SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

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

GSK-KPA-A-60/12 **Prishtinë/Priština**

24 August 2012

In the proceedings of:

D. Z.

Claimant/Appellant

vs.

M. K.

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/131/2011 (case file registered at the KPA under the number KPA08620), dated 26 October 2011, after deliberation held on 24 August 2012, issues the following

JUDGMENT

1- **The decision of the Kosovo Property Claims Commission KPCC/D/A/131/2011, dated 26 October 2011, as far as it relates to the case registered under the number KPA08260 is annulled and the claim of D.Z. is dismissed as it does not fall within the jurisdiction of the KPCC.**

2- **Costs of the proceedings determined in the amount of € 60 (sixty euro) are to be borne by the appellant and have to be paid to the Kosovo Budget within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 22 January 2007, D. Z. filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized as the owner of apartment of 72,28 sq. m, situated on the first floor of a building, erected in 1998 in Prizren, 2E "October revolution" street. He asserted that hi is the owner of the apartment on the basis of a purchase contract dated 23 March 1999 and that his property is usurped. He claims to have lost possession over the property on 1 August 1999.

To support the claim, he has provided the following documents:

- Decision of the housing commission of the company ISF Progress Prizren, dated 02 March 1999;
- Contract for the purchase of the property, concluded between the same company as a seller and the claimant as a buyer, dated 08 March 1999.

The property was notified on 7 November 2007. There was a response submitted by M.K.. She claimed that she was given the right to use the property by the rightful owner - ISF Progress Prizren. The respondent did not provide any evidence in that regard.

The same property (apartment) was subject of a procedure in front of the Housing and Property Claims Commission – cover decision of the HPCC/D/204/2005/C, dated 18 June 2005 (sections 12 and 14 of the arguments are related) and a reconsideration decision - HPCC/REC/66/2006, dated 15/07/2006 (para 50 is related).

In that procedure the father of the claimant – V. Z. was the claimant. The HPCC has dismissed the claim and rejected the request for reconsideration. The HPCC accepted that the claimant V. Z. proved neither that he ever had possession over the property nor that he had ever been a rightful owner (which conferred the right to take possession). With the same argumentation but with a different decision the HPCC refused an identical claim of another claimant – K.B..

On 26 October 2011, the KPCC in its decision KPCC/D/R/131/2011 refused the claim. The KPCC accepted that the claimant has failed to provide any legal evidence that he is the rightful owner. The contract, provided by the claimant could not be positively verified.

With the same decision KPCC has refused an identical claim of a different person (K. B.), regarding the same apartment on the same grounds – no verifiable data for the alleged possession or right of property which would confer to right to take possession. Regarding K. B. the KPCC accepted that he has been in possession of the disputed apartment for two months after the end of the conflict, meaning until 20 August 1999, which excludes the possibility for the claimant D.Z.to have been in possession over the apartment until 1 August 1999 as he claims.

The decision was served to the claimant on 20 February 2012. On 16 March 2012 he filed an appeal.

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 Court should not elaborate on the merits of the appeal, respectively the merits of the appealed decision as the latter has been rendered in the absence of jurisdiction. This is so because 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 has stated that the loss of property occurred on 1 August 1999. From the data available in the case this assertion seems highly improbable. The KPCC has established that another person K. B. has been in possession of the apartment during that time, or at least until 20 August 1999. In addition to that there is no data that the claimant D. Z. has ever been in possession of the property before that – before 20 June 1999, which he is not even asserting.

Apart from this and in the context of the many existing pretentions regarding this apartment, the claims for ownership of D. Z. and of K. B., possession rights claimed by the respondent M.K. and the fact that the same apartment was claimed unsuccessfully by the father of D.Z. ,V. Z., in a procedure before the HPCC, the only logical conclusion that could be drawn is that the dispute related to the property in question neither originated from nor was directly related to the armed conflict of 1998/1999.

Following that it has to be accepted that the alleged loss was not related to the armed conflict that ended on 20 June 1999.

As long as the claim is outside the scope of the jurisdiction of the KPA the KPCC had not to decide on the merits of the claim but to dismiss it. This has not been done and the KPCC has rendered a void decision which has to be annulled as per argument after art. 198.1 of the Law on Contested Procedure. According to the referred legal provision when the court of first instance (in this case it is a quasi-judicial body) has rendered a decision outside its jurisdiction, the court of second instance has to annul the decision and dismiss the claim.

The provisions of the Law on contested procedure are applicable *mutatis mutandis* to the procedure in front of the Supreme Court, according to section 12.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079.

In the lack of jurisdiction it would be obsolete to elaborate whether the claim, the appeal and the response to both were founded on their merits. For procedural clarity the appeal has to be rejected.

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 for dismissal of the suit (sections 10.21, 10.12, 10.1 and 10.15 *mutatis mutandis* of AD 2008/2) considering that the value of the property at hand could be reasonably estimated as being € 28912: € 194,56 (€ 50 + 0.5% of 28912) yet no more than 30 €.

These court fees are to be borne by the appellant who loses the case. According to Article 46 of the Law on Court Fees, when a person with residence abroad is obliged to pay a fee, the deadline for fees' payment is not less than 30 (thirty) and no longer than 90 (ninety) days. The Court sets the deadline to 90 (ninety) days. Article 47.3 provides that in case the party fails to pay the fee within the

deadline, the party will have to pay a fine of 50% of the amount of the fee. Should the party fail to pay the fee in the given deadline, enforcement of payment shall be carried out.

Legal Advice:

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

Anne Kerber, EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Philip Drake, Chief Registrar to the Assembly of the EULEX Judges