



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/R/159/2012

DECISION DATE:

06/06/2012

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) In each of the 27 (twenty seven) claims identified in parts A and B of the attached Schedule, the Commission decides that the claim be dismissed.

(2) In each of the 13 (thirteen) claims identified in parts C and D of the attached Schedule, the Commission decides that the claim be refused.

(3) In Claim Nos. 00043, 11699, 32237, 35355, 35358 and 90641, referred to in parts A and B of the attached Schedule, the Commission additionally decides that the claim be dismissed insofar as the Claimant seeks 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

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

5. The Commission held its twenty-ninth session from 4 to 6 June 2012 in Prishtinë/Pristina. A total of 210 residential property claims were submitted by the Executive Secretariat of the KPA (the “Executive Secretariat”) to the Commission at its twenty-ninth session, together with supporting documentation, claims processing reports, verification reports and other relevant information. Two residential property claims which had been presented to the Commission were withdrawn by the Executive Secretariat. The Commission also suspended the consideration of one residential property claim pending the holding of an oral hearing. In sum, a total of 207 residential 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, except for Claim Nos. 00041, 11727, 33636, 34141 and 35946, the claimants seek the resolution of an ownership claim and all of them relate to residential property, including the associated land. In Claim Nos. 00041, 11727, 33636, 34141 and 35946 the Claimant seeks confirmation of a use right.

8. The present decision covers the 40 residential property claims which are listed in parts A, B, C and D of the attached Schedule. The remaining 167 claims for residential property are covered by decisions KPCC/D/R/157/2012 and KPCC/D/R/158/2012.

9. The 28 claims listed in parts B and D of the attached Schedule 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.

10. The twelve claims listed in part A and C of the attached Schedule are uncontested in the sense that no party has contested the validity of the claims within the 30-day period subsequent notification 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. Decisions taken in claims that were incorrectly notified have been overturned by the Commission to ensure correct notification of the property and provide any persons who may have a legal interest in the property with an opportunity to respond to the claim pursuant to section 10.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. These claims are identified in the relevant columns in the Schedule to this decision. 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 the Secretariat’s gazette and

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.

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

11. 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.

12. 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.

13. 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.)

14. 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.

15. 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. Claims dismissed for lack of jurisdiction

a. Claim No. 00041

16. Claim No. 00041 was submitted by the Claimant in his capacity as a family household member of the alleged property right holder, namely his father. The Claimant seeks the confirmation of a use right over the claimed property and repossession. The Claimant alleges that the property was allocated to his father in 1981 but the allocation decision was declared null and void in 1984 and the apartment was allocated to the Respondent who is still using the property today. In support of his allegation the Claimant has submitted an allocation decision dated 14 December 1981. According to the Claimant, the retraction of the allocation decision was unlawful.

17. The Respondent asserts that he is the rightful user of the claimed property based on an allocation decision dated 23 May 1985 and a contract on use dated 29 August 1985. The Executive Secretariat has verified these documents as being genuine.

18. Based on the evidence before it, the Commission concludes that the Claimant's alleged loss of possession or control is not related to the 1998-99 conflict. Accordingly, in the absence of any such loss, the Claimant's claim falls outside the Commission's jurisdiction.

b. Claim No. 00043

19. Claim No. 00043 was filed by the Claimant in his capacity as a family household member of the alleged property right holder, namely his daughter. The Claimant alleges that his daughter bought the claimed property in September 1999 from a third party through a certified purchase contract.

20. The Respondent contests the Claimant's claim and asserts that he has the consent of the neighbours and the permission of the municipality to convert the claimed basement into residential property.

21. The Executive Secretariat found evidence that the Claimant initiated court proceedings in 2001 and 2004 against the Respondent seeking repossession and ownership over the claimed property. By decision of the Municipal Court of Prishtinë/Pristina on 26 December 2001 the Claimant's claim was refused as unfounded. The Claimant appealed this decision to the District Court, however, the appeal was rejected. A fresh lawsuit was submitted by the Claimant in 2004, however the Court again rejected the claim as unfounded. The Claimant appealed also against this Court decision and the procedure is still on-going. In parallel the Claimant lodged yet another fresh lawsuit, which has been suspended pending the outcome of the appeal of the 2004 lawsuit.

22. 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 2001 respectively 2004, the claim is not within the jurisdiction of the Commission and accordingly stands to be dismissed.

c. Claim No.00976

23. Claim No. 00976 was filed by the Claimant in his capacity as the property right holder of the claimed property. The Claimant acknowledges his claim concerns a border dispute with the Respondent, which has been pending before the local court since 1980. The Respondent challenges the Claimant's claim asserting a legal right to the claimed property.

24. It is evident and indeed undisputed that the Claimant's claim is not related to the 1998-99 conflict, and accordingly the claim stands to be dismissed as falling outside of the Commission's jurisdiction.

d. Claim No. 11699

25. Claim No. 11699 was filed by the Claimant in his capacity as a family household member of the alleged property right holder, namely his father. The Claimant asserts that the claimed property belonged to his grandfather until 1953, when it was unlawfully expropriated by the state. According to the Claimant, the claimed property was subsequently transferred to a third party. The Claimant states that, in 1990, his family regained possession of the claimed property for a short period, and that in 1993 the Ministry of Agriculture issued a decision restoring ownership of his father. However, the documents presented by the Claimant in support of this allegation could not be verified by the Executive Secretariat.

26. The Commission notes that the Municipality built a primary school on the claimed property some forty years ago, and that this building still exists and is used as a school. The representative of the school presented a possession list No.100, which has been by the Executive Secretariat verified as being genuine.

27. The Commission finds, on the basis of the evidence before it, that the Claimant has been unable to establish that the claimed property was lost as a result of the 1998-99 conflict. Accordingly the claim stands to be dismissed as falling outside the Commission's jurisdiction.

e. Claim No. 11727

28. Claim No. 11727 was submitted by the Claimant in his capacity as the property right holder. The Claimant alleges that the claimed property was allocated to him by the enterprise "Universal" in 1971, and that he concluded a contract on use with the enterprise. The Claimant has produced the contract, which has been positively verified by the Executive Secretariat. However, the Claimant confirmed that in 1991 he was allocated another apartment of which he took possession and which he subsequently purchased.

29. The Respondent who is currently in possession of the claimed property states that she has been using the claimed property since 2006 with the permission of the Municipality of Prizren.

30. The Commission concludes, based on the evidence before it, that the Claimant gave up the claimed property in 1991. The Claimant returned to live in Prizren in June 1999, after the end of the conflict. It therefore cannot be said that the Claimant's claim arises of the circumstances surrounding the 1998-99 conflict, and accordingly the claim stands to be dismissed as falling outside of Commission's jurisdiction.

f. Claim No. 21830

31. Claim No. 21830 was filed by the Claimant in his capacity as the property right holder. The Claimant states that he and his family left the claimed property after the 1998-99 conflict and moved to Smederevo, Serbia. He states that he visits the property occasionally, and that he gave permission to the Spasic family to use the property. Accordingly the Claimant is not prevented from exercising his property rights.

32. The Commission concludes, based on the evidence before it, that the Claimant did not lose possession or control over the claimed property as a result of the 1998-99 conflict. Accordingly the claim stands to be dismissed as falling outside of Commission's jurisdiction.

g. Claim Nos. 35355 and 35358

33. Claim Nos. 35355 and 35358 were filed by Claimant in her capacity as a family household member of the alleged property right holder, namely her grandfather. The Claimant seeks confirmation of ownership, repossession and compensation for loss of use for the period that she claims she was prevented from using the properties. The Claimant alleges that after her grandfather's death in 1983, his daughter-in-law Slavica Simic obtained possession of the claimed properties and later sold the property claimed under Claim No. 35355 to the Respondent, while the property under Claim No. 35358 is still registered under the name of the alleged property right holder. The Claimant submits that the sale of the property claimed under Claim No. 35355 was unlawful as the inheritance procedure had not yet been concluded. The Claimant acknowledges that she has never been in possession of the claimed properties and has never lived in Kosovo.

34. The Respondent in Claim No. 35355 through his authorized representative claims a legal right to the property. The Executive Secretariat located *ex officio* a certificate of immovable property rights indicating that the Respondent is now the owner of the property.

35. The Respondent in Claim No. 35358 asserts that he is using the claimed property as a tenant of Svetlan Simic and is paying a rent.

36. The Commission concludes that the Claimant's loss of ability to exercise ownership rights over the claimed properties is not due to the 1998-99 conflict, but rather due to a pre-existing dispute over the inheritance of the claimed properties. Accordingly the claims fall outside the mandate of the Commission and stand to be dismissed.

h. Claim No. 40999

37. Claim No. 40999 was submitted by the Claimant in his capacity as the property right holder. In support of his claim, the Claimant submitted an inheritance decision dated 18 December 2002, which has been verified by the Executive Secretariat as being genuine. Pursuant to the inheritance decision, which is powerful as of 15 May 2003, the Claimant inherited an ideal part of 1/8 of the claimed property.

38. The Commission notes that Claim No. 41440, which was resolved by the Commission's decision KPCC/D/R/157/2012 dated 6 June 2012, was submitted in respect of the same property. The Claimant in Claim No. 41440, who is the brother of the Claimant in Claim No. 40999, alleged that their father had concluded an agreement with them and their sisters Olivera and Lidija as well with their third brother Milan to divide the property after the death of their grandfather Todor. The Claimant in Claim No. 41440 further confirmed that his father Jovan became the owner of the whole of the parcel claimed in the claim based on a court decision on division of the claimed property. He also submitted an inheritance decision dated 29 March 2006. By this inheritance decision, the Claimant in Claim No. 41440 inherited the claimed property as sole successor of his father Jovan. The Executive Secretariat has verified this inheritance decision as being genuine.

39. The Executive Secretariat attempted to contact the present Claimant in order to clarify with him the contradicting allegations, but the Executive Secretariat could not reach the Claimant despite numerous attempts. The Executive Secretariat could only reach one of the Claimant's distant relatives who confirmed that the Claimant had passed away. The Executive Secretariat also attempted to locate the Claimant's family household members, but was not successful.

40. Based on the evidence before it, the Commission concludes that the 2002 inheritance decision submitted by the Claimant has now been superseded by the verified inheritance decision of 2006. Accordingly the Claimant's claim stands to be dismissed as the Claimant lost the claimed property as a consequence of a lawful inheritance decision rather than the 1998-99 conflict.

i. Claim No. 90641

41. Claim No. 90641 was filed by the Claimant in his capacity as a family household member of the alleged property right holder, namely his father. During the processing of claim the Claimant confirmed that he left Kosovo in 1976 and moved to Belgrade for work. He further stated that the claimed property is being used by his cousin with his permission. He acknowledges that he is visiting the claimed property from time to time and is not prevented from exercising his property rights.

42. Accordingly, in the absence of any loss of possession as a result of the 1998-99 conflict, the claim falls outside the mandate of the Commission and stands to be dismissed.

2. Claims dismissed on account of the absence of a power of attorney

43. Claim No. 33681 was filed by the Claimant in her capacity as a family household member of the property right holder, namely the deceased brother of his grandfather. The Claimant does not qualify as a family household member pursuant

to section 1.2 of Annex II of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079, however, he failed to provide a power of attorney from the alleged property right holder or his family household members. While the Claimant indicated that he would submit the required authorization, he failed to do so.

44. The Commission concludes that the Claimant has failed to file a complete claim in accordance with the procedures set out in UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. Accordingly the claim stands to be dismissed.

3. *Voluntary disposal or ability to exercise property right*

45. In all of the claims covered by this section, the claimants initially claimed that they or their families 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, had sold the claimed properties. The fact that the claimants or the property right holders, as the case may be, have been able to dispose of the claimed properties voluntarily shows that they have been in a position to exercise their property rights within the meaning of section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. Accordingly these claims stand to be dismissed.

a. *Claim No. 10353*

46. Claim No. 10353 was submitted by an authorized representative of the Claimant, who claims the property in his capacity as the property right holder. The Claimant stated in the claim form that he lost possession over the claimed property in 2004. During the processing of the claim, the Claimant confirmed that he had sold the claimed property and that he wishes to withdraw the claim. However, he failed to do so.

b. *Claim No. 21578*

47. Claim No. 21578 was submitted by the Claimant in her capacity as the property right holder. In support of her claim the Claimant submitted a possession list No. 241 from a dislocated cadastre which shows the Claimant as co-owner of an ideal part of 1/5 of the claimed property. During the verification process the Executive Secretariat discovered that the claimed parcel was registered in the name of a different person. The Claimant admitted that her brother had sold the claimed property and that she would withdraw the claim, however she failed to do so.

c. *Claim No. 25583*

48. In Claim No. 25583 the Claimant filed the claim in his capacity as a family household member of the alleged property right holder, namely his mother. The Claimant subsequently confirmed that the claimed property had been sold in 2010, and that he would withdraw the claim, however, he failed to do so.

d. *Claim Nos. 31284 and 91324*

49. Claim No. 31284 was submitted by the Claimant in his capacity as the property right holder, and Claim No. 91324 was submitted by another Claimant in his capacity as family household member of the alleged property right holder, namely his

father. Both Claimants are claiming a property right over the same property. Both Claimants subsequently confirmed that the claimed property had been sold in 2009, and that they would withdraw their respective claim, however they failed to do so.

e. Claim No. 31311

50. In Claim No. 31311 the Claimant submitted the claim in her capacity as a family household member of the alleged property right holder, namely her husband. The Claimant subsequently confirmed that the claimed property had been sold to the Respondent in 2009. The Claimant has not withdrawn the claim.

f. Claim No. 32237

51. In Claim No. 32237 the Claimant filed the claim in his capacity as the property right holder. The Claimant subsequently confirmed that he sold the claimed property in 2002. However, he did not withdraw the claim.

g. Claim No. 35946

52. In Claim No. 35946 the Claimant filed the claim in her capacity as a family household member of the alleged property right holder, namely her mother. The Claimant stated that her father had a use right over the claimed property since 1978, and that they have lived in the apartment until 1999, when they left Kosovo as a result of the 1998-99 conflict. The Claimant subsequently confirmed that her brother had sold the claimed property in 2011, and that she would withdraw the claim, however she failed to do so.

h. Claim No. 47380

53. In Claim No. 47380 the Claimant filed the claim in her capacity as the property right holder. The Claimant initially asserted to have lost possession as result of the 1998-1999 conflict, however, subsequently she confirmed that the claimed property was sold in 2011. The Claimant has not withdrawn the claim.

i. Claim No. 48029

54. Claim No. 48029 was filed by the Claimant in his capacity as the property right holder. The Claimant initially alleged having lost possession over the claimed property due to the 1998-99 conflict. The Claimant submitted a court protocol indicating a judicial agreement reached between him and the Respondent for the purchase of the claimed property. In 2004 the Claimant concluded a purchase contract with the Respondent, however, the Claimant stated that their contractual obligations had not been fully complied with to date.

55. The Respondent states that his father purchased the claimed property from the Claimant's father, and that the outstanding purchase price would be paid to the Claimant imminently after the transfer of the ownership has taken place.

56. The Commission notes that the transaction between the Claimant and the Respondent shows that the Claimant has been in a position to exercise his property rights within the meaning of section 3.1 of UNMIK/REG/2006/50 as adopted by Law

No. 03/L-079. The Commission has no jurisdiction over a dispute concerning the purchase price and accordingly the claim stands to be dismissed. The Commission's decision is without prejudice to the Claimant's right to pursue if necessary a claim for the outstanding purchase price before local courts.

j. Claim No. 50908

57. Claim No. 50908 was filed by the Claimant in his capacity as the property right holder. The Claimant initially alleged that he left the claimed property due to the conflict in June 1999. He subsequently admitted having sold the property in 2006, however he argues that the buyer has failed to pay the purchase price in full and therefore seeks repossession of the claimed property.

58. The Respondent states that he purchased the claimed property from the Claimant's authorized representative, and that he has fulfilled all of his obligations toward the Claimant. He submitted as evidence a purchase contract certified by the competent court.

59. The Commission notes that the transaction between the Claimant and the Respondent shows that the Claimant has been in a position to exercise his property rights within the meaning of section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. The Commission has no jurisdiction over a dispute concerning the purchase price and accordingly the claim stands to be dismissed. The Commission's decision is without prejudice to the Claimant's right to pursue if necessary a claim for the outstanding purchase price before local courts.

k. Claim No. 90072

60. In Claim No. 90072 the Claimant submitted the claim in his capacity as the property right holder. The Claimant initially claimed confirmation of ownership over the claimed property, however, he subsequently admitted having sold it in 2007. No withdrawal has been submitted.

4. Res judicata

61. Pursuant to section 11.4 of UNMIK/REG/2006/50, as adopted by Law No. 03/L-079, the Commission may dismiss a claim which has previously been considered and decided in a final administrative or judicial decision. The Commission notes that pursuant to section 2.7 of UNMIK Regulation 1999/23 final decisions of the HPCC are binding and enforceable and are not subject to review by any other judicial or administrative authority in Kosovo. Accordingly, the previous HPCC decisions in these cases constitute *res judicata*.

a. Claim No. 11775

62. In Claim No. 11775 the Claimant filed the claim in his capacity as the property right holder. The Commission notes that the Claimant had previously filed a category A claim for the same property with the Housing and Property Directorate ("HPD") under Claim No. DS003483. The claim was uncontested, with the current Respondent not being party to the claim. The Housing and Property Claims Commission ("HPCC") subsequently by decision No. HPCC/D/116/2004/A dated 16 April 2004 refused the Claimant's claim on the basis that the Claimant did not show

that he had a property right capable of restitution. Accordingly the claim stands to be dismissed as *res judicata*.

b. Claim No. 44574

63. In Claim No. 44574 the Claimant filed the claim in his capacity as the property right holder. The Commission notes that the Claimant previously had filed a category C claim for the same property with the HPD under Claim No. DS305787, and that the Respondent to the present claim had submitted a category A claim for the same property with the HPD under Claim No. DS502386. The HPCC subsequently by decision No. HPCC/D/181/2005/A&C dated 30 April 2005 dismissed the Claimant's Claim No. DS305787 and granted the Respondent's Claim No. DS502386, restoring the Respondent's property right. A later reconsideration request from the Claimant was rejected. Accordingly the claim stands to be dismissed as *res judicata*.

c. Claim No. 47322

64. In Claim No. 47322 the Claimant filed the claim in his capacity as the property right holder. The Commission notes that the Claimant had previously filed a category C claim for the same property with the HPD under Claim No. DS004724, and that the Respondent to the present claim had submitted a category B claim for the same property with the HPD under Claim No. DS005427. The HPCC subsequently by decision No. HPCC/D/89/2003/C dated 29 August 2003 dismissed the Claimant's Claim No. DS004724 and by decision No. HPCC/D/149/2004/B, dated 27 August 2004 granted the Respondent's Claim No. DS005427. The Claimant subsequently filed a reconsideration request which was rejected by HPCC Decision No. HPCC/REC/66/2006 dated 15 July 2006. Accordingly the claim stands to be dismissed as *res judicata*.

d. Claim No. 47114

65. In Claim No. 47114 the Claimant filed the Claim in his capacity as the property right holder. The Commission notes that the Claimant had previously filed a category C claim for the same property with the HPD under Claim No. DS002177, and that the Respondent to the present claim had submitted a category A claim for the same property with the HPD under Claim No. DS001096. The HPCC subsequently by decision No. HPCC/D/195/2005/A&C dated 18 June 2005 granted the Claimant's Claim No. DS002177, restoring the Claimant's property right to the claimed property, and refused the current Respondent's Claim No. DS001096. The Respondent to the present claim filed a reconsideration request and the HPCC issued a new decision No. HPCC/REC/56/2006 dated 18 February 2006 overturning the previous decision and ordering that the category A claim (DS001096) be granted and the Respondent's property right be restored, and that the Claimant in the category C Claim (the present Claimant) should be entitled to be compensation, as set out in the decision. Accordingly the claim stands to be dismissed as *res judicata*.

66. The Commission finds that all of the claims covered by this section B of the present decision stand to be dismissed for lack of jurisdiction, for the reasons set out above.

C. *Claims refused*

67. 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, have been unable to prove their ownership or use right interest over the claimed property.

68. 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).

a. *Claim No. 06723*

69. Claim No. 06723 was submitted by the Claimant in her capacity as the property right holder. The Claimant bases her property right on an inheritance decision dated 22 May 1997, which has been verified by the Executive Secretariat as being genuine. However, the Commission notes that the decision is not powerful. The Claimant also submitted a subsequent inheritance decision O.br. 109/02 dated 19 September 2002 in her favour, purportedly issued by a parallel court in Serbia. The Commission does not consider that such documents establish entitlement to inheritance. The Claimant further submitted a possession list issued by a cadastre office dislocated from Kosovo, indicating her mother-in-law as being the sole owner of the property. The Executive Secretariat requested the Claimant to submit valid documentation to prove her ownership right or to submit a power of attorney from the family household member of the property right holder, however she failed to do so. In the absence of any evidence to support the Claimant's claim, it stands to be refused.

b. *Claim No. 06919*

70. In Claim No. 06919 the Claimant filed the claim in his capacity as family household member of the property right holder, namely his son. In support of the alleged ownership of the property right holder the Claimant submitted a contract on long life care concluded between the son of the Claimant and his aunt. The document has been verified by the Executive Secretariat as being genuine. The Claimant states that he lost the possession over the claimed property in 1999 due to the armed conflict.

71. The Respondent alleges that he purchased the claimed property in 1972 from Ali, Sefer, Haki and Shaqir Seferi, who had previously purchased it from Slavko

Grbusic. The Respondent further states that in 1974 he built a house on the property and continued to live there undisturbed by the Claimant or any of his family members. The Respondent submitted as evidence a letter from Care International of 1999 stating that his house was damaged during the period of March-June 1999, as well as written witness statements. During its 28th session on 17 April 2012 the Commission appointed one of its members to hold an oral hearing pursuant to section 5.4 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. The hearing was held on 24 May 2012 and was attended by the Respondent and the three witnesses offered by the Respondent, namely Haki and Ali Seferi as well as Ahmet Imeri. The Claimant did not participate as the Executive Secretariat was unable to contact him. The witnesses gave a comprehensive testimony on the property transaction between their father Xhemajl Sefiri, on the one hand, and the Claimant, on the other, confirming that the claimed property was sold by the Claimant to their father in 1972, and that later Xhemajl Sefiri respectively his sons sold the claimed property to the Respondent.

72. Based on the evidence before it, including the oral evidence which the Commission finds credible, the Commission concludes that the ownership over the claimed property was sold by the Claimant to Xhemajl Sefiri prior to the conflict. Accordingly the claim stands to be refused.

c. Claim Nos. 17534 and 91402

73. Claim Nos. 17534 and 91402 were submitted by the Claimant in her capacity as a family household member of the property right holder, namely her deceased father. The Claimant's sister-in-law filed two claims with the KPA in respect of the same properties under Claim Nos. 07508 and 07509, in her capacity as family household member of her deceased husband (the Claimant's brother). Claim Nos. 07508 and 07509 are dealt with in the Commission's decision KPCC/D/R/157/2012.

74. The Claimant states that her father was the property right holder of the claimed property. The Claimant contests the allegation of the Claimant of Claim Nos. 07508 and 07509 to the effect that their mother had entered into a contract on long life care with the husband of the Claimant in Claim. Nos. 07508 and 07509. The Claimant asserts that her mother could not have disposed of the property in such way as it was her father that was the property right holder at the time.

75. The Claimant in Claim Nos. 17534 and 91402 submitted a possession list No.17 dated 6 July 1994 in the name of her father, however the Claimant's sister-in-law (the Claimant in Claim Nos. 07508 and 07509) states that her father-in-law was mistakenly registered as the property right holder in the records instead of his wife. She submitted a powerful Court judgement from 1995 in which the mistake was recognized, and in which her mother-in-law was confirmed as the sole owner of the claimed property.

76. The Claimant in Claim Nos. 17534 and 91402 further alleges that she obtained a subsequent court decision confirming ownership over the claimed property in favour of her father, however, she failed to submit such evidence.

77. According to the Claimant's sister-in-law, who is the Claimant in Claim Nos. 07508 and 07509, her mother-in-law inherited the claimed properties from her husband after his death in 1993. Subsequently, on 15 December 1993, she entered

into a contract on long life care with her son, the husband of the Claimant in Claim Nos. 07508 and 07509. In support of her claim this Claimant submitted, among other documents, the inheritance decision dated 4 October 1993 and the contract on lifelong care. Both documents have been verified by the Executive Secretariat as being genuine.

78. In these circumstances, the Commission finds that the Claimant in the present Claims Nos. 17534 and 91402 has failed to prove that her deceased father, the alleged property right holder, had an ownership right over the claimed properties immediately prior to or during the 1998-99 conflict. Accordingly the claims stand to be refused.

d. Claim No. 24365

79. Claim No. 24365 was submitted by the Claimant in his capacity as the property right holder. The Claimant alleges that the claimed property was allocated to him by the airport company in 1998. He submitted in support of his claim an allocation decision dated 16 September 1998 and a contract on lease dated 6 May 1999. The Executive Secretariat could not verify either one of these documents. Furthermore, the Claimant acknowledges that he never took possession of the property.

80. The Respondent who is currently using the claimed property alleges that the apartment was allocated to him in 2001 by the airport company.

81. The Commission finds that the Claimant has not provided sufficient evidence to prove that he had a property right over the claimed property immediately prior to or during the 1998-99 conflict. Accordingly the claim must be refused.

e. Claim No. 28643

82. Claim No. 28643 was submitted by the Claimant in his capacity as the property right holder. The Claimant states that he lost possession of the claimed property in 1999 as a result of the conflict. In support of his claim the Claimant submitted a possession list from a dislocated cadastre which however shows the property in the name of a person other than the Claimant. The Claimant was asked to substantiate and confirm the relationship with this person or to submit other documents that prove his property right, however he failed to do so.

83. During a phone conversation with the Executive Secretariat the Claimant's wife confirmed that the person listed in the possession list, Miljan Radovanovic, is the Claimant's uncle who passed away in 2005. She further confirmed that no inheritance procedure has been initiated after the death of her husband's uncle. She submitted a birth and death certificate of the property right holder. In both documents the surname of the uncle is Radovanic and not Radovanovic as indicated in the possession list. The Claimant was requested to submit a power of attorney from the possible inheritors or a person qualifying as a family household member of his uncle, however, he failed to do so. In the absence of any evidence to support the Claimant's claim, it stands to be refused.

f. Claim No. 28752

84. Claim No. 28752 was submitted by the Claimant in her capacity as property right holder. The Claimant states that she lost possession of the claimed property in June 1999 due to the armed conflict.

85. The Respondent contests the claim and alleges that his father purchased the claimed property in 1995 from the Claimant. To support his allegation he submitted a purchase contract concluded between the Claimant and the Respondent's father. When contacted by Executive Secretariat the Claimant's daughter-in-law confirmed that the claimed property had been sold to the Respondent in 1995. She further stated that she would withdraw the claim, but failed to do so. Accordingly the claim stands to be refused.

g. Claim No. 33636

86. Claim No. 33636 was submitted by the Claimant in his capacity as a family household member of the alleged property right holder, namely his mother. The Claimant states that his mother had a use right over the claimed apartment since 1970, and that they lived in the claimed apartment until 1999 when they left Kosovo as a result of the conflict. The Claimant failed to provide any evidence in support of his allegations. In the absence of any evidence to support the Claimant's claim, it stands to be refused.

h. Claim No. 34141

87. Claim No. 34141 was submitted by the Claimant in his capacity as the property right holder. The Claimant states that he is the occupancy right holder of the claimed apartment, and that he had converted the premises into a residential accommodation with the consent of the other tenants. The Claimant further asserts that he had possession from 1995 until 1999 when he was displaced as a result of the conflict. In support of his allegation the Claimant submitted minutes showing the consent of the other tenants for the conversion of the basement into an apartment. The Claimant furthermore alleges having been issued a decision on conversion by the Municipality in 1995, however, according to the Claimant the document was lost during the conflict.

88. The Respondent asserts that he converted the claimed property into an apartment in 1984 and used it until 1995, with the consent of the tenants. He contends that he was unlawfully evicted by the Serbian police from the claimed property in 1995.

89. The Commission finds that the Claimant has failed to prove that he had any property right over the claimed property immediately prior to or during the armed conflict. Accordingly the claim stands to be refused.

i. Claim No. 39214

90. Claim No. 39214 was filed by the Claimant in his capacity as the property right holder. The Claimant asserts that he lost the claimed property as a result of the conflict in June 1999. The Claimant submitted in support of his claim an allocation decision dated 28 December 1998 and a contract on use dated 19 January 1999.

Neither one of these two documents could be verified by the Executive Secretariat. The Claimant subsequently admitted that he was never in possession of the claimed property. Consequently the Claimant's claim falls short of meeting the requirements for acquisition of an occupancy right pursuant to the Law and Housing Relations (42/86) as amended by Law on Housing (50/92), which provides that an allocation decision, taking of possession and the conclusion of a contract must all exist before an occupancy right can arise.

91. The Respondent claimed a legal right over the claimed property, however he did not want to sign the notice of participation and did not submit any documents to support his allegation.

92. The Commission notes that both the Claimant and the Respondent had filed claims for the same property with the HPD, the Claimant having filed a category C claim under Claim No. DS003897, and the Respondent having filed a category A claim under Claim No. DS004204. Both of these claims were refused by the HPCC by decision HPCC/REC/65/2006/ of 15 July 2006. However, the Commission considers that the HPCC decision does not constitute *res judicata* for the present purposes as the relief sought by the Claimant before the HPCC was repossession, whereas in the present claim the Claimant seeks confirmation of an ownership right.

93. In the absence of any evidence that the Claimant met the relevant statutory requirements for an occupancy right, the Claimant's claim stands to be refused.

j. Claim No. 44101

94. Claim No. 44101 was filed by the Claimant in his capacity as a family household member of the property right holder, namely her father. The Claimant asserts her father lost possession of the claimed property in June 1999 as a result of the conflict.

95. The Respondent claims a legal right over the claimed property, stating that his grandfather purchased the claimed property from the Claimant's father in 1977, however, the Respondent acknowledges that the purchase price was never paid in full. The Claimant confirms that her father sold the claimed property to the Respondent's grandfather, however she asks the KPA to help in finding a solution regarding the remainder of the purchase price.

96. The Commission notes that it is undisputed between the parties that the Claimant did not have an ownership right over the claimed property immediately prior to or during the 1998-99 conflict. Accordingly the claim stands to be refused. As to the Claimant's claim regarding the remainder of the purchase price, the Commission notes that it has no jurisdiction over such claims. The Commission's decision is without prejudice to the Claimant's right to seek relief regarding the outstanding purchase price before competent local courts.

k. Claim No. 50462

97. Claim No. 50462 has been filed by the authorized representative of the Claimant who claims the property in his capacity as the property right holder. The Executive Secretariat located *ex officio* possession list No. 768, which lists the claimed property in the name of a third person. The authorized representative was

contacted by the Executive Secretariat several times and was asked to submit documentation in support of the alleged property right holder's ownership rights. He explained that the Claimant had purchased the property from a third party but that the transaction had not yet been implemented.

98. Based on the evidence before it, the Commission considers that the Claimant has failed to show an ownership right or possession over the claimed property immediately prior to or during the 1998-99 conflict. Accordingly the claim stands to be refused.

l. Claim No. 56143

99. Claim No. 56143 was filed by the Claimant in his capacity as the property right holder. The Claimant states that he took possession of the claimed apartment in February 1999 based on allocation decision No. 425/1 and contract on sale Nr.3787/99. The Executive Secretariat could not verify either one of the documents.

100. The Respondent claims a legal right over the claimed property stating that he has been using the claimed property since 1987 based on allocation decision No.1235 and contract on use No. 1193/10511. Both documents were positively verified by the Executive Secretariat. The Respondent further states that in January 1999 he left the claimed property for security reasons, and that he returned in June 1999. Subsequently, in 2004, he sold the claimed property to a third party, who currently lives in the claimed property.

101. Based on the evidence before it, the Commission considers that the Claimant has failed to show that he had an ownership right over the claimed property immediately prior to or during the 1998-99 conflict. Accordingly the claim must be refused.

D. Compensation claims

102. In Claim Nos. 00043, 11699, 32237, 35355, 35358 and 90641 the Claimant also seeks, in addition to ownership, compensation for physical damage to 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 for compensation are dismissed.

E. Concluding remarks

103. In view of the foregoing, the Commission finds that the claims listed in parts A and B of the attached Schedule stand to be dismissed, and that the claims listed in parts C and D of the attached Schedule stand to be refused, and directs that an order be made in respect of each claim as set out above.

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



Chairperson

APPEALS

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

12.1 Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision.

12.3 The appeal may be filed on the grounds that:

- (a) The decision involves a fundamental error or serious misapplication of the applicable material or procedural law; or
- (b) The decision rests upon an erroneous or incomplete determination of the facts.

Further information on the appeals procedure is contained in the separate Appeals Information Sheet provided to parties with this decision.

*** The English version is the official of all Property Claims Commission decisions. In case of conflict between the English language version and the Albanian or Serbian language version, then the meaning in the English language shall prevail**

Spreadsheet /Lista /Prilog

Part A/Pjesa A/Deo A

KPA40999	KPA21830	KPA35358	KPA47380	KPA90641	KPA21578	KPA32237
KPA33681	KPA31284	KPA90072	KPA91324			

Spreadsheet /Lista /Prilog

Part B/Pjesa B/Deo B

KPA00043	KPA11699	KPA31311	KPA35355	KPA35946	KPA48029	KPA11775
KPA25583	KPA44574	KPA50908	KPA47114	KPA47322	KPA00041	KPA00976
KPA10353	KPA11727					

Spreadsheet /Lista /Prilog

Part C/Pjesa C/Deo C

KPA50462

Spreadsheet /Lista /Prilog

Part D/Pjesa D/Deo D

KPA06723	KPA28643	KPA33636	KPA34141	KPA44101	KPA56143	KPA28752
KPA17534	KPA24365	KPA39214	KPA91402	KPA06919		