



Kosovo Property Claims Commission
Komisioni i Kërkesave Pronësorete Kosovës
Komisija Kosovske Agencijeza Imovinu

Perandori Justininan 5
Pristina
Tel: +381 (0) 38 249-918
Fax: +381 (0) 38 249-919
E-mail: mailbox@kpaonline.org

DECISION

PANEL NO: 1

DECISION NO: KPCC/D/R/173/2012
DECISION DATE: 24/10/2012

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) In the 24 (twenty four) claims, identified in parts A, B, C and E of the attached Schedule, the Commission,

decides that

The claimant or the property right holder, as the case may be, has established ownership over the claimed property, or such part thereof as specified in the respective individual decision;

(2) In the 7 (seven) claims, identified in part D of the attached Schedule, the Commission

decides that

The claimant has established the ownership of the deceased property right holder over the claimed property, or such part thereof as specified in the respective individual decision;

(3) In Claim No. 46039, referred to in part F of the attached Schedule, the Commission

decides that

The claimant has established a use right over the claimed property, or such part thereof as specified in the respective individual decision;

(4) In the 32 (thirty two) claims identified in paragraphs (1), (2) and (3) above, except for Claim Nos. 08711, 34498, 38038 and 48729, the Commission

orders that

- (a) *The claimant or the property right holder, as the case may be, be given possession of the claimed property;*
 - (b) *Any person unlawfully occupying the property vacate the same within 30 (thirty) days of the delivery of this order;*
 - (c) *Should any other person unlawfully occupying the property fail to comply with the order to vacate within the time stated, they be evicted from the property;*
- (5) *In each of the claims identified in the relevant columns of parts A, B, C, D, E and F of the attached Schedule, the Commission additionally decides that the claims be dismissed insofar as the claimants seek compensation for physical damage to, or for loss of use of, the claimed property; and*
- (6) *In cases in which there is more than one owner the above decisions and order do not affect the rights of any respective co-owners.*

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.)¹

5. The Commission held its thirty-first session from 22 to 24 October 2012 in Prishtinë/Pristina. A total of 150 residential property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its thirty-first session, together with supporting documentation, claims processing reports, verification reports and other relevant information. Three residential property claims which had been presented to the Commission were referred back to the Executive Secretariat during the session. The Commission suspended the consideration of one residential property claim pending the holding of an oral hearing. In addition, the Commission resolved five claims which had previously been suspended pending the holding of an oral hearing. In sum, a total of 151 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.

7. The present decision applies to the 32 claims which are listed in parts A, B, C, D, E and F of the attached Schedule. The remaining 119 claims are covered by decisions KPCC/D/R/174/2012 and KPCC/D/R/175/2012.

8. A total of 29 of the 32 claims covered by this decision have not previously been decided by the Commission, while the remaining three of these claims were the subject of an earlier Commission decision. However the earlier decisions in these three claims were overturned by the Commission either on account of an incorrect notification of the claimed properties during claims processing by the Executive Secretariat or on account of other processing errors by the Executive Secretariat which were identified after the decision had been taken. These claims consequently stand to be re-determined following correct notification of the claimed property and correction of the other processing errors. Evidence and information provided by any respondents to the claim or any current occupants of the claimed properties is taken into account by the Commission in the re-determination of the claims. In the claims in which previous decisions have been overturned by the Commission, the Executive Secretariat has written to each claimant advising them of the notification error and informing them that their claims will be re-determined following correct notification of the claimed property. The claimants, as well as the relevant cadastral authorities, have been advised that the previous Commission decisions are invalid and cannot be used for the purposes of any legal transaction.

¹There appears to be a technical error in Annex I. While Annex I clearly appears to be intended to replace UNMIK/ADM/DIR/2007/5 in its entirety, including its all three annexes, Article 26 of Annex I provides that the title of Annex III of UNMIK/ADM/DIR/2007/5 shall be replaced by a title referring to Annex II. However, there is neither specific provision nor any other indication in Law 03/L-079 or its Annexes that the intention of this particular amendment was to delete Annex I or Annex II of 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.

9. In 31 of the total of 32 claims covered by the present decision the claimants seek the resolution of an ownership claim. In one claim the claimant seeks the resolution of a use right claim over the claimed property. All of these claims relate to residential properties, including, as the case may be, the associated land. The present decision deals with claims for residential properties which, at the time of their notification, were found not to be entirely destroyed.

10. The 25 claims referred to in parts A, B, C and D are uncontested ownership claims in the sense that at the time the claimed properties were notified there was no evidence of illegal occupation or use of these properties by any person or, even if there was such evidence, no party has contested the validity of the claim within the 30-day period prescribed in section 10.2 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, or at any later stage during the proceedings, pursuant to section 10.3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. Decisions taken in claims that were incorrectly notified have been overturned by the Commission to ensure correct notification of the property and provide any persons who may have a legal interest in the property with an opportunity to respond to the claim pursuant to section 10.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. These claims are identified in the relevant columns in parts A, B, C and D of the attached Schedule. The Executive Secretariat has notified claims in a variety of ways including through the physical notification of the property and through notification of the property via publication in gazette and newspapers, through local municipal authorities, municipal courts, and 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.

11. The six claims referred to in part E of the attached Schedule as well as Claim No. 46039, referred to in part F of the attached Schedule, are contested claims in the sense that the party or the parties 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.

A. *Claims granted*

1. *Uncontested claims*

12. The Commission notes that the claimants have submitted various types of documents in support of the ownership claims inheritance decisions and certificates of immovable property rights. The Commission is satisfied that inheritance decisions and certificates of immovable property rights confirming an ownership interest indeed constitute proof of ownership of the claimed property. The other documents submitted by the claimants, including possession lists and contract involving property transactions create a rebuttable presumption of ownership. The claims identified in parts A, B, C and D of the attached Schedule are uncontested and no evidence has been received or obtained by the Secretariat *ex officio* which would rebut the presumption of ownership. Consequently the Commission is satisfied that the documents submitted prove the claimants' ownership over the claimed properties. The documents have been verified as being valid by the Executive Secretariat, as relevant.

13. In the ten ownership claims identified in part A of the attached Schedule the claimants have filed the claim in the capacity of the property right holder. In light of the Commission's findings in paragraph 12 above, these claims stand to be granted.

14. In the one claim identified in part B of the attached Schedule, the claimant has filed the claim in the capacity of a family household member of the property right holder pursuant to section 1.2 of Annex II of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. 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 claimant falls within the definition of family household member. Accordingly a decision confirming the property right in favor of the property right holder stands to be granted in this claim, as set out above.

15. In the seven claims referred to in part C of the attached Schedule, the claimants were not property right holders at the date of loss of possession of the claimed property, but have adduced evidence of having subsequently succeeded to the respective ownership right by virtue of inheritance. The claimants must be considered as having succeeded to all the rights belonging to an owner, including the right to claim for confirmation of ownership and for repossession in the present proceedings. The claims therefore stand to be granted.

16. In the seven claims identified in part D of the attached Schedule, the claimants were not the property right holder at the date of loss of possession of the claimed property but assert to having succeeded to the property right. In each of these claims the claimant has established that she or he is a family household member of the deceased property right holder. However, no valid inheritance decision or other documentary evidence has been submitted by the claimants that would establish any of the claimants as being an heir to the claimed property, nor has the Executive Secretariat been able to locate any such documents. Accordingly a decision confirming the property right in favor of the deceased property right holder over the claimed property stands to be granted in each of these cases, as set out above. The Commission's decision with respect to all seven claims identified in part D of the attached Schedule is without prejudice to the determination by the competent court as to how heirs will succeed to the property right of the deceased.

2. *Contested claims*

17. The six claims identified in part E of the attached Schedule, as well as Claim No. 46039 referred to in part F of the attached Schedule, are contested in the sense that the party or the parties 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.

18. However, in all of these claims the Commission, based on its review of the evidence before it, finds that these claims stand to be granted for the reasons set out below.

a. Claim No. 00643

19. Claim No. 00643 has been submitted by the Claimant in her capacity as a family household member of the property right holder, namely her mother. The Claimant seeks

confirmation of the alleged ownership right over the ideal part of ½ of the claimed property. The Claimant submitted in support of her claim a powerful inheritance decision from 2006 showing that the property right holder inherited the claimed property as co-owner with ½ ideal part after the death of the property right holder's grandfather, Gjorgje Jovanovic. This decision has been verified by the Executive Secretariat as being genuine.

20. The Respondent asserts that he is the sole owner of the property including the ½ ideal part claimed by the Claimant. In support of his assertion, the Respondent has submitted a court certified purchase contract from 2001 in the name of Arife Quni, the Respondent's mother, as purchaser and Enver Quni, authorized by Borka Orlovic and Plana Mandic for ¼ ideal part respectively, as seller. The contract has been verified by the Executive Secretariat as being genuine. The Executive Secretariat located *ex officio* a judgment by the Municipal Court of Mitrovicë/Mitrovica from 2004. In the respective court proceedings between Arife Quni, the Respondent's mother, and Gjorgje Jovanovic, the alleged property holder's grandfather, the Court confirmed the ownership of Arife Quni, finding that the Respondent's mother purchased the remaining ½ of the claimed property from a third party, Ibrahim Hasani, in 1975, while the same had purchased it earlier from the grandfather of the property right holder, Gjorgje Jovanovic in 1973. Furthermore, the Executive Secretariat located a certificate of immovable property rights listing the Respondent as the sole owner of the claimed property. The 2004 judgement and the certificate of immovable property rights have been verified by the Executive Secretariat as being genuine.

21. During its 30th session held in September 2012, the Commission ordered that an oral hearing be held in this claim by one of its members pursuant to section 5.4 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. The Claimant Renata Milosavljevic and the Respondent Hadije Quni, as well as two witnesses proposed by both parties, namely Omer Memovic and Qamil Musliu, attended the hearing on 1 October 2012 in the KPA premises in Prishtinë/Priština. At the hearing, the Claimant stated that her family used the claimed property until 1999, which was confirmed by the witnesses Omer Memovic and Qamil Musliu. The Respondent acknowledged that the Claimant and her mother had indeed stayed on the property until March 1999, however only as guests.

22. The Commission finds that the judgment of the Municipal Court of Mitrovicë/Mitrovica from 2004, according to which the mother of the Respondent acquired ownership over the remaining ½ of the claimed property, cannot be considered by the Commission as sufficient evidence for this fact. The Commission finds it highly unlikely that Gjorgje Jovanovic could have sold the property in 1973, but that the Claimant's family had then lived in the claimed property with no interruption until 1999, when they left the property as a result of the conflict. The Commission finds that the 2004 judgment is based on an incomplete determination of the relevant facts and therefore cannot be relied on for purposes of the present decision. The Respondent has thus failed to prove her defence and the claim stands to be granted.

b. Claim No. 01289

23. Claim No. 01289 has been submitted by the Claimant in his capacity as the property right holder. The Claimant, Dragan Kosanin, submitted a positively verified allocation decision from 1988 pursuant to which the claimed property had been allocated to the Claimant, and a positively verified purchase contract from 1995 pursuant to which the Claimant purchased the claimed property from a third party. While the purchase contract does not bear the signature of the Claimant as buyer, it is duly certified by the Municipal Court of Prishtinë/Priština. The Commission finds that this is sufficient evidence of the purchase of the claimed property by the Claimant in 1995.

24. The Commission notes that two competing claims were filed by the Claimant, Dragan Kosanin, and the Respondent, Eljmi Gërguri for the same property with the Housing and Property Claims Commission (“HPCC”). Both claims were dismissed by the HPCC. However the Commission notes that, when taking its decision, the HPCC did not consider the purchase contract from 1995 as the Claimant did not present it to the HPCC.

25. The Respondent, Eljmi Gërguri, alleges to have purchased the claimed property from the Claimant in 1996. In support of his allegation, the Respondent submitted a purchase contract from 1996 and invoices dated 1996 and 2002, issued by the public company “Komunalia” and related related to the claimed property in the name of the Respondent, as well as a tax invoice issued by the Municipality of Glogovc/Glogovac from 2003. The purchase contract submitted by the Respondent is not certified, and the Housing and Property Directorate (“HPD”) sought forensic expertise in order to verify its authenticity. The examination conducted by a forensic expert in Bulgaria found that the Claimant’s signature on the alleged purchase contract was not comparable to the Claimant’s signature on the certified purchase contract from 1995. As regards the invoices submitted by the Respondent, the Executive Secretariat was unable to verify them as they are not recorded in the respective public companies that allegedly issued them. During a telephone conversation between the Executive Secretariat and the Respondent, the latter stated that the only witness who was present when the sale in 1996 took place was killed during the conflict.

26. The Claimant states that the purchase contract submitted by the Respondent is a forgery, and that the Respondent started using the claimed property only after the conflict.

27. During its 30th session held in September 2012, the Commission ordered that an oral hearing be held in this claim by one of its members pursuant to section 5.4 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 and the Claimant Dragan Kosanin and the Respondent Eljmi Gërguri be invited to attend the hearing. At the hearing on 1 October 2012 in the KPA premises in Prishtinë/Priština, the Claimant stated that until March 1999 he regularly visited the claimed property, but then was prevented from doing so due to the prevailing security situation. He explained that at the time of the HPCC proceedings he did not have the certified purchase contract through which he had acquired the property in 1995. The Respondent alleged that the Claimant had agreed to the sale on 29 January 1996, and that the Claimant had signed in a different manner on purpose in order to deceive the Respondent.

28. The Commission considers that the statements of the Claimant during the hearing were consistent with the documents before the Commission. The Respondent’s statements during the hearing, on the other hand, are not supported by reliable evidence. Accordingly, based on the evidence before it, the Commission concludes that the claim stand to be granted.

c. Claim Nos. 48729 and 08711

29. Claim Nos. 48729 and 08711 have been submitted by the respective Claimants in their capacity as family household members of the respective property right holders. The Claimants seek confirmation of their co-ownership rights, each for 1/5 ideal part of the claimed property. The submitted possession list No. 78 lists both property right holders as co-owners each with a share of 1/5 ideal part of the claimed property. The possession list, which lists three further co-owners for the remaining 3/5 ideal parts of the claimed property, has been verified as being genuine. The Claimant in Claim No. 08711 furthermore seeks the reconstruction of the damaged residential property.

30. The Respondent claims to be one of the other co-owners of the claimed property in his capacity as legal successor of his deceased grandfather. While he advised that an inheritance procedure as well as a procedure on property division are presently underway, the Respondent did not submit any evidence in support of his allegation.

31. In the absence of any valid defense on the part of the Respondent, the Commission finds that the claims stand to be granted. The request for reconstruction of the destroyed house in Claim No. 08711 must be dismissed, since the Commission has no jurisdiction over such claims under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

d. Claim No. 25689

32. Claim No. 25689 has been submitted by the Claimant in her capacity as a family household member of the property right holder, namely her deceased father. The Claimant seeks confirmation of the ownership right over the claimed property, a residential property located on land parcel No. 4319/2 in Gjilan/Gnjilane. In support of her claim, the Claimant submitted a court certified purchase contract from 1966, concluded between the alleged property right holder as buyer and Svetozar Vuckovic as seller over a property with a surface of 3 ar 40 m². The contract refers, however, to a property located on land parcel No. 2319 and not on land parcel No. 4319/2. The Executive Secretariat has verified the contract as being genuine. The Claimant furthermore submitted written statements explaining that prior to 1966, Svetozar Vuckovic had in fact sold the claimed property to a third party, namely Ljuba Kitanovic. However as no formal purchase contract had been concluded at the time between Svetozar Vuckovic and Ljuba Kitanovic, and no changes in the cadastral records had been made, Ljuba Kitanovic could not conclude a formal contract when she decided to resell the claimed property in 1966 to the alleged property right holder. Therefore, no changes were also made in the cadastral records following the transaction in 1966 regarding the claimed property in favour of the alleged property right holder. The Claimant further submitted a verified certificate issued by the Municipal Assembly of Gjilan/Gnjilane. This certificate shows that the alleged property right holder was authorized to construct a residential structure on the respective land parcel. The decision refers to land parcel No. 4319/2. The Claimant explains that land parcel No. 4319 was subject to a division, and that he claims only an ownership right over the residential property located on land parcel No. 4319/2.

33. The Respondent who is currently occupying the property submitted a court certified purchase contract over the claimed property from 2000. This contract was concluded between the Respondent as buyer and Bashkim Iljazi, authorized by Svetozar Vuckovic, as seller. This contract has been verified by the Executive Secretariat as being genuine.

34. During its 30th session held in September 2012, the Commission ordered that an oral hearing be held in this claim by one of its members pursuant to section 5.4 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. Accordingly, pursuant to the Commission's decision, the Claimant Mladena Nikola Paunovic and the Respondent Isa Shaqiri were invited to attend and appeared for an oral hearing on 2 October 2012 in the KPA premises in Prishtinë/Priština. In addition, the witness Bashkim Iljazi was duly summoned but did not appear to the session and did not explain his absence. The Executive Secretariat also tried to summon the proposed witnesses Sinisha and Milanka Kitanovic but was not able to contact them. During the hearing, the Claimant repeated her assertion that the claimed property was sold to Ljuba Kitanovic prior to 1966. The Claimant explained that she had subsequently been in contact with the Respondent to reach an agreement over the resale of the claimed property to the Respondent but that no agreement was found. The Respondent stated that he had purchased the entire parcel No. 4319 in 2000 for DM 118,000.

35. The Commission notes that the parcel No. 2319 referred to in the purchase contract from 1966 does not correspond to the parcel No. 4319 at issue in the claim. However, the Commission considers that there is sufficient evidence to conclude that this discrepancy results from a typing error. The certificate issued by the Municipal Assembly of Gjilan/Gnjilane authorizing the Claimant to construct the residential structure on parcel No. 4319/2 confirms the Claimant's allegations that parcel No. 4319 had been divided into two separate parcels, and that she was the owner of one of these two parcels, namely parcel No. 4319/2 which has the same surface of 3 ar 40 m² as the property that was sold in 1996 and that is the subject of the present claim. Since the Claimant purchased the claimed property already in the 1960s based on the informal purchase contract, the Respondent could not have acquired that same property from Svetozar Vuckovic later in 2000 as the seller, Svetozar Vuckovic, was at that time no longer the owner of the claimed property. Accordingly the claim stands to be granted in the name of the property right holder.

e. Claim No. 34498

36. Claim No. 34498 has been submitted by the Claimant in her capacity as a family household member of the property right holder, namely her deceased father. The Claimant submitted a possession list No. 79 from 2002 in the name of the alleged property right holder. The certificate of immovable property rights of 6 March 2008 obtained *ex officio* by the Executive Secretariat also lists the alleged property right holder as the rightful owner. Furthermore, the Claimant submitted a death certificate according to which the property right holder passed away in 1980. The death certificate was also verified as being genuine by the Executive Secretariat. The Claimant claims that her brothers Martin and Nikola sold the claimed property without her and her sister's knowledge. She requests the KPA to mediate between her and her brothers while acknowledging that no inheritance procedure had been commenced.

37. The Respondent asserts that he bought the claimed property in 2001. In support of his assertion, the Respondent submitted a purchase contract dated 2001, concluded between a third party, Ilmi Rrahmani, as seller on behalf of the property right holder and allegedly authorized by him, and the Respondent in the capacity as buyer. The Executive Secretariat has verified the purchase contract to be genuine. On the basis of the purchase contract, the cadastral records were updated in the name of the Respondent as evidenced by the certificate of immovable property rights from 2012. The Respondent also submitted a power of attorney of 2001 allegedly authorizing Ilmi Rrahmani to sell the claimed property and sign the purchase contract. The power of attorney had been certified with notary's stamp in the Former Yugoslav Republic of Macedonia, but its authenticity could not be verified by the Executive Secretariat.

38. The Claimant alleges that the power of attorney presented by the Respondent has been forged by her brothers against whom she had filed a claim with the competent court. The Respondent did not cooperate further in elucidating the exact circumstances of his purchase.

39. The Commission concludes that the power of attorney in question cannot be relied upon as evidence as it was allegedly issued by the property right holder in 2001, although he had died already in 1980. As a consequence, in 2001 Ilmi Rrahmani had no authority to sell the claimed property on behalf of the property right holder, and the Respondent could not acquire ownership over the claimed property as a result of the 2001 transaction.

40. In the light of the evidence before it, the Commission concludes that the claim stands to be granted in the name of the property right holder.

f. Claim No. 46039

41. Claim No. 46039 has been submitted by the Claimant in his capacity as a family household member of the property right holder. The Claimant seeks confirmation of the property right holder's user right of the claimed residential property, namely an apartment. To substantiate his claim, the Claimant submitted a decision from the Municipality of Prishtinë/Priština from 1978. The decision certifies the payment of taxes by the property right holder for the use of the claimed residential property. The Executive Secretariat has verified the decision as being genuine. The Claimant did not submit any further evidence, such as a relevant allocation decision or a contract on lease. However, the Executive Secretariat *ex officio* found that the property right holder is registered in the Public Housing Enterprise list as having the right of use over the claimed property.

42. The Respondent who is currently occupying the claimed property asserts that he took possession of the claimed property after having paid €1,500 to a third party. However, the Respondent failed to provide any evidence to show that he had any legal right over the claimed apartment, nor did he disclose the identity of the third party and accordingly the Respondent's statement could not be verified.

43. In these circumstances, the Commission finds that the claimed use right stands to be granted in favor of the property right holder.

44. In a number of claims the claimants or the property right holders, as the case may be, left the property outside the period 27 February 1998 and 20 June 1999, referred to in section 3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079. The Commission has determined that, even though the date of loss in these claims fell outside the above period, the loss of property right in each case occurred in circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999, as required by section 3 of UNMIK/REG/2006/50 and section 3 of Law No. 03/L-079.

45. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in each of the claims covered by this decision:

- (a) the claimant or the property right holder as the case may be had an ownership right or use right as the case may be in respect of the claimed property, or such part thereof as specified in the respective individual decision;
- (c) the claimant or the property right holder, as the case may be, in each case is not now able to exercise their property right; and
- (c) the claim in each case involves circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

B. Claims for compensation

46. In the claims identified in the relevant parts 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.

C. *Concluding remarks*

47. In view of the foregoing, the Commission finds that the claims listed in parts A, B, C, D, E and F of the attached Schedule succeed and directs that an order be made in respect of each claim as set out above.

48. In a number of claims, the claimant had filed a claim for repossession of the same property with the Housing and Property Directorate, which claim had subsequently been granted by the Housing and Property Claims Commission ("HPCC"). The Commission notes that the causes of action available for claimants before the present Commission and the HPCC, respectively, and accordingly the jurisdiction of the two Commissions, are not identical. Thus the decisions of the HPCC do not necessarily constitute *res judicata* before the present Commission, although in certain circumstances this may be the case. Moreover, in cases where the HPCC granted an eviction order in favour of the Claimant, the Commission does not consider that such an order constitutes a bar for this Commission to issue a fresh eviction order in cases where the property is unlawfully occupied.

49. The Commission's above decisions and orders 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.

50. Pursuant to section 8.5 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079, the Commission may in its decision determine any property right in the name of the property right holder and make an order for possession in favor of the claimant. When the property right holder is alive, the Commission grants the right of possession in the name of the property right holder. When the property right holder is deceased and the death is proven but no valid inheritance decision has been provided, the Commission grants possession to the claimant as a family household member of the property right holder. In cases where the property right holder dies after filing the claim and there is no family household member claimant, the Commission grants the right to possession in the name of the deceased property right holder. The right to possession is granted pursuant to the applicable provisions of the law governing family relations in Kosovo, which includes the administration of family property. The Commission's decision on the entitlement to possession of property by the family household member claimant is without prejudice to the rights of other family household members or other heirs of the property right holder who have not filed claims with the KPA but who may have a joint right to possession of the property pursuant to the applicable law or as a consequence of future inheritance proceedings (section 8.5 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079).

51. 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.



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.

The Supreme Court of Kosovo may levy court fees for the appeal procedures.

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

KPA06558	KPA14831	KPA28301	KPA38038	KPA42330	KPA44438	KPA92721
KPA91308	KPA92754	KPA27122				

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Part B/Pjesa B/Deo B

KPA33399

Spreadsheet /Lista /Prilog

Part C/Pjesa C/Deo C

KPA01370	KPA14533	KPA47335	KPA91530	KPA92181	KPA92182	KPA42336
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Spreadsheet /Lista /Prilog

Part D/Pjesa D/Deo D

KPA34259	KPA50126	KPA40484	KPA44364	KPA92690	KPA48952	KPA48169
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Part E/Pjesa E/Deo E

KPA08711	KPA34498	KPA48729	KPA01289	KPA00643	KPA25689	
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Part F/Pjesa F/Deo F

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