismissed.

46. Claim Nos. 36636 and 36659 have been submitted by the Claimant in his capacity as a family household member of the alleged property right holder, namely his father. The Commission notes that the Claimant has also submitted another claim, Claim No. 36662, seeking confirmation of ownership and repossession over the same property as in Claim Nos. 36636 and 36659. Claim No. 36662 has been granted by the Commission by cover decision KPCC/D/A/92/2010 dated 28 October 2010. The Commission considers that the previous decision on the same subject matter constitutes *res judicata*, and accordingly Claim Nos. 36636 and 36659 stand to be dismissed.

47. The Commission finds that all of the claims referred to in section B above stand to be dismissed for lack of jurisdiction, for the reasons stated above.

C. *Claims refused*

48. 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.

49. 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: Claim Nos. 23407, 23408, 23409, 23410, 23411, 23412, 23413, 23414, 40985, 40987, 40988, 40989, 40990 and 40991*

50. These claims were filed by the Claimant in his capacity as the alleged property right holder. In Claim Nos. 23407, 23408, 23409, 23410, 23411, 23412, 23413, 40987, 40988 and 40989 the Claimant acknowledges that he sold the claimed properties to Latif Suikaj (the “First Respondent”) in 1984 or 1985, however, he alleges that the First Respondent has failed to pay the purchase price in full. The First Respondent states that he has been in undisturbed possession since 1985. The Claimant asks the Commission to either order the First Respondent to pay the entire purchase price including accumulated interest or repossession of the claimed properties. During the processing of the claim, the Claimant’s son informed the Executive Secretariat that the Claimant has passed away. The Claimant’s son also confirmed that the Claimant and his family had not used the claimed property since 1983-1984.

51. In Claim Nos. 23414 and 40990 and 40991 the claimed properties are occupied by Rexhë Brahimaj (the “Second Respondent”). The Second Respondent claims that the First Respondent transferred the ownership of these properties to him in 1985-1986 in exchange for parcels in his ownership. The Claimant’s son subsequently confirmed to the Executive Secretariat that the claimed property had been sold.

52. In Claim No. 40985 the claimed property is occupied by Lah Loshi (the “Third Respondent”). The Third Respondent claims a legal right to the claimed property, but he does not specify his alleged property right nor has he submitted any evidence in support of his allegations.

53. The evidence before the Commission suggests that there is a dispute concerning the claimed properties pending before the local courts, and that the relevant proceedings in these claims were initiated prior to entry into force of UNMIK/REG/2006/5. However, with the available evidence provided by the parties and found *ex officio*, the Commission is not able to conclude whether the court proceedings involve all the claimed properties, and whether they are only related to the payment of outstanding purchase price as alleged by the Claimant or also the confirmation of ownership.

54. Since the Claimant acknowledges that he has voluntarily disposed of the claimed properties in the early 1980s, the claims stand to be refused.

2. *Voluntary disposal – lack of ownership: Other claims*

55. Claim No. 26420 has been filed by the Claimant in his capacity as a family household member of the alleged property right holder, namely his father. The Claimant initially claimed that he lost possession of the claimed property in June 1999, however, he later confirmed that the property has been sold to the Respondent in 1990. The Respondent alleged that he is the owner of the claimed property asserting that he has bought the property from the Claimant in 1990. The Claimant did not withdraw the claim.

56. Claim Nos. 38961 and 38962 have been filed by the Claimant in his capacity as a family household member of the alleged property right holder, namely his grandfather. He claims confirmation of ownership right and possession. The Respondent contested the claim stating that his father had purchased the claimed property from the Claimant’s grandfather in 1970. This transaction was subsequently confirmed by the Claimant, however, the Claimant did not withdraw the claims.

57. Claim No. 13508 has been filed by the Claimant in his capacity as the property right holder. The Claimant seeks confirmation of ownership and possession of the claimed property. The Respondent's son alleges that his father purchased the claimed property from the Claimant in 1997. Since the Claimant passed away in 2007 after filing the claim, the Executive Secretariat contacted the Claimant's son. He confirmed the property had been sold and indicated that he is no longer interested in the pursuit of the claim. However, he did not withdraw the claim.

58. Claim No. 24661 has been filed by the Claimant in his capacity as a family household member of the alleged property right holder, namely his father. The Respondent states that his father purchased the property 45 years ago from the Claimant's father, and he and his family have used the claimed property since then. Subsequently, the Claimant confirmed that his father had indeed sold the property many years ago to the family of the Respondent. The Claimant however did not withdraw the claim.

59. Claim No. 11441 has been filed by the Claimant in his capacity as a family household member of the alleged property right holder, namely his grandfather. The Claimant acknowledges that the claimed property has been sold, but seeks repossession on the basis that the Respondent has not fully paid the purchase price.

60. Claim No. 25119 has been filed by the Claimant in her capacity as a family household member of the alleged property right holder, namely her husband. The Respondent states that his father purchased the claimed parcel from the Claimant's family in 1986. The Claimant initially claimed repossession of the property, but later confirmed that the claimed property was sold to the Respondent's family in 1986 by way of an informal transaction. However, she did not withdraw the claim.

61. Claim No. 26270 has been filed by the Claimant in his capacity as a family household member of the alleged property right holder, namely his father. The Respondent states that he purchased the claimed property 20 years ago from one Miladin Markovic. The Claimant subsequently acknowledged that his father had sold the claimed property many years ago to his neighbour Miladin Markovic, however the transaction was not reflected in the cadastral records.

3. *Claim No. 26806*

62. Claim No. 26806 has been filed the Claimant filed the claim in her capacity of the property right holder, namely as co-owner of the claimed property. In support of her claim the Claimant submitted an inheritance decision issued by the Municipal Court in Vernjacka Banja dated 12 March 1996. However, the said decision does not mention the claimed parcel, which was found to be still registered in the name of the Claimant's father.

63. The Executive Secretariat contacted the Claimant several times to seek clarification on the discrepancy but she refused to cooperate with the Executive Secretariat. The Claimant stated that she does not have any property in Kosovo and requested that the Executive Secretariat cease the processing the claim, however, she did not withdraw the claim.

4. *Claim Nos. 14550, 14551, 14552 and 14553*

64. Claim Nos. 14550, 14551, 14552 and 14553 have been filed by the Claimant in her capacity of the property right holder, namely co-owner together with her siblings. The

Claimant seeks confirmation of ownership and repossession of the claimed properties. In support of her allegations she submitted a court decision from the District Court of Pejë/Peć, dated 1 July 1999, issued by a parallel court in Leskovac, which purports to confirm the co-ownership of the Claimant over the claimed property.

65. The Respondent, Shefqet Dreshaj, alleges that he has purchased the claimed property from the Kosovo Trust Agency. In support of his allegations, he has submitted a sales agreement of shares in "Cattle Farm New Enterprise" in Vrellë/Vrella, concluded between Kosovo Trust Agency on behalf of SOE "Dubrava" and the Respondent's brother Gani Dreshaj. The Respondent further produced a declaration of transfer and a Certificate for Immovable Property Rights registered in the name of Gani Dreshaj with 99 years leasehold over socially-owned property.

66. Based on the evidence before it, the Commission considers that the Claimant failed to show an ownership right or possession over the claimed properties before or at the time of conflict in 1998-1999.

5. Claim Nos. 53756 and 53758

67. Claim Nos. 53756 and 53758 have been filed by the Claimant in her capacity the property right holder, namely co-owner of the claimed properties. The Claimant initially sought confirmation of ownership and repossession of the properties.

68. The Respondent in Claim No. 53756 states that he purchased the property 30 years ago. The authorized representative of the Respondent in Claim No. 53758 has submitted a number of documents, however, these are not related to the claimed parcel or no parcel was identified in such documents. Subsequent to the Respondents allegations, the Claimant confirmed that she has sold some of the parcels, but was unwilling to provide any further information. However, the Claimant did not withdraw the claims.

69. Based on the evidence before it, the Commission considers that the Claimant has failed to show an ownership right or possession over the claimed properties before or at the time of conflict in 1998-1999.

6. Claim Nos. 15123 and 40246

70. Claim Nos. 15123 and 40246 have been filed by the Claimant in her capacity as the property right holder, namely co-owner of the claimed property. The Claimant seeks repossession and confirmation of ownership of the properties. Both claims are filed for the same parcel. During the verification process, the Executive Secretariat found that the claimed property was registered as a socially owned property.

71. The Respondent who is currently using the property alleges that he purchased the claimed property from the Kosovo Trust Agency during the privatization process. The Claimant was contacted again, and she stated that she was aware that this parcel had been privatised, and that she is no longer claiming any legal right to it. However, she did not withdraw the claims.

72. In all the claims covered by this section C, the Claimants initially 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 the case may be, disposed of the properties voluntarily before the 1998-1999 conflict, or have failed to show that they had any property right to the claimed properties before or at the time of the 1998-99 conflict. Accordingly, all of these claims stand to be refused by the Commission for the Claimants' failure to establish a property right over the claimed property at the relevant time.

D. Claims for compensation

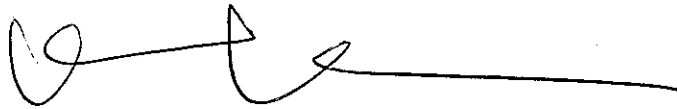
73. In Claim Nos. 24661, 26806 and 40246 the Claimants also seek, in addition to ownership, compensation for physical damage to, or for loss of use of, the claimed property. Under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the Commission has no jurisdiction over such claims. Accordingly these claims must be dismissed.

F. Concluding remarks

74. 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.

75. 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.

76. 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.**