

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/AR/101/2011

DECISION DATE:

23/02/2011

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

- (1) In each of the seventy four (74) claims identified in the attached Schedule, the Commission decides that the claim be dismissed.*
- (2) In Claim Nos. 07868, 07870, 07871, 07873, 07875, 07877, 07878, 07880 and 90242, the Commission decides that the claims be refused.*

LEGAL FRAMEWORK

1. On 13 June 2008, Law No. 03/L-079 adopting and amending UNMIK Regulation 2006/50 ("UNMIK/REG/2006/50") on the resolution of claims relating to private immovable property, including agricultural and commercial property entered into force in Kosovo. The Law included an annex ("Annex I") adopting and amending UNMIK Administrative Direction No. 2007/5 ("UNMIK/ADM/DIR/2007/5"), which implements UNMIK/REG/2006/50. Law No. 03/L-079 and Annex I established the Kosovo Property Agency ("KPA") as an independent agency and amended certain provisions of UNMIK/REG/2006/50 and UNMIK/ADM/DIR/2007/5 as necessary to effect the change in the applicable legal framework. In accordance with their terms, Law No. 03/L-079 and Annex I entered into force upon their publication in the Official Gazette.

2. Pursuant to section 22 of UNMIK/REG/2006/50 the Regulation ceased to be in force after 31 December 2008. Accordingly, Law No. 03/L-079 is presently the sole source of the Commission's statutory authority. The provisions of UNMIK/REG/2006/50 remain relevant to the extent that they have been incorporated by reference to Law No. 03/L-079.

REASONS FOR THE DECISION

3. A claimant or the property right holder, as the case may be, is entitled to an order from the Commission for repossession of the property, if the claimant proves:

- (a) ownership of private immovable property, including agricultural and commercial property; or
- (b) a use right in respect of private immovable property, including agricultural and commercial property,

where the claimant or the property right holder, as the case may be, is not now able to exercise such property rights, and where the claim involves circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. (See section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.)

4. Where the claimant makes an ownership claim pursuant to section 3.1(a) of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission must resolve the issue of ownership and, if ownership is proven to the satisfaction of the Commission and the claimant does not indicate otherwise, make an order for repossession in favour of the claimant or the property right holder, as the case may be. Where the claimant makes a claim for a property use right pursuant to section 3.1(b) of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission may consider the claim in a summary procedure and make an order for recovery of possession. (See section 3.1 of

UNMIK/REG/2006/50 read together with section 9 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079.)¹

5. The Commission held its twenty first session from 21 to 23 February 2011 in Prishtinë/Pristina. A total of 2,632 agricultural property claims and 35 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty first session, together with supporting documentation, claims processing reports, verification reports, legal memoranda and other relevant information. However two agricultural claims presented to the Commission were re-categorized by the Commission during the session as residential property claims and are included in the decisions concerning claims for residential property. One further agricultural property claim which had been presented to the Commission by the Executive Secretariat in the thirteenth commission session but in which the Commission had suspended deliberations pending confirmation of physical notification of claims over the claimed properties was referred to the Commission but was withdrawn by the Executive Secretariat during the session. In sum, a total of 2,631 agricultural property claims and 37 residential property claims were considered 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. Ownership claims

7. In all of the claims covered by the present decision the claimants seek the resolution of an ownership claim, and all of them, with the exception of Claim No. 30882, relate to agricultural properties, including agricultural land, pasture and forests. The Claimant in Claim No. 30882 seeks confirmation of his ownership over a house and associated land parcel.

8. The present decision deals with 83 claims, namely 82 agricultural property claims and one residential property claim. The remaining 2,549 agricultural property claims are covered by decisions KPCC/D/A/100/2011, KPCC/D/A/102/2011 and KPCC/D/AR/103/2011. The remaining 36 residential claims are covered by decisions KPCC/D/R/104/2011 and KPCC/D/R/105/2011.

9. A total of 31 claims covered by this decision have been previously considered by the Commission, while 52 of the claims are presented to the Commission for the first

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.

time. However the earlier decisions in these claims were overturned by the Commission either on account of an incorrect notification of the claimed properties during claims processing by the Executive Secretariat or on account of other processing errors by the Executive Secretariat which were identified after the decision had been taken. These claims consequently stand to be re-determined following correct notification of the claimed property and correction of the other processing errors. Evidence and information provided by any respondents to the claim or any current occupants of the claimed properties is taken into account by the Commission in the re-determination of the claims. In the claims in which previous decisions have been overturned by the Commission, the Executive Secretariat has written to each claimant advising them of the notification error and informing them that their claims will be re-determined following correct notification of the claimed property. The claimants, as well as the relevant cadastral authorities, have been advised that the previous Commission decisions are invalid and cannot be used for the purposes of any legal transaction.

10. A number of claims dismissed by the Commission in the present decision were previously granted by the Commission in earlier decisions. In its re-determination of claims, the Commission takes into account new information obtained by the Executive Secretariat or provided by the claimant or a respondent in the course of re-processing of claims. In situations where information has been provided which would affect the outcome of the earlier decision, such as information indicating that there was no loss of possession or inability to exercise property rights in relation to the claimed property, the Commission acts on the basis of the new information and may dismiss a claim that was previously granted.

11. The Commission notes that all of the claims covered by the present 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. 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 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

12. 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.

13. 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 refuse or dismiss a claim on any ground, including those set down in section 11.4 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

14. 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 right of claimants 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.)

1. Claims dismissed on account of lack of evidence of loss of possession

15. 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.

16. 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 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.

17. Claim No. 06984 is filed by the Claimant in his capacity as property right holder. The Claimant advises that he inherited the claimed land parcel from his grandfather and used the land until he left Kosovo for Serbia in 1972. He advised the Executive Secretariat that he visited his property only once prior to the conflict in Kosovo and has not visited the property since. He has no knowledge as to the current condition of his property and advised the Executive Secretariat that his loss of possession over the property was unrelated to the conflict in Kosovo during 1998-1999. In the circumstances the claim stands to be dismissed as falling outside the mandate of the Commission.

18. In Claim Nos. 26370, 26371, 26372, 26373, 26374, 26375 and 26378, the Claimant, who filed the claims in his capacity as property right holder, states that he left Kosovo in 1970 for Serbia and has continued to use his properties since that time. He states that he was never displaced by the conflict and has never lost possession of his properties. He has filed his claim for the purposes of confirmation of his property right and to ensure the legal security of his title. As there has been no conflict related interference with the Claimant's property rights, these claims stand to be dismissed. (See also the Commission decisions KPCC/D/A/52/2009 of 19 August 2009, KPCC/D/A/65/2010 of 25 February 2010 and KPCC/A/93/2010 of 28 October 2010 in which the Commission the claims filed by the same Claimant for the same reason.)

19. Claim Nos. 30880, 30881, 30882, 30883, 30884, 30885, 30886, 30888, 38704, 38705, 38706, 38707 and 38709 are filed by the Claimant in his capacity as property right holder. All claims are for agricultural property, with the exception of Claim No. 30882 which is for residential property, namely a house and an associated land parcel. In August 2008 the Claimant advised the Executive Secretariat that his father had left Kosovo in the 1980s and that the property was used by relatives after that time. He added that after the conflict neither he nor his family were able to exercise property rights over the claimed land parcels due to security reasons. In May 2009 the Claimant was again contacted by the Executive Secretariat to clarify the circumstances of his current inability to exercise property rights over the land parcels. He advised that he was not currently prevented from using the claimed parcel but would like confirmation of his property rights to make it easier for him to sell the property in the future. He stated that the property is located in Leposaviq/Leposavić municipality, a predominantly Serbian municipality within Kosovo. For the purposes of further corroboration the Executive Secretariat contacted the mother of the Claimant who advised that neither she nor her husband had lived in Kosovo since 1972 but that her husband had occasionally visited their properties. She advised that during the 1998-1999 conflict, the properties were used by her husband's relatives who had never lost possession of the properties, did not leave Kosovo and continue to reside in Kosovo. Based on the information provided by the Claimant, the Commission finds that he has not lost possession over the claimed property as a result of the conflict and is not currently prevented from exercising his property rights. Consequently the claims must be dismissed as falling outside the mandate of the Commission.

20. Claim Nos. 31384, 31385, 31386, 31387, 31389, 31390, 31391, 38666, 38668, 38672, 39069 and 39073 were initially filed by the Claimant in his capacity of family household member, namely son, of the property right holder. However subsequent to the death of the property right holder, the properties were inherited by his brother. The

possession list confirming the ownership right of the Claimant's brother has been verified by the Executive Secretariat. The Claimant in these claims acknowledges that neither he nor his family have lost possession of the properties as a result of the conflict. When asked why he had previously claimed to have lost possession of the properties, he stated that his family feared losing possession of the land following the unilateral declaration of independence in Kosovo. In these circumstances, as there has been no loss of possession of the claimed property as a result of the 1998-99 conflict, the claims stand to be dismissed. (See also Commission decision KPCC/D/A/70/2010 of 21 April 2010 in which the Commission dismissed claims by the same Claimant for the same reason).

2. *Claims dismissed on account of lack of proof of capacity to file the claim on behalf of the property right holder*

21. Pursuant to section 5.2 of UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079, claims may be made by either the property right holder, a family household member of the property right holder, or an authorized natural person with a valid and duly executed power of attorney from either the property right holder or a family household member of the property right holder. In exceptional cases where the provision of a power of attorney is problematic, the Executive Secretariat may certify an alternative document authorizing representation of a claimant.

22. Section 1 of the UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 defines "Member of Family Household" to include "the spouse, children (born in and out of wedlock or adopted) and other persons whom the property right holder is obliged to support in accordance with the applicable law, or the persons who are obliged to support the property right holder in accordance with the applicable law, regardless of whether or not that person resided in the property together with the property right holder." The Commission has determined that, under the applicable law, this definition covers, in addition to spouses and children, parents, brothers, sisters, grandparents, grandchildren, great-grandparents and great-grandchildren of the property right holder. However, by implication the definition does not cover in-laws, uncles, aunts, nephews, nieces or cousins, or other more distant relatives who must provide a power of attorney authorizing their representation on behalf of the property right holder.

23. Claims in which the relationship between the family household member claimant and the property right holder cannot be established cannot be considered complete claims in accordance with section 5.2 of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079, since an essential procedural requirement is not satisfied, namely authorization from the property right holder or family household member.

24. Claim No. 38307 is filed by the Claimant on behalf of his mother, the property right holder. The Claimant's mother is deceased and her death certificate has been provided to the Executive Secretariat. The Claimant's name, according to his identification card and the birth certificate, is Nikola Filipovic. His mother's name is listed as Zivka Stojanovic in her death certificate, in her husband's death certificate, in the possession list and in the certificate of immoveable property, but as Zivka Filipovic in the Claimant's birth certificate. According to her death certificate, the property right holder's maiden name was Zivka Simijonovic. Her deceased husband's name is stated

variously as Stanko Filipovic (in the Claimant's birth certificate), Stanko Stojanovic (in his death certificate) and Stanko Petrovic (in his marriage certificate). While the Claimant has provided a witness statement stating that Zivka Stojanovic and Zivka Filipovic are the same person, the Commission is unable to accept that a witness statement constitutes adequate evidence in the absence of any corroborating evidence. The Commission also notes that the death and marriage certificates of Zivka Stojanovic provide different dates of birth. The Claimant was contacted by the Executive Secretariat on a number of occasions and was asked to provide documents which would clarify the name discrepancy, but the Claimant indicated that he had no further documents to submit apart from those already provided to the Executive Secretariat. The Executive Secretariat attempted to establish *ex officio* whether the property right holder's personal identification number was ever listed in the registry books for birth or marriage as this fact might have established that Zivka Stojanovic/Petrovic/Filipovic were the same person. However, the personal identification number was not listed in either registry book. The only document linking the Claimant and the property right holder is the Claimant's birth certificate, but no explanation has been provided for the difference in names in the various documents concerning the property right holder. In these circumstances, the Commission cannot be satisfied that the Claimant is a family household member of the deceased property right holder. The claim therefore stands to be dismissed. The Commission notes that it has dismissed previous claims by the same Claimant for the same reason; see, e.g., Commission decision KPCC/D/A/61/2010 of 25 February 2010.

25. Claim Nos. 44518 and 44526 are filed by the Claimant in her capacity as the family householder member, namely the wife, of the deceased property right holder. However, no death certificate has been provided to the Executive Secretariat. The Claimant's name is Jelica Arsic, and her maiden name is Jelica Petrovic. The possession list and the certificate of immoveable property indicate that the property right holder is Filip Stolic. In the claim intake form the property right holder's name is listed as Filip Arsic, while in the Claimant's birth certificate, as re-issued by UNMIK in 2006, the property right holder's name is listed as Filip Staletovic. The Executive Secretariat contacted the Claimant in 2009 and asked her to provide certified documents from competent authorities to confirm that Filip Arsic/Stolic/Staletovic were the same person. The Claimant advised that all the relevant documents were in Prizren, and that she was too old to go to Prizren. In January 2010 the Executive Secretariat contacted the Claimant's grandchild to clarify the name discrepancy. He advised that his grandfather had variously been registered in some documents as Staletovic and in other documents as Arsic, but that the name Stolic was just an administrative error. He said that he had tried to obtain certified documents regarding the discrepancy in his grandfather's surname from the court in Krusevac, Serbia and through the civil registry office, but that the officials advised him to go to Prizren to obtain the relevant documents. He said that the Claimant could not come to Prizren on account of the security situation. He said that the property right holder passed away in 2004 in Lazarevac, Serbia and that the death certificate was registered in the name Arsic. The grandchild advised that he would provide his grandfather's death certificate, copy of his identification card and taxation records and would try once more to obtain a certified document regarding the name discrepancy. However, this documentation has not been provided, and the Executive Secretariat cannot make the application on behalf of the Claimant. In these

circumstances, the Commission is unable to establish the identity of the property right holder or be satisfied that the Claimant is the spouse of the property right holder. The claim therefore stands to be dismissed. The Commission notes that it has dismissed previous claims by the same Claimant for the same reason; see, e.g., Commission decision KPCC/D/A/61/2010 of 25 February 2010.

3. *Claims dismissed on account of the absence of a power of attorney*

26. Pursuant to section 5.2 of UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079, claims may be made by either the property right holder or a family household member of the property right holder. A claimant may be represented by an authorized natural person with a valid and duly executed power of attorney. In exceptional cases where the provision of a power of attorney is problematic, the Executive Secretariat may certify an alternative document authorizing representation of a claimant.

27. Section 1 of the UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 defines "Member of Family Household" to include "the spouse, children (born in and out of wedlock or adopted) and other persons whom the property right holder is obliged to support in accordance with the applicable law, or the persons who are obliged to support the property right holder in accordance with the applicable law, regardless of whether or not that person resided in the property together with the property right holder." The Commission has determined that, under the applicable law, this definition covers, in addition to spouses and children, parents, brothers, sisters, grandparents and grandchildren of the property right holder. However, by implication the definition does not cover in-laws, uncles, aunts, nephews, nieces or cousins, or other more distant relatives who must provide a power of attorney authorizing their representation on behalf of the property right holder or a family household member of the property right holder. Individuals who do not fall within the definition of a household member cannot be considered claimants, but are persons purporting to represent the claimant.

28. Claims in which the person filing the claim is not a family household member and requires a power of attorney cannot be considered complete claims in accordance with section 5.2 of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079, since an essential procedural requirement is not satisfied, namely authorization from the property right holder or a family household member of the property right holder.

29. In Claim No. 36546, the person filing the claim is the son in law of the property right holder. As he did not provide a power of attorney from a family household member of the property right holder, the Executive Secretariat contacted his wife who is the daughter of the property right holder. She agreed to authorize her husband to claim on her behalf. However no power of attorney was received by the Executive Secretariat. When the Executive Secretariat again contacted the property right holder's son in law, he advised that he no longer wished to provide the documents as he "did not trust the agency." In these circumstances the claim must be dismissed on account of the failure by the Claimant to provide authorization of his capacity to file the claim on behalf of the property right holder.

30. Claim Nos. 36690, 36691 and 36693 are filed by a family household member, namely son, of the alleged property right holder. While the possession list covering the claimed properties is in the name of Rade Vasic, the parcel is registered in the name of Dragutin Stosic pursuant to a contract on division which has been certified in the Municipal Court of Kamenicë/Kamenica in 1991 and has been verified by the Executive Secretariat. It appears that the parcel was previously owned by Rade Vasic who sold the land to the Claimant's father, Zivorad Stostic, who subsequently divided the land between his two brothers, the Claimant's uncles. The Claimant was informed about the registration of the property in the name of his uncle and invited to submit a power of attorney from his uncle authorizing him to submit the claim on his behalf. The Claimant advised that he would submit the power of attorney, but has not done so. As the Claimant has failed to establish either the ownership right of his father, or his capacity to lodge a claim on behalf of the current property right holder, the claim stands to be dismissed. The Commission notes that a number of other claims filed by the Claimant and granted by the Commission have confirmed the ownership right of the Claimant's father.

31. Claim Nos. 37412, 37413, 37414, 37415, 37419, 37420, 37421, 37424, 51508, 51516, 51525 and 51526, are all filed by the nephew of the property right holder. As the Claimant does not stand in a family household member relationship with the property right holder, the Executive Secretariat contacted the Claimant on several occasions requesting that he provide a power of attorney from the property right holder, or a family household member of the property right holder, to prove his authorisation to file the claim. The Executive Secretariat also contacted the wife of the Claimant. However, instead of providing a power of attorney from either property right holder or a family household member of the property right holder authorizing the Claimant to present the claim, the Claimant provided the Executive Secretariat with a power of attorney in which he authorized the son of the property right holder to represent him as the claimant. Such a power of attorney does not constitute authorization from either the property right holder or a family household member of the property right holder. Consequently, as the Claimant has failed to establish his capacity to lodge a claim on behalf of the property right holder in accordance with the requirements of section 5.2 of UNMIK/ADM/DIR/2007/5, as adopted by Law No. 03/L-079, the claims must be dismissed.

32. Claim No. 51245 is filed by the Claimant in his capacity as family household member, namely step-son, of the deceased property right holder. The Claimant has provided the death certificate of his step-mother, but no evidence proving his family household member relationship with his step-mother. Nor has the Claimant provided other relevant documentation such as the marriage certificate of his father and step-mother or his own birth certificate. The Commission notes that the property right holder did not take the name of the Claimant's father upon marriage, but appears to have retained her surname from a previous marriage. The Claimant has not provided any proof that he was formally adopted by his step-mother, nor has he provided a court decision indicating any obligation by his step-mother to support him in accordance with the applicable law, or an inheritance decision indicating that he has inherited the claimed property. In these circumstances the Claimant cannot be considered a family household member of the property right holder and the claim stands to be dismissed on account of

the Claimant's lack of capacity to file the claim on behalf of the property right holder. Nor has the Claimant proved his own ownership over the claimed property. The Commission notes that it has dismissed previous claims by the same Claimant for the same reason; see, e.g., Commission decision KPCC/D/A/84/2010 of 2 September 2010.

33. The persons filing Claim Nos. 08466, 08469, 08471, 08473, 27560, 27561, 37086, 38293, 38294, 38296, 38297, 38298, 38299, 38303, 38304, 39505, 39509, 47388, 47389, 49375 and 51773 are not family household members of the property right holder pursuant to the above definition and must consequently demonstrate their authorization to act on behalf of the property right holder, or a family household member of the property right holder, through a valid power of attorney. In all cases the Executive Secretariat has contacted the persons filing the claims on numerous occasions to request that he or she provide a power of attorney from either the property right holder or a family household member of the property right holder; however no such document has been provided. In all claims the person filing the claim indicated that he or she would provide a power of attorney from a family household member, however, they have failed to do so. Some claimants have filed separate claims which have previously been granted by the Commission. However in those claims the claimants have lodged the claims in their capacity as family household members of the property right holder and no power of attorney was necessary.

C. Claims refused

34. 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 sufficiently prove their ownership or use right interest over the claimed property.

35. 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 property 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).

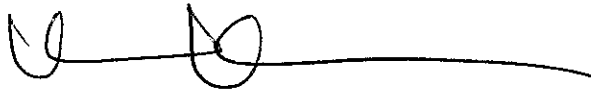
36. Claim Nos. 07868, 07870, 07871, 07873, 07875, 07877, 07878, 07880 and 90242 are submitted by the Claimant in his capacity as property right holder. The claims were previously determined by the Commission in various Commission decisions during 2007. However those decisions were overturned by the Commission as a result of the incorrect notification of the subject properties during claims processing by the Executive Secretariat. The Commission referred the claims for re-processing following correct

notification of the property. At the time of the earlier decisions the Claimant was the property right holder. However the Claimant now confirms having sold the property to a third party in 2009 pursuant to a purchase contract No. 79/109. The Certificate of Immoveable Property, which has been verified by the Executive Secretariat, is registered in the name of the new owner. The Claimant's son advised that he would submit the purchase contract and withdraw the claims. However no formal withdrawal has been received by the Executive Secretariat. As the Claimant has confirmed that he is no longer the property right holder, the claim stands to be refused by the Commission for the Claimant's failure to establish a current property right over the claimed properties.

D. Concluding remarks

37. 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.

38. 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-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

KPA08466	KPA08469	KPA08471	KPA08473	KPA27560	KPA27561	KPA38293
KPA38297	KPA38298	KPA38303	KPA38304	KPA39505	KPA39509	KPA47389
KPA51773	KPA36690	KPA36691	KPA37421	KPA51516	KPA51526	KPA37412
KPA37413	KPA37419	KPA37420	KPA47388	KPA51508	KPA51525	KPA51245
KPA31387	KPA37086	KPA37414	KPA37415	KPA37424	KPA38668	KPA44526
KPA36693	KPA38307	KPA44518	KPA49375	KPA06984	KPA36546	KPA38294
KPA38296	KPA38299	KPA38666	KPA30881	KPA30883	KPA30884	KPA30886
KPA38704	KPA38707	KPA31384	KPA31385	KPA31386	KPA31389	KPA31390
KPA31391	KPA38672	KPA39069	KPA39073	KPA30880	KPA30885	KPA30888
KPA38705	KPA38706	KPA38709	KPA26370	KPA26375	KPA26378	KPA30882
KPA26371	KPA26372	KPA26373	KPA26374			

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

KPA07868
KPA07870
KPA07871
KPA07873
KPA07875
KPA07877
KPA07880
KPA90242
KPA07878