SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-së
ŽALBENO VEĆE KAI

GSK-KPA-A-59/13 **Prishtinë/Priština, 18 October 2013**

In the proceedings of

M.N
Claimant/Appellant

vs

M.K

Respondent/Appelee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/156/2012 (case file registered at the KPA under the number KPA 00375), dated 6 June 2012, after deliberation held on 18 October 2013, issues the following

JUDGMENT

1- **The appeal of M.N is rejected as unfounded.**

2- **The decision of KPCC/D/R/156/2012 (case file registered at the KPA under the number KPA 00375), dated 6 June 2012, is confirmed.**

3- **The appellant has to pay the costs of the proceedings which are determined in the amount of € 60 (€ sixty) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 9 March 2007 M.N (the claimant) filed a claim with the Kosovo property Agency (KPA) seeking repossession over a property described as parcel 537 – construction land Boro Vukmirović, Klinë/Klina. The claimant declared that that the property was occupied by the M.A.K without any compensation, the property was a shop and it was demolished by the M.A. Therefore he requested to be repossessed.

To support his claim he presented various documents, among which a ruling from the M.K for awarding the claimant with socially owned land, parcel 537, with surface of 58 m², dated 9 March 1997; building permit for the construction of a building in the same parcel, issued much earlier – on 26 March 1997; a decision from 25 April 1997 for granting the claimant with the right to use the facility, a temporary building for a restaurant; possession list from 2005, describing the parcel in question as socially owned; copy of the cadastral plan for the same parcel.

The KPA notified the claim by putting a poster on the parcel on 23 March 2007. Later on 1 July 2010 the KPA performed a second notification with publication in KPA notification gazette. On 30 August 2010 Y.M, on behalf of the M.K signed a notice of participation. The respondent claimed legal right towards the property.

With cover decision KPCC/D/R/156/2012 (case file registered at the KPA under the number KPA 00375), dated 6 June 2012 the Commission dismissed the claim as falling outside its mandate as set out in section 3.1 of UNMIK/REG/2006/50 as amended by Law No 03/L-079. The Commission noted that the loss of possession was not related to the armed conflict of 1998-1999.

It was established from factual point of view and not disputed by the claimant that in 1989 the M.K gave permission to the current claimant to build an object of temporary nature on parcel 537 with surface of 58 m². It is clear as well that the clamant build a hotel and used it as such without interruption until 2005 when the M.K tore it down, revoked the user right and repossessed the parcel against the claimant.

There is no dispute whatsoever that the cessation of possession or usage from the claimant was not related to the armed conflict of 1998/1999. His possession or usage continued until 2005.

The claimant was notified of the decision on 14 February 2013.

On 19 February 2013 he filed an appeal with the Supreme Court against the aforementioned decision.

The appellant asserts that the permanent use of a social owned property is equivalent to the ownership as an absolute right. In addition he claims that the decision rests on erroneous and deficient establishment of evidence. The competent prosecution office has terminated the fictitious criminal proceedings initiated by the M.K.

Legal Reasoning:

The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

However, the appeal is ungrounded. The decision of the KPCC is correct, the case is not within the jurisdiction of the KPCC.

According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of private immovable property, but also that he or she is not now able to exercise such property rights by reasons or circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

According to section 2.1 of UNMIK/DIR/2007/5 as amended by Law No. 03/L-079 "any person who **had** an ownership right, lawful possession of or any lawful right of use of or to private immovable property, who at the time of filing the claim is not able to exercise his/her rights due to circumstances directly related to or resulting from the armed conflict of 1998/1999 is entitled to reinstatement as the property right holder in his/her property right".
Therefore any property right, which was interrupted after the conflict and had no relation to it – like the one in the current case – the claimant was in possession/usage until 2005, should be dealt with by the regular civil procedure mechanisms and within the system of the regular civil courts. Same applies for possible compensation claims.

The claimant/appellant does not dispute the fact that he has been in possession or usage of the building in question (and the parcel on which it was erected) until 2005. Therefore he cannot claim loss of any "property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999".

As the claim is out of the jurisdiction of the KPCC, the Commission had not to decide on the ownership of the appellant.

Following the same line, because of the lack of jurisdiction, the Court has not to decide whether the appellant is the owner of the claimed property or not.

Obiter dicta:

It is irrelevant for the current proceedings whether the claimant still has his usage right, this would be relevant in a conventional property/usage right suit, not in the current one which is restricted to property/usage rights lost because of the war of 1998/2005.

It is irrelevant as well whether in 2005 the respondent had the right to tear down the building/construction. If the actions of the respondent have been illegal the way to pursue any potential compensation is within the framework of negotiations between the one who allegedly caused damage and the one who allegedly suffered damage. In case mutual agreement is impossible a civil suit for compensation for tort would be an alternative. However, the most appropriate dispute resolution method is to be chosen by the allegedly injured party himself. There is data in the file that the claimant is already pursuing compensation claim against the respondent in the regular civil courts.

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of AD 2007/5 as amended by Law No. 03/L-079, the parties are exempt from costs of proceedings before the Executive Secretariat and the Commission. However such exemption is not foreseen for the proceedings before the Appeals Panel. As a consequence, the normal regime of court fees as foreseen by the Law on Court Fees (Official Gazette of the SAPK-3 October 1987) and by AD No. 2008/02 of the Kosovo Judicial Council on Unification of Court fees are applicable to the proceedings brought before the Appeals Panel.

Thus, the following court fees apply to the present appeal proceedings:

- court fee tariff for the filing of the appeal (Section 10.11 of AD 2008/2): € 30;
- court fee tariff for the issuance of the judgment (10.21, 10.15 and 10.1 of AD 2008/2: € 30.

These court fees are to be borne by the appellant who should pay them within 15 days from the day the judgment is delivered to him.

Legal Advice:

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Dag Brathole, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar