

**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-239/11

Prishtinë/Priština, 8 May 2012

In the proceedings of

Z.P.

Claimant/Appellant

vs

M.

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Anne Kerber, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/111/2011 (case file registered at the KPA under the number KPA00256), dated 13 May 2011, after deliberation held on 8 May 2012, issues the following

JUDGMENT

- 1- **The appeal of Z.P. against the decisions of the Kosovo Property Claims Commission KPCC/D/A/111/2011 regarding case file registered at the KPA under the number KPA 00256, is rejected as unfounded.**
- 2- **The decision of KPCC/D/A/111/2011 regarding case file registered at the KPA under the number KPA 00256 is confirmed.**

- 3- **The appellant has to pay the costs of the proceedings which are determined in the amount of € 155 (€ one hundred fifty five) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 15 January 2007 Z.P. (the claimant) filed a claim with the Kosovo property Agency (KPA) seeking for repossession over a commercial building, shop No 28, of 2 floors (and 2 rooms), with the surface of 44 square meters, Skenderbeu Glllogoc/Glogovac. According to the claim the property was allocated to the claimant “as construction land... The construction of the building was allowed based on the advertisement, according to a project and an acceptance by a technical commission. The premise was functioning based on the permeation from competent authority from 1997 till 2001, when municipal authorities considered that that this was issued by occupier”.

To support his claim Mr P. presented to the KPA general plan of 1980 and detailed urban plan of 1982; sketch 07/353-466 from 21 Jan 1997; total project of the constructed building No. 28 in parcel No. 763; decision 07/353-466, dated 21 Jan 1997; decision 02/351-152, dated 02 Jun 1997; decision on technical approval and utilization permission 07/351-280, dated 09 Oct 1997; minutes No 17/1, dated 15 Aug 1999; decision No 17/1, dated 14 Sept 1999; notification No 361-12, dated 29 Sept 1999; decision C. nr. 50/01, dated 07 May 2001; executive decision No 2001/6; notification from public lawyer’s office No 27/2002, dated 05 Jun 2002; decision No 353-129, dated 08 Mar 2002; decision A No 19/2001, dated 27 Feb 2001, issued by the Supreme Court of Kosovo; decision No 50/2001, dated 24 Aug 2001; response from the Government of Kosovo No 139-06, dated 25 Jan 2005; notification dated 02 Feb 2005; temporary register No 1599/2005, dated 01 Mar 2005; judgement No 444/2001, dated 21 Mar 2005, issued by the Supreme Court of Kosovo; claim for a meritorious solution of the case dated 16 Sept 2005; response from Thomas J Monaghan, director of the Department of Justice; information of JIU/06/ag/115, dated 24 Feb 2006; response No 412, dated 11 Jul 2006, report, dated 30 Jun 2006.

The claimant has indicated the M. as the occupant of the property.

On 31 March 2008 the KPA processed the notification by putting a poster in the parcel where the shop was situated. In its report, dated 31 March 2008, the KPA noted that the property is a destroyed shop; it is occupied by the M., who claimed legal right to it by a representative.

With a cover decision No KPCC/D/C/111/2011, dated 13 May 2011, regarding claim 00256 the KPCC has accepted that the claim falls outside the mandate of the Commission 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 claimant

has already challenged the decision of the M. Assembly before the local courts, which are the appropriate forum for the resolution of property disputes that are not related to the 1998-1999 conflict. Following the Cover decision, the Commission has issued a certified individual decision, dated 22 Aug 2011 for the dismissal of the claim.

The claimant received the KPCC decision on 21 Sept 2011.

On 28 Sept 2011 the claimant, now appellant filed an appeal with the Supreme Court against the aforementioned decision.

The appellant challenges the decision in its entirety on the grounds that there have been essential violation of provision of contested procedure; erroneous and incomplete determination of factual situation; erroneous application of material law. He also claims that the decision has been influenced by policy.

He explains that in 1992 the M. has launched an advertisement for allocation of land in Scenderbeu Street in Drenas (Gillogoc/ Glogovac) and 95 citizens responded. Land was allocated to 45 of them. The claimant himself applied and was allocated land in 1997. As a result 2 storey business premises were constructed. The premises were build according to the Urban plan. He was issued valid permits, including construction permit, technical admission and business permit. However on 29 Sept 1999 the interim government of the M. ordered the premises to be vacated. On 28 March 2001 they have received an order from the M. to remove the premises from the public property.. On 26 Apr 2001 all vendors filed a claim with the Municipal court for obstruction of possession against the M.. The court imposed a temporary measure, thus granting the claim by the Drenas vendors. Different procedures followed and eventually the Supreme Court with a decision from 21 Mar 2005 took a decision invalidating all decisions taken by the Municipal and Central Government. Since the decision failed to be enforced the claimant hoped that the KPA would take any measure, but it did not. Eventually the building in question was removed.

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 cases 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 reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

The claimant himself describes that the disputed building (along with other similar buildings in the same street) was erected after he had been allocated with a land by the relevant Municipality and afterwards the Municipality had decided to revoke the allocation of the parcel, respectively to remove the erected 2 story buildings (see the order dated 28 mars 2001) and to construct a town square on the same land, according to the new urban plan. As a result of that the buildings, including the one subject of the current proceedings were removed/demolished sometimes after 28 March 2001, i.e. the claimant lost possession after 28 march 2001 or as the KPCC has accepted in 2005, in any case long after the armed conflict from 1998/1999. The legality of this removal/demolition was a subject of a civil dispute, in front of the regular civil courts of Kosovo, as the claimant himself explains and as it is established by the numerous documents applied to the claim. In any case the removal/demolition was not related and did not result from the armed conflict between 27 February 1998 and 20 June 1999. Therefore the loss of possession was not related and did not result from it.

Whether the decision of the Municipality to revoke the allocation of the parcels and later to remove the buildings in order to construct the square was legal and just cannot be a subject of the procedure in front of the KPA, respectively in front of the Court. It falls outside the jurisdiction of the KPCC, respectively the Appeals panel of the SC.

As the claim is out of the jurisdiction of the KPCC, the KPCC 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.

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 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being comprised at € 15.000: € 125 (€ 50 + 0,5% of € 15.000).

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.

Anne Kerber, EULEX Presiding Judge

Sylejman Nuredini, Judge

Elka Filcheva-Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar