



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

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DECISION

PANEL NO:1

DECISIONNO.: KPCC/D/A/102/2011
DECISION DATE: 23/02/2011

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

In each of the 121 (one hundred and twenty one) claims identified in parts A, B, C, D, E, F and G of the attached Schedule, the Commission decides that the claims be dismissed.

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

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 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 accordingly are covered by decisions concerning residential property. A further agricultural property claim which had been presented to the Commission in the thirteenth Commission session but in which the Commission had suspended deliberation pending confirmation of physical notification of claims over the claimed properties, was presented to the Commission but withdrawn by the Executive Secretariat during the session. In sum, a total of 2,631 agricultural property claims were considered by the Commission during the twenty first session.

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

A. Claims covered by the present decision

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

8. The present decision covers a total of 121 (one hundred and twenty one) claims, as identified in the attached Schedule. The remaining 2,510 claims for agricultural property dealt with by the Commission during the session are covered by three other decisions, namely decisions KPCC/D/A/100/2011, KPCC/D/AR/101/2011 and KPCC/D/AR/103/2011.

9. In order to satisfy the requirements for a valid claim, the claimant or the property right holder, as the case may be, must show that he or she had an ownership or use right in respect of the claimed property, and that he or she is not now able to exercise his or her property right due to the circumstances directly relating to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

10. A total of 25 claims covered by this decision have been previously considered by the Commission, while 96 of the claims are presented to the Commission for the first 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

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.

current occupants of the properties is taken into account by the Commission in the redetermination 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.

11. All claims covered by the present decision are contested in the sense that the party occupying the claimed properties, or a party that has expressed a legal interest in such properties (the "Respondent"), has contested the validity of the claim within the 30-day period prescribed in section 10.2 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, or at a later stage during the proceedings, pursuant to section 10.3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. 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 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.

12. Pursuant to section 10 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, each of the Respondents has been provided with a copy of the claim submitted by the respective Claimant. In accordance with section 3.5 of Annex II to UNMIK/AD/2007/5 as adopted by Law No. 03/L-079, the Claimants have been provided with a copy of the documents submitted by the respective Respondent in response to the claim. Both parties in each case have thus been given an opportunity to comment on the information provided by the other party, and any such comment or information has been taken into account during claim processing and adjudication. The Commission notes that the First Respondent to the claims covered in parts D and E of the attached Schedule to this decision refused to accept a copy of the documents from the First and Second Claimants to these claims.

B. Dismissals

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

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

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

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

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

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

1. *Claim Nos. 15536 and 15537*

18. Claim Nos. 15536 and 15537, as identified in part A of the attached Schedule to this decision, were filed by Darinka Mugos Novovic (the "Claimant") in her capacity as property right holder. The Claimant's daughter has now advised the Executive Secretariat that her mother has passed away although no death certificate has been provided confirming the fact. The Commission considers that a claimant's death during the proceedings does not affect the validity of the claim. In support of her claim, the Claimant submitted a possession list identifying her mother as the owner of the parcel, as well as a cadastral plan registering the Claimant as owner of the property based on a 1984 inheritance decision. The Claimant stated in the claim form that she lost possession of the property in June 1999 and that the property is currently occupied by an unknown person.

19. The Commission notes that these two claims were previously determined by the Commission as uncontested claims in Commission decision KPCC/D/A/13/2008 dated 30 April

2008. At that time there was no information available to the Commission or the Executive Secretariat to indicate that any persons were challenging the Claimant's claim. The Commission was subsequently advised that both claims had been incorrectly notified, in other words, that the physical notification of the properties had taken place outside the boundaries of the claimed land parcel. The Commission consequently overturned its previous decisions in relation to these claims and directed that the claims be re-processed. New information and evidence that became available in the course of the re-processing of the claims by the Executive Secretariat, including the evidence and information provided by the Respondents to this matter, must be taken into account by the Commission.

20. Two persons responded to these claims, namely Ymer Bardhi (the "First Respondent") and Ibish Kuqi (the "Second Respondent"). The First Respondent approached the KPA in relation to these claims on 22 August 2008 while the Second Respondent approached the KPA on 3 September 2008. The Second Respondent declared that his father had purchased the property from the Claimant and her husband in 1979. In support of his defense, the Second Respondent submitted minutes from a court hearing concerning a property transaction, however these minutes relate to a separate parcel, No. 438/8. After the Executive Secretariat clarified that the claims related to parcel Nos. 111/1 and 111/2, and not parcel No. 438/8, the Second Respondent stated that he did not contest ownership of those parcels which he stated were bought a long time ago by the Bardhi family. The Second Respondent indicated that he wished to withdraw his response to these claims, but has not provided a written withdrawal to the Executive Secretariat.

21. The First Respondent states that he purchased the claimed property in 1978 and has been in possession of the property continuously since 1976. He provided a statement saying that the full purchase price of 70 million dinar had been paid at the time of the purchase in 1978 but that the Claimant had later challenged the purchase price. The purchase contract was not registered in the Municipal Court of Pejë/Peć at the time of the sale because the property was in the name of the Claimant's mother and the inheritance proceedings were not completed until 1984. The First Respondent later took action in the Municipal Court of Pejë/Peć to confirm his co-ownership interest of the parcel with his two brothers, Halil and Smajl Bardhi. By judgment dated 27 February 2006 the Court confirmed the First Respondent's ownership interest. In support of his response, the First Respondent has submitted a number of documents including the judgment of the Municipal Court of Pejë/Peć No. 2007/04 dated 27 February 2006, a possession list dated 28 June 2007 listing the First Respondent and his two brothers as co-owners of the property, a handwritten contract dated 10 October (year could not be confirmed) between the Claimant's husband, Milorad Novovic as seller and Zhuj Keri Bardhaj, the First Respondent's uncle, as purchaser and ten handwritten receipts indicating payment monies were received by Milorad Novovic from Zhuj Keri Bardhaj. The Executive Secretariat has verified the court judgment and the possession list.

22. The First Respondent later provided a number of other documents including minutes dated 29 August 1984 compiled by the Socialist Alliance of Working People of Serbia, a declaration given by the Claimant on 26 September 1986 in which she alleges that she sold the property under duress from the purchaser Zhuj Mahmut and official records of the police of Kliqinë No. 288/89 dated 12 March 1989 which found that the purchase was concluded without any duress. The minutes of August 1984 indicate that the Claimant addressed a complaint to the local commission requesting help to regain her land as she had sold her property some years earlier to Zhuj Keri and

Mahmut Keri for a low price. The official records of the police of Kliqinë of March 1989 indicate that this complaint was not upheld.

23. When the Executive Secretariat attempted to contact the Claimant to clarify the circumstances of the sale of the property, they were advised by her daughter that the Claimant had died. The Claimant's daughter denied that her mother had ever sold any land parcel and stated that her family were prevented from using the land by the Bardhi family.

24. Full exchange of documents occurred between the Claimant and the Respondents, including a copy of the judgment of the Municipal Court of Pejë/Peć of 2006 confirming the ownership of the property in the name of the First Respondent and his two brothers. The Commission notes that the Claimant was not represented in those proceedings and that the court appointed a temporary representative on her behalf. Prior to the appointment of a temporary representative, the Court made efforts to inform the Claimant of the application within Kosovo through publication of a notice at the Court and publication of a notice in a Kosovo daily newspaper; it also made inquiries with two government agencies to obtain the Claimant's contact information. The Court concluded that the parties entered into the purchase contract without duress and of their own free will and found that the First Respondent had been in possession of the property since 1976. Applying Articles 21 and 28 of the Law on Basic Property Relations regarding adverse possession of property in good faith, the Court confirmed the ownership right of the First Respondent and his two brothers. The Commission notes that the court case was concluded on 27 February 2006, i.e., prior to the entry into force of UNMIK/REG/2006/50. The Claimant was provided by the Executive Secretariat with a copy of the Court judgment but she has not provided any response.

25. Based on the available evidence, including the decision of the Municipal Court of Pejë/Peć dated 27 February 2006, the Commission finds that the Claimant did not lose possession of the claimed property as a result of the armed conflict in Kosovo during 1998-1999, but through a sale which took place in 1978, much before the conflict. Consequently the claim stands to be dismissed pursuant to section 11.4(b) of UNMIK/REG/2006/50, as adopted by Law No. 03/L-079. The Commission also notes that the claim has previously been considered and decided in a final judicial decision, namely that of the Municipal Court of Pejë/Peć, and therefore also stands to be dismissed as *res judicata* pursuant to section 11.4(c) of UNMIK/REG/2006/50, as adopted by Law No. 03/L-079. (See also the Commission's previous decision in a claim lodged by the same Claimant which dismissed the claim for identical reasons, namely decision KPCC/D/A/85/2010 dated 2 September 2010).

2. *Claim No. 16011 and others*

26. The eleven claims identified in part B of the attached Schedule to this decision are filed by the Claimant in his capacity as family household member, namely son, of the deceased property right holder. In support of his claims the Claimant submitted a possession list in the name of his deceased mother as property right holder. This possession list has been verified *ex officio* by the Executive Secretariat.

27. The Executive Secretariat has physically notified the claimed properties, which are located in the municipality of Podojevë/Podujevo. During the process of notification of the properties, Mr Nazmi Fejza (the "Respondent"), who currently uses the claimed properties,

challenged the Claimant's title and claimed a legal right to the properties. He asserts that the property right holder sold the properties to a third party in 1970, and that his family purchased the properties approximately ten years later from a party to whom such third party had sold the property in the meantime. In support of his assertion the Respondent submitted witness statements and evidence of paid property taxes.

28. It was initially claimed that the Claimant lost the properties as a result of the 1998-1999 conflict, however the Claimant later advised the Executive Secretariat that his family did not have possession of the claimed properties from 1970 onwards. He also confirmed that he was neither in possession nor using the claimed properties at the time of the 1998-99 conflict in Kosovo. In these circumstances the Commission concludes that the alleged loss of property rights cannot be said to be related to the conflict. Consequently, the Claimant's claims fall outside the jurisdiction of the Commission and stand to be dismissed.

3. *Claim No. 20163 and others*

29. The seven claims identified in part C of the Schedule to this decision are filed by Djurdje Milenko Pajovic (the "Claimant") in his capacity as family household member, namely son, of the property right holder. The Claimant asserts that the property right holder is his deceased father and has submitted a death certificate as evidence. In support of his claim the Claimant has submitted a possession list listing his father as owner of the claimed parcels. This document has been positively verified by Executive Secretariat. The Claimant states that his mother Sindja retained possession of the claimed properties until December 2004 when she passed away.

30. The Respondent, Remzi Haradinaj, has approached the Executive Secretariat in relation to the claimed parcels and claims a legal right over the properties. He states that he has been cultivating the claimed land for more than 20 years pursuant to an oral agreement with the Claimant and his mother. He states that he subsequently purchased the claimed property in 2001. In support of his response he has submitted a purchase contract concluded on 18 May 2001 between Sindja Pajovic, Biljana Pajovic-Mirjagic and Djurdje Pajovic as sellers and the Respondent himself as buyer. The contract is not certified in court and therefore could not be verified by the Executive Secretariat. The Respondent also submitted a statement certified in the Municipal Court in Vrsac, Serbia, dated 18 May 2001, by which the Claimant confirms that the signature contained in the uncertified purchase contract is his signature. This document has been verified by the Executive Secretariat. The Respondent contends that he could not certify the purchase contract as the local courts were not operational in 2001. When he later tried to certify the contract, the Claimant refused to accept the contract.

31. The Claimant denied that he or anyone in his family sold the claimed properties to the Respondent and claims that the purchase contract is forged. He contends that the purchase contract could not be genuine as the inheritance proceedings in relation to his father, the alleged property right holder, had not been initiated at the time and therefore no-one had the legal capacity to sell his father's properties.

32. While the Claimant and the Respondent have differing accounts of the past use of the properties, the Claimant contends that his mother remained in possession of the properties until December 2004, well after the end of the armed conflict in Kosovo. The Executive Secretariat contacted the Claimant to clarify whether the Claimant's claim involved in any way the

circumstances surrounding the conflict, as it was initially claimed that possession of the properties was lost in 1999. The Claimant confirmed that there had been no loss of possession as a result of the 1998-99 conflict, but that after his mother's death in 2004 the properties had been occupied by unknown persons. Accordingly, the claims stand to be dismissed as falling outside the jurisdiction of the Commission.

4. *Claim No. 23154 and others and Claim No. 27389 and others*

33. The 38 claims identified in part D of the Schedule to this decision are filed by Marina Korac (the "First Claimant") in her capacity as family household member, namely granddaughter, of the deceased property right holder, Dragoljub Stevic, or as property right holder in her own right having inherited a part of the claimed parcels from her grandfather.

34. The seventeen claims identified in part E of the Schedule to this decision are filed by Zoran Stevic (the "Second Claimant") in his capacity as property right holder having inherited the claimed parcels in 2004 from his father Bogomir Stevic. Dragoljub Stevic was the First Claimant's grandfather and the Second Claimant's uncle. As the claims made by the First and Second Claimants relate to the same factual circumstances, they are dealt with together for the purposes of this decision.

35. Pursuant to section 1.2 of Annex II of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079, a claim may be filed by a family household member on behalf of the property right holder. Section 1 of the Administrative Direction 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. Consequently, as the granddaughter of the property right holder, the First Claimant has the requisite legal capacity to file the claim on behalf of her deceased grandfather. The First Claimant has submitted a death certificate for her grandfather which identifies the date of death as 25 November 1991. The document has been verified as being valid by the Executive Secretariat.

36. All the properties claimed by the First and Second Claimants are located in the municipality of Podujevë/Podujevo and the Executive Secretariat has physically notified the claimed properties. During the process of notification, two individuals, Sevdajet Sadriu (the "First Respondent") who currently uses the claimed properties, and Musa Hoti (the "Second Respondent") responded to the claims. The First Respondent responded to all the claims on behalf of his brother, Bexhet Sadriu, who claims to have purchased the properties and currently lives in Germany. The Second Respondent has responded only to the parcel covered by Claim No. KPA47740, which is claimed by the First Claimant. The Second Respondent is also claiming on behalf of his brother, Isa Hoti, who allegedly purchased the parcel and is resident in Germany. The First Respondent signed a notice of participation claiming a legal right to the properties, whereas the Second Respondent did not sign such a notice but has replied to the claims in writing. The First Respondent has submitted documentary evidence in support of his response

but the second Respondent has not. The Commission is satisfied that the claimed properties have been properly notified pursuant to section 10.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

37. In support of her claim, the First Claimant has submitted several documents relating to her alleged property right, namely Possession List Nos. 7, 29 and 75 identifying Dragoljub Stevic as owner of the claimed properties, and Possession List Nos. 32, 96, and 121 identifying Ratomir Stevic (Dragoljub's brother) as owner of the claimed properties. The Claimant also has submitted two inheritance decisions issued by the Municipal Court of Podujevë/Podujevo dated 1984 and 1989 which show that Dragoljub Stevic inherited $\frac{1}{2}$ of the property that belonged to his brother Ratomir Stevic. The Executive Secretariat was able to verify all the above mentioned documents against cadastral records and records held in the Municipal Court in Podujevë/Podujevo. The First Claimant has also submitted an inheritance decision issued by the parallel Court of Kursumlija in Serbia by which the First Claimant inherited $\frac{1}{10}$ of her grandfather's properties. However this inheritance decision cannot be considered as valid since Dragoljub Stevic died in Revuce in Podujevë/ Podujevo and the Kursumlija court did not have the requisite competence to deal with the inheritance proceedings.

38. In support of his claim, the Second Claimant has submitted an inheritance decision issued on 26 March 2004 and Possession List No.66 which confirms his ownership of the claimed properties. The Executive Secretariat has verified both the possession list and inheritance decision.

39. Both the First and Second Claimants confirm that they entered into a transaction with Behxhet Sadriu, the brother of the First Respondent, in 2008 for the sale of the claimed parcels. However they state that the transaction was not finalized since the final part of the purchase was not paid by Behxhet Sadriu.

40. The First Respondent states that his brother Behxhet Sadriu concluded a purchase contract with Zoran, Milutin and Mica Stevic on 4 January 2008 for the claimed parcels with a purchase price of € 250,000. Milutin and Mica are the grandchildren of Dragoljub and the cousins of the First Claimant. The First Claimant confirms having given oral permission to Milutin and Mica to sell the claimed parcels on her behalf. The First Respondent states that all sellers were present when the contract was concluded and € 200,000 of the purchase price was paid to them at the time. The remainder of the purchase price was to be paid within six months by which time the "heirs" would have obtained the necessary documentation confirming their property ownership through inheritance. It appears that the inheritance proceedings were not finished and the remainder of the purchase price is outstanding. The Second Claimant confirms that he received the majority of the purchase price owing to him, and that only a small amount is outstanding. The First Claimant confirms that an amount of money was paid as part of the transaction. A copy of the purchase contract has been provided to the Executive Secretariat, but the contract was not certified by the court since the inheritance proceedings were not completed.

41. The Second Respondent claims that his brother Isa Hoti is the owner of half of parcel no. 728, listed in Possession List No.96, which is the subject of Claim No. 47740. He states that the other half of the parcel belonged to Dragoljub Stevic. He states that his brother bought the claimed property from Milojka Korac in 1987 but that his brother could not register the purchase at the time on account of the discriminatory legislation which prevented ethnic Albanians from

registering the purchase of private immovable property from ethnic Serbs. He also alleges that the purchase contract was burnt during the war, but there were witnesses present during the transaction who can confirm the sale. The First Claimant has confirmed this transaction and states that the other half of the parcel belongs to her grandfather Dragoljub Stevic.

42. The Commission notes that it was only the Second Claimant who had the legal capacity to sell the properties that are registered in his name. The two other signatories to the purchase contract, Milutin and Mica Stevic, who claimed to be heirs to Dragoljub and Ratomir Stevic, were never confirmed as heirs by any valid court decision and therefore had no legal capacity to sell the properties. Nor did the First Claimant have the legal capacity to sell the properties she claimed to have inherited from her grandfather as the inheritance decision was issued by a parallel court.

43. In order to satisfy the criteria for confirmation of ownership by the Commission as set out in section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, claimants must demonstrate that the claim is conflict-related in the sense that it involves circumstances directly related to or resulting from the 1998-99 conflict. However this has not been demonstrated by either the First or Second Claimants. Nor has it been demonstrated that there has been any conflict related loss of possession or inability to exercise property rights. Indeed both Claimants have exercised, or purported to exercise, property rights over the claimed parcels. The Second Claimant has sold his parcels by purchase contract dated 2008 in his capacity as property right holder. The First Claimant has purported to sell some of her grandfather's parcels to the current occupant of the properties. While the Commission does not accept that the First Claimant has inherited the claimed properties from the deceased property right holder, there is no evidence of any impediment to the exercise of property rights; rather the main impediment appears to be the lack of completed inheritance proceedings leading to confusion over who are the rightful heirs to the properties, and thus which persons possess the legal capacity to sell the land parcels. On account of the lack of evidence of any conflict-related loss of possession or inability to exercise property rights over the claimed properties, the claims stand to be dismissed as falling outside the jurisdiction of the Commission.

5. *Claim No. 42422 and others*

44. The 32 claims identified in part F of the Schedule to this decision are filed by Amet Ajdari (the "Claimant") in his capacity as family household member, namely son, of the deceased property right holder.

45. In support of his claims the Claimant has submitted various documents including a possession list and two court judgements. The possession list, which has been verified by the Executive Secretariat, lists the father of the Respondent, Xhemo Ajdari, as the property right holder. As the Claimant and the Respondent are cousins, the registered property right holder is the Claimant's uncle. The Claimant contends that his father is the rightful owner of ¼ of the ideal part of the claimed land parcels. He seeks repossession of the properties, as well as compensation for use of the claimed parcels. The Respondent is the current occupant of the claimed parcels.

46. The dispute between the parties in this case is long-standing and pre-dates the conflict. It relates to a disputed contract on gift dating back to 1964. The Respondent contends that the

Claimant's father, Memis, renounced his share over the claimed properties in favour of his brother, Xhemo, in 1953 in return for the right to payment of children's allowance. The Respondent further claims that the Claimant only became interested in the claimed parcels when he visited the village for the first time in 1986, saw the properties and asserted that the land belonged to his grandfather who was the original property right holder. The Claimant subsequently, in 1989, commenced litigation in relation to the claimed properties.

47. The first decision of the Municipal Court in Prizren, decision No. 1181/89 of 3 November 1989, annulled the contract on gift and found in favour of the Claimant's father. The Court noted that the inheritance proceedings concerning the deceased property right holder had not yet been initiated and held that the parties could not conclude a contract of gift in relation to properties that they did not own.

48. The Respondent's father subsequently appealed the Municipal Court decision and the District Court of Prizren, in judgment Gz. Br. 103/90 dated 26 February 1990, dismissed the appeal as groundless.

49. The Claimant's mother attempted to initiate inheritance proceedings in the Municipal Court of Prizren in 1992 in relation to her husband's estate, however the Court rejected the application as being out of time. Various challenges were made by the Claimant's family to the inheritance decision of the Municipal Court of Prizren of 1992 concerning the inheritance proceedings, including appeals to the District Court of Prizren and the Supreme Court of Belgrade which issued a decision, Rev. 3253/93 dated 6 October 1993, upholding an appeal against a decision of the District Court of Prizren in relation to the matter. Further court actions challenging the decision relating to the inheritance proceedings were initiated in 1994 and 1998, and it appears that the litigation in this matter is ongoing.

50. Cadastral officials have advised the Executive Secretariat that the claimed properties were registered in the name of the Respondent's father in 1984, although they could not be sure on what basis the property was registered as the relevant archival records were burnt in a fire in the cadastral offices in Prizren in 2007.

51. The Commission finds that the property dispute in these claims is the result of a long-standing family dispute and is wholly unrelated to the conflict in Kosovo in 1998-1999. Indeed the Claimant does not contend that the dispute is related to the conflict. It is apparent that the dispute commenced well prior to the conflict and has continued between the disputants since the conflict. The Claimant states that neither he nor his father ever had possession of the claimed properties and agrees that the properties have been continually used by the Respondent's family. The Respondent confirms that his family has had uninterrupted possession of the properties. In the circumstances, the claim stands to be dismissed as falling outside the Commission's jurisdiction.

C. Refusals

52. 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 inter alia if the claimant or the property right holder as the case may be has been unable to prove ownership or use right interest over the claimed property.

53. 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).

54. The fourteen claims identified in part G of the Schedule to this decision are filed by the Claimant in her capacity as family household member, namely daughter, of the property right holder. While the claimed properties are currently registered in the name of a socially owned enterprise called "SLOGA," the Claimant contends that her father acquired the ownership right over the properties through a decision issued by the Commission for Land Restoration in 1993.

55. In support of her claim, the Claimant has submitted a decision No. 07-461-18 dated 14 August 1993, issued by the Commission for Land Restoration in Podujevë/Podujevo recognizing the ownership right of the Claimant's father over certain properties in consequence of the previous expropriation of his land. The decision of the Commission for Land Restoration does not restore to the Claimant the originally expropriated parcels but other parcels that would have approximately corresponded in surface area and class to the parcels taken. In the present proceedings, the Claimant claims for the restored parcels, not the originally expropriated parcels. The Claimant has also provided various other documents including a copy of a 1994 complaint by the socially-owned enterprise PERPARIMI and others to the Ministry of Finance, Property Issues Sector, against a 1992 decision of the Commission for Land Restoration, a decision of the Ministry of Finances of Serbia dated 20 October 1995 annulling decisions of the Commission for Land Restoration dated 24 February 1992 and 14 August 1993, and a judgment of the Supreme Court of Belgrade, judgment No. U-7038/95 upholding the appeal and annulling a decision of the Ministry of Finance. The Claimant did not provide the Executive Secretariat with a copy of the 1992 decision of the Commission for Land Restoration.

56. The Claimant alleges that her father had been living in Podujevë/Podujevo until March 1999 when he moved to Kragujevac in Serbia. The Claimant's father died in Serbia in 2000. The Claimant advised that although her father was very ill in the 1990s, a request to register the properties in the name of her father, based on the decision of the Commission on Land Restoration, was made to the cadastral authorities in Podujevë/Podujevo in February 1999 through a lawyer. The Claimant said that there was no reason why the properties could not and should not be registered in her father's name as she had all the requisite property documentation to prove ownership. However since the 1998-1999 conflict the family were unable to travel to Kosovo to register the property for security reasons. Consequently the Claimant submitted a claim with the KPA to have the cadastral records updated in her father's name. The Claimant confirms that her father has never had possession of the claimed properties.

57. There are two Respondents to this claim. The First Respondent is the director of PERPARIMI. He advises that SLOGA was divided into four basic cooperative organizations long time ago, and one of those organizations was PERPARIMI. The First Respondent has submitted a number of documents including a possession list confirming that the socially owned enterprise SLOGA is the property right holder of the claimed land parcels. This document has been verified by the Executive Secretariat. The First Respondent has also provided a statement stating that PERPARIMI has been in continuous possession of the claimed parcels for over 50 years. He also contended that the Claimant was claiming an ownership right based on a decision issued at a time of widespread discrimination against Albanians when Serbian courts restored properties, without any legal basis, to persons who had previously sold their properties.

58. The First Respondent has also submitted a statement on behalf of the Second Respondent who has claimed a legal right in relation to Claim Nos. 24354, 24674, 24680, 24681, 24685, 24688, 24689 and 24692. The Second Respondent asserts that four hectares of land belonged to his father and grandfather until 1952 when the land was taken without compensation. The Second Respondent contended that the supporting documentation in relation to his claim was burned during the war. He also stated that he had filed a claim with the Privatization Agency of Kosovo but had not yet received any response.

59. In the course of document exchange, the Claimant was provided with a copy of the possession list confirming that SLOGA is currently registered as the owner of all land parcels with the exception of three that were transferred from SLOGA to another organization called SHPRESA by cadastral decisions taken in 2000 and 2001. The Executive Secretariat also advised the Claimant that the 1993 decision of the Commission for Land Restoration that she had provided could not be verified as it did not contain the court stamp indicating that the decision was final and enforceable. The Claimant was invited to submit a copy of the decision with the stamp, but did not do so. She advised that the decision with the enforceable stamp should be contained in the dislocated cadastral archives in Serbia.

60. The Executive Secretariat attempted to verify the Commission for Land Restoration's decision through various means. Local cadastral authorities advised that the decision had never been executed in the cadastral records and confirmed that the property remained registered as socially owned property. They further advised that they had no record of a request being made to register the property in the name of the Claimant's father in February 1999. Cadastral officials further pointed out that the Commission for Land Registration's decision could not be considered valid without the stamp indicating that the decision was enforceable.

61. The Executive Secretariat also attempted to verify the decision against the records held by the Municipality of Podujevë/Podujevo, however the decision could not be found. Efforts were also made to try and verify the decision with the dislocated archives in Krusevac in Serbia, however the decision could not be located and the Executive Secretariat was advised that not all records displaced from Podujevë/Podujevo were held in the archives in Krusevac.

62. From the documents submitted by the Claimant, it is apparent that the decisions of the Commission for Land Restoration of 1992 and 1993 were subject to various appeals and challenges. The 1994 complaint by PERPARIMI and others to the Ministry of Finances, Property Issues Sector, challenged the 1992 Commission decision on various grounds. By decision dated 30 October 1995 the Ministry for Finance of Serbia annulled the 1993 Commission decision and

referred the case back to the first instance body for re-determination. The Claimant's father challenged the Ministry of Finance decision to the Supreme Court of Belgrade which accepted the appeal, annulled the decision of the Ministry of Finance and referred the matter back for re-determination.

63. It is not clear whether the Ministry of Finance took a further decision in this matter, and if so, what the outcome of the decision was and whether it was subject to further appeal. It is unclear from the documentation submitted by the Claimant whether the dispute was ever finalized, or finalized in favour of the Claimant. The Commission for Land Restoration's decision submitted by the Claimant cannot be verified in the absence of confirmation of its enforceability and the Claimant has submitted no other proof of ownership over the property. Conversely the properties remain registered in the name of the socially owned enterprise SLOGA. As the Claimant has been unable to establish the existence of a private property right over the properties in the name of her father, the claim stands to be refused by the Commission.

D. Claims for compensation

64. In the claims identified in the relevant columns of parts A, B, C and D of the attached Schedule, the claimants also seek, in addition to ownership, compensation for physical damage to, or for loss of use of, the claimed property. Under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the Commission has no jurisdiction over such claims. Accordingly this aspect of the claims for compensation must be dismissed.

E. Concluding remarks

65. The Commission's decision and order also apply, where appropriate, to any associated property, *i.e.* any buildings or other constructions owned or used by the claimant or the property right holder, as the case may be, which form a unit with the claimed property.

66. 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.

67. The Commission's decision is without prejudice to the right of the claimants or the property right holders, as the case may be, to seek confirmation of their property right over the claimed properties before the competent local authorities, such as the cadastral authorities or local courts, in accordance with the applicable law.



Chairperson

APPEALS

UNMIK/REG/2006/50 and the Law No. 03/L-79 provide that:

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

12.3 The appeal may be filed on the grounds that:

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

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

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

Spreadsheet /Lista /Prilog
Part A/Pjesa A/Deo A

KPA15537						
KPA15536						

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

KPA16011	KPA16012	KPA16013	KPA16014	KPA90427	KPA90428	KPA90429
KPA90432	KPA90433	KPA90435	KPA90436			

Spreadsheet /Lista /Prilog
Part C/Pjesa C/Deo C

KPA20163	KPA20164	KPA20165	KPA20166	KPA20167	KPA20168	KPA20169
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Spreadsheet /Lista /Prilog
Part D/Pjesa D/Deo D

KPA23155	KPA47552	KPA47554	KPA47743	KPA47744	KPA49522	KPA49516
KPA49517	KPA47550	KPA47553	KPA47726	KPA47727	KPA47729	KPA47730

Spreadsheet /Lista /Prilog
Part E/Pjesa E/Deo E

KPA34116	KPA27391	KPA27395	KPA27397	KPA34117	KPA34128	KPA34129
KPA27389	KPA27392	KPA34111	KPA34113	KPA34118	KPA34130	KPA34131
KPA34132	KPA34133	KPA34134				

Spreadsheet /Lista /Prilog
Part F/Pjesa F/Deo F

KPA42422	KPA42423	KPA42424	KPA42426	KPA42429	KPA42432	KPA42433
KPA42434	KPA42438	KPA43338	KPA43339	KPA43347	KPA43350	KPA43351
KPA43353	KPA43354	KPA42425	KPA42427	KPA42428	KPA42430	KPA42435
KPA42436	KPA42437	KPA42439	KPA43337	KPA43340	KPA43341	KPA43342
KPA43348	KPA43349	KPA43352	KPA43355			

Spreadsheet /Lista /Prilog
Part G/Pjesa G/Deo G

KPA24354	KPA24675	KPA24679	KPA24680	KPA24681	KPA24685	KPA24688
KPA24689	KPA24692	KPA24694	KPA24697	KPA24698	KPA24700	KPA24701