

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

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

GSK-KPA-A-116/12

Prishtinë/Priština

20 December 2012

In the proceedings of

D. S.

Claimant/Appellant

V s

S. Ç.

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/R/142/2012 (case file registered at the KPA under the numbers KPA 28304, 28308, 28312 and 90111), dated 29 February 2012, after deliberation held on 20 December 2012 and pursuant to section 13.3 (c) UNMIK/REG/2006/50 as amended by Law No. 03/L-079 and section 12.2 ibid in relation to 465.1 of the Law on contested procedure, issues the following

JUDGMENT

- 1- **The appeal of D. S. against the decision of the Kosovo Property Claims Commission KPCC/D/R/142/2012 regarding case file registered at the KPA under the numbers KPA 28304, 28308, 28312 and 90111, is rejected as unfounded.**
- 2- **The decision of the KPCC/D/R/142/2012 regarding case files registered at the KPA under the numbers KPA 28304, 28308, 28312 and 90111 is confirmed.**
- 3- **The appellant has to pay the costs of the proceedings which are determined in the amount of € 60 (€ sixty euro) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 8 March 2007 D. S. (the claimant) as a family member of the property right holder (PRH) M. D. S.(claimant's late father), filed a claim with the Kosovo property Agency (KPA) seeking for repossession over parcels 33/2, 34/4; 35/1, 35/2, 35/3, 35/4; 33/1, situated in Brolić, Pejë/Peć and all described like pastures. Allegedly there was a house in parcel 33/1, which was destroyed during the war of 1998/1999. The claimant declared that his father was the sole owner of the parcels and now they are illegally occupied. He presented a Possession list No. 46, issued by the Geodesic institute (Geodetski zavod) of Serbia on 12 February 2002 under the name of the claimant's father, regarding the above listed parcels.

The KPA processed the claim. In response to the notification S. Ç. claimed that in 1979, his father D. Ç., purchased these properties from M. D. S. . He did not present any written evidence in that regard. He asserted that there was written contract, but it burned during the war.

In response to the allegations of S. Ç., the claimant replied that he does not know his father to have sold the properties. He also explained that he has been living in Serbia since 1970 and that his father remained in Kosovo where he died in 1989. It is not clearly established from which moment of time the respondent's family (Ç. family) started to use these properties, but it is undisputed – the claimant does not rebut this, that the family of the respondent had been using the properties long before the armed conflict of 1998/1999 and before 1989.

With a cover decision KPCC/D/R/142/2012, dated 29 February 2012 regarding case file registered at the KPA under the numbers KPA 28304, 28308, 28312 and 90111), KPCC has accepted that the claims

fall 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 there is no evidence of conflict-related loss of possession or inability to exercise property rights over the claimed properties, therefore the claims fall outside the jurisdiction of the Commission.

Following the cover decision, on 24 May 2012 the KPCC issued an individual decision.

The decision was served to the claimant on 6 August 2012.

The claimant filed an appeal on 3 September 2012.

The decision is appealed based on “wrong application of material and procedural law”, “wrong and incomplete establishment of facts” and “contradiction between the enacting clause and the reasoning of the decision”.

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 are 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.

According to section 2 General principles, point 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”.

The texts clearly demonstrate that the purpose of this special law (the Regulation) is to ensure the restitution of property rights that cannot be exercised because of circumstances related to the war conflict of 1998/1999.

This special law does not serve for the resolution of conventional property and property related disputes, which are in no way related to the armed conflict. Those are deemed to receive their resolution within the framework of the existing general property legislation, like for example the Law on Property and Other Real Rights (Law No.03/L-154 of 2009, OG No. 57/2009).

In the current case it is undisputed that the properties had been occupied by the family of the respondent (Ç.) long before the armed conflict of 1998/1999, even before 1989, when the alleged Property Right Holder (the claimant's father) was still alive. Inversely at the same moment in time – *i.e.* long before the war of 1998/1999 and before 1989 the family of the claimant (S.) ceased to exercise possession over these properties. This does not mean that when the possession was transferred the right of property was transferred as well. The possession is a mere factual stance which can be transformed into an ownership only when the conditions of the material law have been satisfied – the conditions for that vary in different countries, but usually they include open and peaceful occupation for a significant period of time – *e.g.* according to art. 40 of the Law on Property and Other Real Rights (Law No.03/L-154 of 2009, OG No. 57/2009) it is 20 or 10 years (the short time period is if the possession is under the colour of a certain registration). Same time periods were applicable under art 28 of the Law on Basic Property Relations (OG SFRY, No.6/1980).

However in this case it is irrelevant whether the respondent or his father have acquired the right of property on the basis of adverse possession and reciprocally whether the claimant is still the rightful owner. This, if in future remains an argument between Mr. S. and Mr. Ç., should be decided upon in a conventional civil suit before an ordinary civil court.

The jurisdiction of the KPCC and the current Panel is excluded not because the claimant and *vice versa* the respondent is or is not a property owner, but because **the loss of possession and the inability the right of property to be exercised** by the time the claim was filed **is not related in any** way to the armed conflict of 1998/1999.

In conclusion the KPCC by dismissing the claim as falling outside its jurisdiction has rendered a correct decision.

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: 30 €. This amount is determined in accordance with Section 10.11 of AD 2008/2 (related to fees payable for filing an appeal).
- court fee tariff for the issuance of the judgment, considering that the value of the property at hand could be reasonably estimated as being comprised at € 19610: € 30. This amount is calculated in accordance with Sections 10.21 (related to fees, payable for the issuance of a decision in appeals proceedings), 10.15 (related to fees, payable in cases of dismissal of a suit) and 10.1 (describing the general rule of calculating fees) of AD 2008/2.

These court fees are to be borne by the appellant who should pay them within 90 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