

**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-146/14

Priština/Prishtinë

25 April 2018

In the proceedings of

M. of P./P.

Represented by Xh.R.

Appellant

vs

R. R.I.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami Presiding Judge, Krassimir Mazgalov and Ragip Namani, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/219/2013 dated 27 November 2013 (case files registered at the KPA under nos. KPA38108, KPA38109 and KPA38110), after deliberation held on 25 April 2018 issues the following

JUDGMENT

1. The Appeals filed by Municipality of Podujevë/Podujevo, registered under the numbers GSK-KPA-A-146/2014, GSK-KPA-A-147/2014 and GSK-KPA-A-148/2014, are joined in a single case under the number GSK-KPA-A-146/2014.
2. The Appeals of Municipality of Podujevë/Podujevo against the Decision of the Kosovo Property Claims Commission KPCC/D/A/219/2013 dated 27 November 2013, with regard to the claims registered with KPA under Nos. KPA38108, KPA38109 and KPA38110, are accepted as founded.
3. The Decision of the Kosovo Property Claims Commission KPCC/D/A/219/2013 dated 27 November 2013, with regard to the claims registered with KPA under Nos. KPA38108, KPA38109 and KPA38110 is annulled.
4. The claims of R. R. I., registered with KPA under Nos. KPA38108, KPA38109 and KPA38110 are dismissed as falling outside of the jurisdiction of the Kosovo Property Agency.

Procedural and factual background

1. On 29 October 2007, R. R. I. (henceforth: the Appellee) filed three separate claims with the Kosovo Property Agency (KPA), registered under case no. KPA38108, KPA38109 and KPA38110, seeking confirmation of ownership right and repossession of the cadastral parcel no 231, 232 and 233 with a total surface of 02.38.32 ha, which have been incorporated in a new cadastral parcel with the number 235 and with a greater surface, located in Fusha e Livadicës/ Livadicko Polje, Municipality of Podujevë/Podujevo (henceforth: the claimed property).
2. In the claims it is stated that the claimed properties were lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 18 June 1999 as a date of loss.

3. To support his claim, the Appellee provided the KPA among others with the following documents:
 - The Judgment No.44/95 rendered by Municipal Court in Kuršumljia on 25 March 1996 by which the Contract on Sale concluded between late N. J. and Agricultural cooperative “Sloga” (now “Përparimi”) regarding the purchase of the claimed properties on 19 July 1967 is declared null and void. The Agricultural cooperative “Perparimi” in a capacity of the Respondent was obligated to handover the claimed property to the legal successors of the late N. J.
 - The Inheritance Decision No.190/1996 issued by Municipality Court in Kuršumljia on 24 October 1996 with which A. I. was declared as the only heir of his mother- late N. J., for the entire legacy including the claimed properties.
 - Cadastral Decision No 952-02-2/97/123-134 issued by Republic Geodesy Office of Serbia, Immovable Property Cadastre in Podujevë/Podujevo on 4 March 1997, whereby, the abovementioned institution allowed that the claimed properties be registered on the name of A. I.,
 - Death Certificate No. 1/2000 issued by Municipality of Kuršumljia on 07 February 2000 showing that R.I. (husband of A.I.) passed away on 02 February 2000.
 - Death Certificate No 412/2002 issued by Municipality of Kruševac on 24 April 2002 showing that A. I. (widow of the late R. I.) passed away on 07 April 2002.
 - Inheritance decision No.79/2002 issued by Municipality Court in Kuršumljia on 5 June 2002 with which R. I. was declared as the only heir of his mother- late A. I., for the entire legacy including the claimed properties.
 - Copy of the Possession List no. 160 issued on 24 July 2007 by Republic Geodesy Office of Serbia, Immovable Property Cadastre in Podujevë/Podujevo (dislocated at Kruševac), where the cadastral parcels nos.231, 232 and 233 were registered on the name of A. I. as the sole owner.
4. All of the above mentioned documents were positively verified.
5. The initial notification was performed on 07 May 2008 but it was deemed incorrect later on. On 14 August 2013 KPA notified the claims Nos. KPA38108, KPA38109 and KPA38110 again. The claimed properties were found occupied by Municipality of Podujevë/Podujevo (henceforth: the Appellant). The representative of the Appellant signed a Notice of Participation and claimed legal rights over the claimed properties.

6. Within the legal deadline of 30 days, pursuant to article 10.2 of the Law no. 03/L-079 the Appellant filed a response to the claim alleging that the Municipality has lawfully expropriated the claimed properties. However, the Appellant did not provide any evidence in support of the response regarding the expropriation.
7. The Executive Secretariat of KPA has found *ex officio* that the claimed properties that has been incorporated in a new parcel no.235 with a greater surface, listed in the name of the Appellant.
8. The Appellee has been contacted by Executive Secretariat and stated that he is living in Kuršumlija with his family since 1967, but when the claimed property was returned to him based on the mentioned Judgment No.44/95, he travelled to Kosovo and used the claimed property until losing possession over the same due to the armed conflict in 1998-1999.
9. With the appealed Decision KPCC/D/A/219/2013 dated 27 November 2013 KPCC granted the claims Nos. KPA38108, KPA38109 and KPA38110 with the reasoning that the Appellee has established his ownership right over the claimed property with positively verified documents and the Appellant failed to present any evidences in support of his allegations about the expropriation of the property.
10. On 25 March 2014, the KPCC Decision was served on the Appellant.
11. On 22 April 2014 the Appellant filed the above mentioned Appeals.

Allegations of the appellant

12. The Appellant alleges that the KPCC Decision is delivered in substantial violation of applicable law and erroneous determination of evidences submitted by the Appellee.

Legal reasoning

Admissibility of the appeal

13. The appeals are filed within the time limit of 30 days set in Law No. 03/L-079 Article 12.1. The Supreme Court has jurisdiction over the appeals against the Decision of the KPCC.

Joining of the appeals

14. According to section 13.4 of Law No. 03/L-079, the Supreme Court can decide on joined or merged appeals, when such joining or merger of claims has been decided by the Commission pursuant to Section 11.3 (a) the law. This section allows the Commission to take into consideration the joining or merger of claims in order to review and render decisions when there are common legal and evidentiary issues.
15. The provisions of Law on Civil Procedure that are applicable in the proceeding before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of Law No. 03/L-079, as well as provision of Article 408.1 as read with Article 193 of the Law No. 03/L006 on Contested Procedure, provide for the possibility of joining of all claims through a ruling if that would ensure court effectiveness and efficiency of the case.
16. In the text of appeals filed by the appellant, the Supreme Court observes that apart from a different case number for which the respective appeal is filed, the facts, the legal grounds and the evidentiary issues are exactly the same in all the cases. Only the cadastral parcels, subject of the property right which is alleged in each claim, is different. The appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the claims is the same one.
17. The appeals registered under the numbers GSK-KPA-A-146/14, GSK-KPA-A-147/14 and GSK-KPA-A-148/14 are joined in a single case under the number GSK-KPA-A-146/14.

Jurisdiction of the KPCC

18. According to Article 3.1 of the Law 03/L079, the KPCC has the competence to resolve conflict related claims involving circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Thus, a Claimant is not only to provide as ownership title over a private immovable property but also to show 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.

19. According to the KPCC the Appellee submitted a Judgment from the year 1996 by which the ownership right over the claimed property was transferred to the Appellee's grandmother.
20. The property right can be acquired by law itself, based on legal affair (legal transfer) or inheritance, pursuant to the Article 20 of the Law on Basic Property Relations (OG SFRY, No. 6/1980), applicable on 1996, the time when the alleged transfer of claimed property accrued.
21. The KPCC had made a positive verification of the abovementioned Judgment No.44/95 rendered by Municipal Court in Kuršumljia on 25 March 1996.
22. Article 33 of the Law on Basic Property Relations (OG SFRY, No 6/1980) reads that on the basis of the legal affair (which is the Judgment on case at hand) the property right over the real estate shall be acquired by registration into the "public notary book" (cadastral book) or in some other appropriate way that is prescribed by law.
23. **However, the cadastral records in Kosovo were not updated in the name of the Appellee's grandmother or her heirs.** This means that, the Judgment No.44/95 rendered by Municipal Court in Kuršumljia on 25 March 1996 was never executed.
24. On 22 July 2016, the Supreme Court issued a Court Order to the Municipal Cadastral Office of Podujevë/Podujevo asking to indicate whether parcels Nos 231, 232 and 233 are merged in a single one parcel No 235 and to provide information which is the legal base for this action. According to the reply dated 30 September 2016, **with prior approval of the Municipal Administrator appointed by the UN Special Representative of the Secretary General in Kosovo, who was responsible for administration of Social and Public Property, and the Decision of the Municipal Assembly of Podujevo No.02-01/264-953 dated 20 December 2001 the claimed property was given for temporary use to the Football Club "Besiana" in Podujevo**, some cadastral units (including the abovementioned parcels 231, 232 and 233) were joined in one general surface of 88611 m² and from this surface was created parcel No. 235-0 with surface of 40000 m² with the culture, meadow, category 2 and another 4 parcels. The new parcel No.235-0 was created from the following old cadastral units (parcels): No.No.235, 231, 232, 233, 237, 238-1, 2, 3, 239-2 and 240 in cadastral zone Livadicë/Livadica.

On 10 September 2002 the cadastral parcel No.235-0 was registered from the previous status with the old owner Agricultural Cooperative Podujevë/Podujevo, upon the abovementioned Decision of the Municipal Assembly of Podujevo No.02-01/264-953

dated 20 December 2001, to the new status which is socially owned property and with the user Football Club “Besiana” for the for period of 10 years. On 28 September 2011 the Decision of the Municipal Assembly of Podujevë/Podujevo No.02-01/264-953 dated 20 December 2001 on Allocation of the Municipal Property for temporary use to the Football Club “Besiana” was annulled by the Municipal Assembly of Podujevë/Podujevo and currently the parcel No.235-0 is registered as the Municipal Property.

25. Based on the above, the Court reached the conclusion that the Appellee’s grandmother has not gained the property right since the conditions of article 33 of the Law on Basic Property Relations (SFRY, No 6/1980) were not fulfilled. As a consequence nor the Inheritance Decisions mentioned at the paragraph 3 of the Judgment should not be taken into consideration due to the Appellee’s grandmother ownership right was not established.
26. The Supreme Court considers that there was no legal or practical obstacle why the cadastral books in Kosovo were not updated in accordance with the Judgment considering that it was issued on year 1996.
27. Nevertheless, the established facts bring the Court to the conclusion that the dispute regarding the property in question is not derived from the armed conflict of 1998/99. It refers back to 1967, when the property of the Appellee’s family was confiscated and taken by Agricultural Cooperative “Sloga”.
28. The Supreme Court concludes that the Commission decided wrongly and unlawfully when rendered the appealed Decision, since it had no jurisdiction over the claim. Therefore, the Appellant’s appeals are accepted, the KPCC decision is annulled and the claims are to be dismissed pursuant to Section 13.3 (a) of the Law No. 03/L-079.
29. On the basis of the above and in accordance with Section 12.2 the Law No. 03/L-079 and art 195.1 (e) of the Law on Contested Procedure it has been decided as in the enacting clause of this Judgment.
30. This Judgment has no prejudice to any party to claim legal right over the property before the competent court in Kosovo.

Legal advice

Pursuant to Article 13.6 of the Law 03/L-079 this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary legal remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Bjorn Olof Brautigam, EULEX Registrar