



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/152/2012  
DECISION DATE: 19/04/2012

Commissioners Heiskanen (Chairperson),  
Vokshi and Wühler

## ORDER

*(1) In each of the 29 (twenty-nine) claims identified in parts A and B of the attached Schedule, the Commission decides that the claim be dismissed.*

*(2) In each of the 23 (twenty-three) claims identified in parts C and D of the attached Schedule, the Commission decides that the claim be refused.*

*(3) In Claim Nos. 01130, 22267, 41455, 47602, 54575, 54576 and 54577, referred to in parts A, C and D 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 favor 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.)<sup>1</sup>

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<sup>1</sup>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

5. The Commission held its twenty-eighth session from 17 to 19 April 2012 in Prishtinë/Pristina. A total of 231 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its twenty-eighth session, together with supporting documentation, claims processing reports, verification reports and other relevant information. One residential property claim which had been presented to the Commission was referred by the Commission back to the Executive Secretariat for further verification. The Commission suspended the consideration of three residential property claims pending the holding of an oral hearing. In sum, a total of 227 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 the claims covered by the present decision, except for Claim Nos. 00876, 11795, 17897, 29210 and 44729, the claimants seek the resolution of an ownership claim. All claims covered by this decision relate to residential property, including the associated land. In Claim Nos. 00876, 11795, 17897, 29210 and 44729, the claimant seeks confirmation of a right to use the claimed property.

8. The present decision covers the 52 residential property claims which are listed in parts A, B, C and D of the attached Schedule. The remaining 175 claims for residential property are covered by decisions KPCC/D/R/150/2012 and KPCC/D/R/151/2012.

9. The 33 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 nineteen 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

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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.

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. 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. 00876*

16. Claim No. 00876 was submitted by the Claimant in his capacity as the property right holder. The Claimant seeks the confirmation of a use right over the claimed property. However, based on the evidence submitted, the Claimant acquired possession of the claimed property only subsequent the 1998-99 conflict. The Claimant also states that he lost possession of the claimed property only in April 2005. Accordingly, there could not have been any loss of possession over the claimed property as a result of the 1998-99 conflict, and the claim stands to be dismissed as being outside of Commission's jurisdiction.

*b. Claim No. 22204*

17. Claim No. 22204 was submitted by the Claimant in his capacity as the alleged property right holder. The Claimant has not submitted any documents in support of the claim. The possession list verified *ex officio* by the Executive Secretariat lists a person other than the Claimant as owner of the claimed property. During the notification process the property was found to be used by the Claimant. Accordingly, while the Claimant has failed to prove any property right over the claimed property, he is now able to use the claimed property. In these circumstances, the claim in any event stands to be dismissed for lack of jurisdiction.

*c. Claim No. 42188*

18. Claim No. 42188 was filed by the Claimant in his capacity as the property right holder seeking confirmation of ownership over the claimed property. Subsequently the Claimant acknowledged that he was not displaced as a result of the conflict in Kosovo and never lost possession of the property. He stated that he left Kosovo in 2002 on account of the difficult situation and lack of opportunities in his village. He confirmed that he was under no duress to leave the village and could return to the claimed property at any time. In the meantime, he had given permission to his nephew to use the property. The Claimant stated that he lodged the claim for the purpose of obtaining confirmation of his legal right over the property.

19. Accordingly, in the absence of a loss of possession over the claimed property as a result of the 1998-99 conflict, the claim stands to be dismissed as being outside of Commission's jurisdiction.

*d. Claim No. 50461*

20. Claim No. 50461 was filed by an authorized representative on behalf of the Claimant who claims the property in her capacity as a family household member of the alleged property right holder, namely her husband. The authorized representative of the alleged property right holder was contacted by the Executive Secretariat several times and was asked to submit documentation on the alleged property right holder's ownership right. The authorized representative explained that the alleged property right holder had purchased the property from a third party but that the transaction had not yet been implemented. The authorized representative indicated that he would submit the purchase contract, however, he failed to do so.

21. The Executive Secretariat during the course of notifying the claimed property found a newly constructed house on the claimed property. The Claimant acknowledged that the claimed property is not unlawfully occupied and that her family is visiting the property from time to time. Accordingly, while the Claimant has failed to prove any property right over the claimed property, he is now able to use the claimed property. The claim therefore stands to be dismissed for lack of jurisdiction.

*e. Claim Nos. 92432 and 92433*

22. Claim Nos. 92432 and 92433 have been filed by the Claimant in his capacity as the family household member of the alleged property right holder, namely his father. In view of a discrepancy in the property right holder's name in the various documents (Petar/Petrus and Pavle/Pave), the Commission at the 8<sup>th</sup> KPCC Session on 25 August 2008 referred the claims back to the Executive Secretariat for clarification of this issue.

23. The Executive Secretariat contacted the Claimant on 8 May 2009 and asked him to submit a certified document from the civil registration office regarding the discrepancy or provide a new corrected possession list with the property right holder's actual name. The Claimant asked the Commission to suspend the processing of the claims until the inheritance procedure had been concluded, as he only wanted to continue with the claims relating to his property. The Executive Secretariat attempted to contact the Claimant several times but was told by his son and daughter-in-law that he had moved to Moscow, in the Russian Federation. Despite repeated requests to provide the requested documents to explain the discrepancy in the names he has failed to do so. Accordingly, the claims are to be dismissed. The Commission notes that it has previously dismissed the Claimant's claims on the same basis; see the Commission's decision KPCC/D/A/142/2012 of 29 February 2012, paras. 52-53.

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

24. In both of the claims covered by the present section the claimants have 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 these claims stand to be dismissed.

a. *Claim No. 28989*

25. Claim No. 28989 was filed by the Claimant in his capacity as a family household member of the alleged property right holder, namely his aunt. The Claimant did not provide a valid power of attorney from the alleged property right holder or a family household member.

b. *Claim No. 52022*

26. Claim No. 51022 was filed by the Claimant in her capacity as a family household member of the alleged property right holder, namely her mother in law. The Claimant alleged that the property right holder has died but no satisfactory evidence has been submitted, nor has the Executive Secretariat been able to locate any such documents. The Executive Secretariat contacted the Claimant on numerous occasions and requested her to provide a power of attorney from a family household member of the alleged property right holder. The Claimant indicated that she would provide the required power of attorney, but failed to do so.

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

27. 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, disposed of the properties voluntarily. The fact that the claimants or the property right holders, as the case may be, have been able to sell the claimed properties 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. 13919*

28. In Claim No. 13919 the Claimant filed 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 in 2011, however she did not wish to withdraw the claim.

b. *Claim No. 17078*

29. In Claim No. 17078 the Claimant lodged the claim in his capacity as the property right holder. The Respondent alleged that he is using the property with the permission of the property right holder. The Claimant subsequently confirmed that he had sold the claimed property in 2011 to a third person and denied having given permission to any other person. The Claimant stated that he would withdraw the claim, but failed to do so.

c. *Claim No. 22484*

30. In Claim No. 22484 the Claimant filed the claim in his capacity as the property right holder. The Claimant initially sought confirmation of ownership right, however he subsequently acknowledged that he had sold the claimed property in 2007. He indicated that he would withdraw the claim, however he failed to do so.

*d. Claim No. 25547*

31. In Claim No. 25547 the Claimant filed the claim in his capacity as a family household member of the alleged property right holder, namely his father. The Claimant subsequently confirmed that he sold the claimed property in 2007 to the Respondent. The claim has not been withdrawn.

*e. Claim No. 25548*

32. In Claim No. 25548 the Claimant filed the claim in his capacity of property right holder. The Claimant subsequently confirmed that the claimed house was sold in 2007, but did not withdraw the claim.

*f. Claim No. 30669*

33. Claim No. 30669 was submitted by the Claimant in his capacity as a family household member of the deceased alleged property right holder. The Claimant initially sought confirmation of ownership over the claimed property. However, he subsequently confirmed that the claimed property was sold in 2011. The claim has not been withdrawn.

*g. Claim No. 47602*

34. In Claim No. 47602 the Claimant filed the claim in his capacity of the property right holder. The Claimant subsequently confirmed that the claimed parcel was sold in 2007. The claim has not been withdrawn.

*h. Claim No. 50445*

35. Claim No. 50445 was filed by an authorized representative on behalf of the Claimant who submitted the claim in his capacity as a family household member of the alleged property right holder. The Claimant initially claimed confirmation of ownership over the claimed property, however later he admitted having sold it. No withdrawal has been submitted.

*i. Claim Nos. 50452 and 50456*

36. Claim No. 50452 was filed by an authorized representative for the Claimant who lodged the claim in her capacity as a family household member of the alleged property right holder, namely her husband. Claim No. 50456 was submitted by the same authorized representative on behalf of the Claimant in his capacity as the property right holder. Both claims were submitted with respect to the same house but for two different alleged co-owners, Predrag and Novica Ilic, who allegedly purchased the claimed property from Borivoje Mitic prior to the conflict. The Claimants submitted a possession list listing Borivoje Mitic as property right holder. The Claimants failed to produce any evidence in support of the alleged sale. The Executive Secretariat located *ex officio* a certificate for immovable property right listing Dragisa (Borivoj) Mitic as owner of the claimed property. The Executive Secretariat contacted the Claimants and the authorized representative several times requesting them to provide additional documents to prove the alleged ownership right,



however they failed to do so. During a phone conversation on 20 March 2012 the son of the alleged co-owner stated that the claimed property had been sold to a third party. The claims however have not been withdrawn.

*j. Claim No. 53704*

37. Claim No. 53704 was submitted by the Claimant in his capacity as a family household member of the alleged property right holder, namely his father. The Respondent asserted that he purchased the claimed property from the alleged property right holder in October 1999. The Claimant subsequently confirmed that his father had indeed sold the claimed property but that he was not satisfied with the amount of the purchase price he received. The Commission notes that, in the absence of any evidence of duress in the circumstances of the conflict, it has no jurisdiction over adjustment of contract price.

*k. Claim No. 56109*

38. In Claim No. 56109 the Claimant filed the claim in his capacity of the property right holder. The Claimant confirmed that the claimed parcel was sold in 2010 through her authorized representative and that she is not interested in pursuing her claim. No withdrawal has been submitted.

*l. Claim Nos. 91511 and 91512*

39. In Claim Nos. 91511 and 91512 the Claimant submitted the claims in her capacity as a family household member of the alleged property right holder, namely her grandchild. The Respondent asserts that he purchased the claimed property from the alleged property right holder in 2009. The Claimant subsequently confirmed that her father, son of the alleged property right holder, had indeed sold the claimed properties to the Respondent, however she stated that she was not able to withdraw the claims since she is living abroad.

*m. Claim No. 92483*

40. In Claim No. 92483 the Claimant submitted the claim in his capacity as a family household member of the alleged property right holder, namely his son. The Respondent contends that he purchased the claimed property from the alleged property right holder in 2003 and submitted in support of his allegation a purchase contract concluded on 29 October 2003 in respect of the claimed property between the Respondent and the alleged property right holder. The cadastral records have been updated in the name of the Respondent. The Claimant denies having sold the claimed property stating that the Respondent's statements are not true. However, the Claimant failed to provide any evidence in support of his allegation.

*4. Res judicata*

*a. Claim No. 10469*

41. In Claim No. 10469 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 with regard to the same property with the Housing and Property Directorate

("HPD") under Claim No. DS200490, and that the Respondent to the present claim had previously submitted a category A claim for the same property with the HPD under Claim No. DS200338. The Housing and Property Claims Commission ("HPCC") by decision HPCC/D/236/2005/A&C dated 16 December 2005 granted the Respondent's Claim No. DS200338, restoring the Respondent's property right to the claimed property, while finding that the Category C Claimant was entitled to compensation.

*b. Claim No. 11795*

42. In Claim No. 11795 the Claimant filed the claim in his capacity as the property right holder. The Commission notes that the Claimant previously filed a category A claim for the same property with the HPD under Claim No. DS201261. The HPCC by decision No. HPCC/D/199/2005/A dated 18 June 2005 refused the Claimant's claim.

*c. Claim No. 21033*

43. In Claim No. 21033 the claim was filed by an authorized representative of the Claimant who claims in his capacity as the property right holder. The Commission notes that the Claimant previously filed a category C claim for the same property with the HPD under Claim No. DS006428, while the Respondent to the present claim had previously submitted a category B claim for the same property with Claim No. DS001566. The HPCC by decision No. HPCC/D/240/2005/B&C dated 16 December 2005 dismissed the Claimant's claim and referred it to the competent local court, while granting the category B Claim DS001566 of the Respondent.

*d. Claim No. 52351*

44. In Claim No. 52351 the Claimant filed the claim in his capacity as the family household member on behalf of property right holder. The Commission notes that the Claimant had previously filed a category C claim with regard to the same property with the HPD under Claim No. DS005296, and that the Respondent to the present claim had previously submitted a category B claim for the same property with the HPD under Claim No. DS007464. The HPCC subsequently by decision No. HPCC/D/155/2004/B dated 22 October 2004 refused the Claimant's claim and referred it to the competent local court, while granting the Respondent's Claim No. DS007464.

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45. 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*.

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46. The Commission finds that all of the claims covered by this section B stand to be dismissed for the reasons set out above.

*C. Claims refused*

47. 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.

48. 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 immoveable 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. 01130*

49. In Claim No. 01130 the Claimant filed the claim in his capacity as the property right holder of the claimed property. The Claimant claims that he sold the claimed property in 2000 to the Respondent. He asserts that he entered into the contract under duress and sold the claimed apartment for less than market value. The Claimant confirms that the 56 m<sup>2</sup> apartment was sold for the price of 76,000 DM.

50. According to section 4.3 of UNMIK/REG/2006/50 as amended by Law 03/L-079, duress is presumed where the market value of the property at the time of the sale bears no reasonable relation to the actual purchase price. The Commission finds that a purchase price of 76,000 DM for a 56 m<sup>2</sup> apartment was not unreasonable at the time the transaction took place. Accordingly, it cannot be considered that the Claimant entered into the transaction under duress and the claim stands to be refused.

*b. Claim No. 10534*

51. In Claim No. 10534 the Claimant filed the claim in her capacity as a family household member of the property right holder. The Claimant initially claimed confirmation of the ownership right over the claimed property. However, she subsequently acknowledged that the property had been sold by the property right holder prior to the conflict, in 1997. The Claimant stated that, because of her bad health, she is not able to approach the KPA offices to withdraw her claim. Accordingly the claim stands to be refused.

*c. Claim No. 13705*

52. In Claim No. 13705 the Claimant filed the claim in her capacity as a family household member of the property right holder, namely her husband. The Claimant alleges that her husband is co-owner of the claimed apartment based on a contract for financing for finalization of construction of the apartment concluded between the Development Fund of Serbia and the Department of the Cadastre as co-investor. The Commission notes that the Claimant's husband signed the contract in his capacity as the director of the Department of the Cadastre as endorsing officer. Accordingly, the Claimant's husband, in his private capacity, never became a party to the contract and therefore cannot derive any property rights from the contract that he signed in his capacity as representative of the Cadastre Department. Accordingly, in the absence of any proven private property right on the part of the alleged property right holder, the claim stands to be refused.

53. The Claimant filed a request with the Executive Secretariat for translation of the documents that were submitted by the Respondent who is the current occupant. The request was refused by the Executive Secretariat as the Claimant failed to provide sufficient documentation to establish financial hardship. The Claimant requested that the Commission reconsider the Executive Secretariat's decision, however, in the absence of any new material allegations or evidence, the Claimant's request stands to be refused.

*d. Claim No. 13855*

54. Claim No. 13855 was submitted by the Claimant in his capacity as the property right holder. The Claimant alleges having used the claimed property from December 1998 until June 1999.

55. The Respondent, who is the current user of the property, claims a legal right over the claimed property based on an allocation decision dated 11 January 1978 by which the mother of the Respondent was granted an indefinite use right over the claimed property.

56. The Executive Secretariat could not verify any of the documents provided by the Claimant in support of his claim. In the circumstances, the claim stands to be refused.

*e. Claim No. 17897*

57. Claim No. 17897 was submitted by the Claimant in his capacity as the property right holder. The Claimant seeks the confirmation of a use right over the claimed property and repossession. The Claimant alleges that the claimed apartment was allocated to him for temporary use, and that he was in possession of it from 1995 until 1999, when he lost possession as a result of the conflict. The Claimant submitted an allocation decision dated 14 September 1995 in support of his claim.

58. The Respondent, who is currently living in the apartment, asserts that she initially occupied the claimed property with permission of the Claimant and has subsequently sought for permission from the Municipality, which however has not been granted.

59. The Commission notes that the claimed property belongs to the Municipality of Pristina and is registered in the cadastre as socially owned property. The Commission also notes that the allocation decision was issued to the Claimant on a temporary basis, and the Claimant never entered into a contract on use in order to establish a permanent occupancy right over the claimed apartment. In these circumstances, the Commission finds that the Claimant's right to use the apartment, which was merely a temporary or imperfect legal right and as such incapable of restitution, must be considered to have expired. Accordingly, in the absence of a proven property right, the Claimant's claim stands to be refused.

*f. Claim No. 22267*

60. Claim No. 22267 was filed by the Claimant in his capacity as the property right holder. The Claimant initially claimed ownership right over the property, however, he subsequently confirmed that his mother had sold the claimed property in 1974 to the Respondent. According to the Claimant, the transaction was never formalized, as his family left Kosovo in 1975. The Respondent confirms the Claimant's explanations and states that he has been using the claimed property for almost 40 years. In the circumstances, the claim stands to be refused.

*g. Claim Nos. 28551 and 90953*

61. In Claim Nos. 28551 and 90953 the Claimant filed the claim in her capacity as the property right holder. Both claims were submitted for the same property. To support her allegations the Claimant submitted an "inheritance decision" dated 30 April 2003, purportedly issued by the parallel Municipal Court of Istok in Serbia and confirming that the Claimant inherited the claimed property from her mother in law. The Commission does not consider that such documents establish entitlement to inheritance. The Commission itself has no jurisdiction to resolve issues relating to inheritance. The Executive Secretariat requested the Claimant several times to produce a valid inheritance decision or a power of attorney from the inheritors in order to proceed with the claims, but she failed to submit the required documents. In the circumstances, the Claimant must be considered to have failed to establish any property right over the claimed property, and her claims stand to be refused.

*h. Claim No. 28867*

62. Claim No. 28867 was filed by the Claimant in his capacity as the property right holder claiming ownership over the claimed property. The Claimant did not provide any evidence in support of his claim. He was requested to substantiate his claim and produce evidence, however, he has failed to do so.

63. The Respondent, who is currently using the property, asserts that he bought the claimed property in 2007 from a third person and submitted the purchase contract as well as the possession list which lists him as the property right holder in support of his allegation. When confronted with the Respondent's assertion by the Executive Secretariat, the Claimant admitted that the claimed property has been sold to the Respondent. However, the Claimant failed to withdraw the claim. In the circumstances, the claim stands to be refused.

*i. Claim No. 29210*

64. In Claim No. 29210 the Claimant filed the claim in his capacity as a family household member of the alleged property right holder, namely his mother. The Claimant states that the Municipality of Pejë/Peć granted a temporary use right over the property to his family by prior to the conflict, and that they lost the possession of the property in June 1999 when they left Kosovo due to the security situation. The Claimant did not provide any documentary evidence in support of his allegation. The Commission notes that the Claimant also filed a claim for the same property with the HPD under Claim No. DS501076. This claim was refused by the HPCC by decision HPCC/D/204/2005/C on 18 June 2005. 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 a use right.

65. The Respondent, who is the current occupant of the property, claims legal right over the claimed property asserting that the property was allocated to him by the Municipal Centre for Social Affairs of Pejë/Peć. To support his assertion, he submitted an allocation decision that was verified as being genuine by the Executive Secretariat. In the circumstances, the claim stands to be refused.

*j. Claim No. 36990*

66. Claim No. 36990 was submitted by the Claimant in her capacity as the property right holder, seeking confirmation of ownership over the claimed property. The Claimant alleged that she lived in the claimed apartment until 14 September 1999 when she was displaced to Serbia as a result of the conflict. The only material document submitted by the Claimant in support of her claim is a decision on temporary use of the claimed property issued by the Municipality of Obiliq/Oblic. This document was not found in the records of the Municipality by the Executive Secretariat when it attempted to verify the document. The Claimant was requested to submit additional documentation in order to establish an ownership or use right over the claimed property, however, the Claimant stated that she does not have any further documentation.

67. The apartment building in which the claimed apartment was located has been demolished. The underlying land on which the building was constructed is municipal land. Meanwhile a mosque has been constructed in the place of the demolished apartment building. In the circumstances, the Commission considers that any temporary allocation that might have been granted to the Claimant by the Municipality must be considered to have expired, at the latest when the claimed property was demolished. Accordingly the claim stands to be refused.

*k. Claim No. 37219*

68. In Claim No. 37219 the Claimant submitted the claim in her capacity as a family household member of the property right holder, namely her husband. The Claimant alleges that her husband is the owner of the claimed property, however, she acknowledged that she does not have any material evidence in support of her allegation as they had to leave all documentation behind when they fled Kosovo.

69. In the absence of any evidence in support of the claimed property right, the claim stands to be refused.

*l. Claim No. 41455*

70. In Claim No. 41455 the Claimant filed the claim in her capacity as a family household member of the property right holder, namely her father. The Claimant initially claimed confirmation of ownership over the claimed property. The Commission notes that the Claimant's brother filed a claim with the KPA under Claim No. 41538 for the same property. The Claimant confirmed during the processing of the claim that her brother, namely the Claimant in Claim No. 41538, is the owner of the claimed property based on a contract on division between her father and her brother. Claim No. 41455 has been granted in decision KPCC/D/R/151/2012. The Claimant stated that she was not interested in pursuing the claim. Accordingly, in the absence of any property right on the part of the Claimant, the claim stands to be refused.

*m. Claim No. 44729*

71. In Claim No. 44729 the Claimant filed the claim in his capacity as the property right holder seeking confirmation of a use right to and repossession of the claimed property. In support of his allegation the Claimant submitted an allocation decision from 1991. The allocation decision could not be verified by the Executive Secretariat. Accordingly, in the absence of any evidence supporting the claimed property right, the claim stands to be refused.

*n. Claim Nos. 44992 and 44993*

72. In Claim Nos. 44992 and 44993 the Claimant initially filed the claims in her capacity as a family household member of the property right holder, namely her father. Subsequently the Claimant stated that she is co-owner of the claimed property based on an inheritance decision dated 20 August 2007, issued by the Municipal Court of Kursumlija.

73. The Respondent, who is currently using the claimed property, alleges that he purchased the claimed properties in 1987, however, the transaction could not be formalized at the time due to the statutory prohibition of inter-ethnic transactions for immovable property. The Claimant denied having sold the claimed property to the Respondent. In March 2007 the Municipal Court of Podujevo recognized the Respondent's property right over the claimed property and the Respondent requested the changes to be made in the cadastral records. Based on the evidence before it, the Commission is satisfied that the Respondent purchased the claimed property during the 1980s, and that therefore the inheritance decision of the Municipal Court of Kursumlija cannot be relied upon as against the Claimant.

74. Accordingly, the Claimant's claim stands to be refused.

*o. Claim No. 50464*

75. In Claim No. 50464 the Claimant submitted the claim through his authorized representative in his capacity as the property right holder. In support of his allegation

the Claimant submitted a possession list No. 829 issued by a dislocated cadastre and a cadastre plan listing Borivoje Mitic as property right holder. The Claimant states that he purchased the claimed property from Borivoje Mitic, but did not submit any evidence in support of the alleged transaction. The Executive Secretariat located *ex officio* a certificate for immovable property right No. 829 listing Dragisa (Borivoj) Mitic as owner of the claimed property.

76. In 2009, in the course of the verification process, the Executive Secretariat found out that the claimed parcel had been divided into sub-parcels. The Secretariat contacted the Claimant several times and requested him to produce documents to prove his ownership right, however he failed to do so. Accordingly, the claim stands to be refused due to lack of evidence.

*p. Claim Nos. 51116 and 51118*

77. In Claim Nos. 51116 and 51118 the Claimant filed the claims in his capacity as the property right holder. The Claimant did not identify the claimed parcel in the claim intake form. In support of his claim the Claimant submitted a lawsuit dated 31 May 2004 before the Municipal Court of Pejë/Peć seeking compensation for damages to his property caused by the conflict. The specified surface area of the claimed property does not match with any of the surface areas of the parcels listed in the submitted lawsuit. The Secretariat requested the Claimant several times to clarify the exact location and specification of the claimed parcel, however he has failed to do so.

78. The Commission concludes that the Claimant has failed to establish any property right over the claimed parcel. Accordingly the claim stands to be refused.

*q. Claim Nos. 54575, 54576 and 54577*

79. In Claim Nos. 54575, 54576 and 54577 the Claimant filed the claims in his capacity as the property right holder. The Claimant initially claimed repossession and compensation, however he subsequently confirmed that the claimed properties had been sold some twenty years ago. The Claimant further stated that purchase contracts had not been certified and the cadastral records were therefore not updated.

80. Accordingly, in the absence of any property right during the relevant period, the claim stands to be refused.

*r. Claim Nos. 92416 and 92417*

81. In Claim Nos. 92416 and 92417 the Claimant filed the claims in his capacity as a family household member of the property right holder, namely his father. The Claimant initially claimed repossession of the claimed properties, however he subsequently confirmed that the claimed properties had been sold in 1973.

82. Accordingly, in the absence of any property right during the relevant period, the claims stand to be refused.



s. *Claim No. 92434*

83. In Claim No. 92434 the Claimant filed the Claim in his capacity as a family household member of the alleged property right holder, namely his father. The Claimant claimed confirmation of ownership and repossession of the claimed property. However, the Claimant failed to submit any evidence in support of his claim. Accordingly, in the absence of any proven property right, the claim stands to be refused.

D. *Compensation claims*

84. In Claim Nos. 01130, 22267, 41455, 47602, 54575, 54576 and 54577 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*

85. 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.

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

87. 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

KPA00876	KPA13919	KPA22484	KPA50461	KPA56109	KPA92433	KPA42188
KPA50445	KPA50452	KPA50456	KPA22204	KPA47602	KPA92432	

Spreadsheet /Lista /Prilog

Part B/Pjesa B/Deo B

KPA25547	KPA25548	KPA17897	KPA28989	KPA51022	KPA52351	KPA92434
KPA10469	KPA53704	KPA17078	KPA21033	KPA91511	KPA91512	KPA92483
KPA11795	KPA30669					

Spreadsheet /Lista /Prilog

Part C/Pjesa C/Deo C

KPA50464	KPA28551	KPA41455	KPA90953	KPA51116	KPA51118	
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Spreadsheet /Lista /Prilog

Part D/Pjesa D/Deo D

KPA13705	KPA37219	KPA92416	KPA92417	KPA29210	KPA36990	KPA44992
KPA44993	KPA01130	KPA22267	KPA10534	KPA13855	KPA28867	KPA44729
KPA54575	KPA54576	KPA54577				