

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-207/11

Prishtinë/Priština
31 May 2012

In the proceedings of

I.I.

Claimant/Appellant

vs.

Municipality of G.

Represented by

H.H.

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/116/2011 (case file registered at the KPA under the number KPA00052), dated 22 June 2011, and KPCC/D/C/118/2011 (case file registered at the KPA under the numbers KPA00053, KPA00054 and KPA00055), dated 22 June 2011, after deliberation held on 31 May 2012, issues the following

JUDGMENT

- 1- The appeal of I.I. is rejected as ungrounded.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/R/116/2011, dated 22 June 2011, as far as it regards the case registered under No. KPA00052, and the decision of the Kosovo Property Claims Commission KPCC/D/C/118/2011, also dated 22 June 2011, as far as it regards the cases registered under Nos. KPA00053, KPA00054 and KPA00055, is confirmed.
- 3- Costs of the proceedings determined in the amount of € 530 (five hundred thirty) are to be borne by the appellant and have to be paid to the Kosovo Budget within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 5 May 2006, I.I. filed four claims with the Kosovo Property Agency (KPA), seeking confirmation of user rights, repossession and compensation for unlawful use of different parcels.

GSK-KPA-A-207/11 (KPA00052):

In this case the claimant claims a property use right for a house or an apartment in this house, situated at parcel No. 754 and 752, a house with 6 rooms and a surface of 165 m², built in 1953, and a yard with a surface of 5 ar 65, situated in Glllogoc/Glogovac, Marshal Tito No. 2 (place “Arat e Ibrit”). The claimant stated that the place was occupied by the Municipality of G.. He also claimed compensation for the period from “1989-1999” up to now in the amount of ten million euro.

To support his claim, he provided the KPA amongst others with the following documents:

- Possession list No. 87, dated 6 February 2001, showing that the Municipality of G. was in possession of parcels no 752 and 754 at the place called “Arat e Ibrit”;
- Possession list No. 87 dated from the year 2000, showing that I.I. was the permanent user of house/Apartment No. 2, a socially-owned property of the Municipality of G.;

- Decisions No. 860/75 and 79/76 of the Municipal Court of Pristinë/Priština, showing that the claimant won two different cases regarding apartment No 2 against the Municipality of G.

GSK-KPA-A-208/11 (KPA00053):

The claimant claims a property use right for a house located “Ashnajk zone B” in Glllogoc/Glogovac, which he allegedly had acquired by the decision of the Supreme Court dated 14 March 1988. He requests the right of permanent possession and use of this property, respectively its construction and compensation in the amount of 20 million euros.

The claimant provided the KPA with decision No. 6/89, with which his request on executing decision No. 335/88 was approved. He also submitted the abovementioned decisions of the Municipal Court of Glllogoc/Glogovac.

GSK-KPA-A-209/11 (KPA00054):

The Claimant claims a user right to an apartment with a surface of 21 m², acquired by a decision of the Municipality of G. from 3 December 1990. He states that he won a court dispute in 1987 for an attorney at law office and requests compensation for 42 m² which he was not allowed to use for his attorney at law’s office until 25 April 2005 in the amount of 50 million euros.

The claimant provided the KPA amongst others with decision No. 1191/87 of the Supreme Court of Kosovo with which his claim against the Municipality of G. was approved.

GSK-KPA-A-210/11 (KPA00055):

The claimant claims repossession of a 42 m² parcel located in “Zone B” in Glllogoc/Glogovac destined for a lawyer’s office as well as compensation in the amount of 60 million euros covering the period from 1989 to the day of the claim. He alleges to have acquired the use right by a decision of the Supreme Court, No.1449/88 dated 8 November 1988. He provided the KPA amongst others with this decision.

With letter dated 8 September 2008, the claimant stated that the property he claimed had been taken by the Municipality of G. during the “discriminating period between 1989-1999”. With letter from May 2009, he confirmed that the Municipality of G. occupied his property and was building illegally new houses. He stated that he had won the right to that property by having it in possession in good faith since 1973.

During the notification of the parcels, the lawyer H.H. was present. Subsequently, he submitted written replies for the claims as a representative of the Municipality of G.. He asserted that the claims should be dismissed as being outside the jurisdiction of the KPA as the dispute about the claimed properties went back to 1974. Furthermore the KPA did not have jurisdiction to decide on claims for compensation.

On 22 June 2011, the KPA with its decisions KPCC/D/R/116/2011 (regarding claim No. KPA00052) and KPCC/D/C/118/2011 (regarding claims Nos. KPA00053, KPA00054 and KPA00055) dismissed the claims as they did not fall within the jurisdiction of the KPCC.

Both decisions were served on the claimant on 8 November 2011. On 16 November 2011, the claimant (henceforth: the appellant), filed an appeal with the Supreme Court regarding cases KPA00049 (which is not an issue in this judgment of the Supreme Court) and KPA00052 to KPA00055. The appellant insisted on his case being decided in his favour. He alleges wrong establishment of facts and serious misapplication of the law. He insists on the restitution and his right of compensation for the damage resulting from the discriminating period 1989 to 1999.

The appeal was served on the representative of the respondent (from now on: appellant), he, however, did not react.

The Supreme Court has joined the claims.

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 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 a right to the 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.

In this case, however, the claimant has not proven that the loss of the property is in any connection with the armed conflict of 1998/1999. Obviously there has been a dispute about the property between the claimant and the Municipality of G. at least since the year 1975, during which the first court decision was issued. The last decision of the Supreme Court dates from 1988. The appellant confirms this assessment with his appeal, as he insists on his right to compensation for damages inflicted during the “discriminating period 1989 to 1999”. This shows clearly that the dispute is not related to the armed conflict in 1998/1999.

The KPCC, however, has not to decide on disputes not related to the armed conflict.

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 more than € 100.000: € 500 (€ 50 + 0,5% of € 100.000 but not more than € 500).

These court fees are to be borne by the appellant who loses the case. According to Article 45 of the Law on Court Fees, the deadline for fees' payment is 15 (fifteen) 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 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

Urs Nufer, EULEX Registrar