

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-140/2015

Prishtinë/Priština,
22 March 2017

In the proceedings of:

Z. Đ.

Appellant

vs.

N/A

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 dated 13 March 2014 (case files registered at the KPA under number KPA90451), after deliberation held on 22 March 2017, issues the following

JUDGMENT

1. The appeal of Z. Đ. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 regarding case file registered at the KPA under the number KPA90451, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission, KPCC/D/A/228/2014 regarding the case file registered at the KPA under the number KPA90451 is confirmed.

Procedural and factual background

1. On 5 December 2008, Z. Đ. (hereinafter: the Appellant) filed a Claim with the Kosovo Property Agency (hereinafter: the KPA) on behalf of his late grandfather V. Đ., seeking repossession over the cadastral parcel no 130 with the culture meadow of the surface of 00.02.61 ha, cadastral parcel no 131 with the culture orchard of the surface of 00.12.76 ha, cadastral parcel no 132, orchard of the surface 00.36.91 ha and cadastral parcel no 133 cultivated land of the surface 00.68.69 ha, all cadastral parcels located at Municipality of Podujevë/Podujevo, (hereinafter: the claimed properties). He declared that his grandfather had bought the claimed properties from the “Agricultural Cooperative Krpimej/Kripimeh” during the year 1960. The loss of possession was as the result of the circumstances of 1998/1999 in Kosovo.
2. To support his Claim, the Appellant provided the KPA with the following documents:
 - Contract on Sale concluded on 28 April 1967 between “Agricultural Cooperative Krpimej/Kripimeh” as the seller and V. Đ. as the buyer. The Contract gives detailed presentation of the properties which are subject of the sale but did not mention the cadastral numbers.
 - The Lawsuit filed before Municipal Court of Podujevë/Podujevo by V. Đ. against “Agricultural Cooperative Krpimej/Kripimeh” on 18 April 1978. The subject of the lawsuit was confirmation of the existence of Contract on Sale.
 - Default Judgment No 89/78 issued by Municipal Court of Podujevë/Podujevo on 15 January 1979, whereby it is confirmed that on 28 April 1967 it was concluded the Contract on Sale between V. Đ. and “Agricultural Cooperative Krpimej/Kripimeh” with the subject of the sale transaction being the claimed properties. The “Agricultural Cooperative Krpimej/Kripimeh” was obliged to register the claimed properties on the name of V.Đ. within 15 days after the payment of the sale taxes and if failed to do so, V. Đ. is obliged to

perform the registration to his name at the expense of the Cooperative. The Judgment became final on 14 April 1979.

- Proposal filed before Municipal Court of Podujevë/Podujevo on 27 August 1979 through which V. Đ. seeks from the Court the execution of the Judgment No 89/78.
 - Possession List No 34 issued by Cadastral Municipality of Podujevë/Podujevo on 24 December 1987 listing the claimed properties on the name of the “Agricultural Cooperative Krpimej/Krpimeh”.
 - Possession List No 79 issued by dislocated Cadastral Municipality of Podujevë/Podujevo on 5 November 1999 listing the claimed properties on the name of V. Đ.
 - Death Certificate No 02/17 issued by Civil Registration Office of Podujevë/Podujevo on 5 September 2006 showing V. Đ. passed away on 28 October 1994 at Podujevë/Podujevo.
 - Birth Certificate No 189 of Z. Đ. issued by Civil Registration Office of Podujevë/Podujevo on 26 September 2006.
 - Death Certificate No 02/04 issued by Civil Registration Office of Podujevë/Podujevo on 26 September 2006 showing that T. Đ. was son of V. Đ.
 - Witnesses Statement No 8990/09 certified before First Municipal Court of Beograd on 9 July 2009, whereby, B. O. and M. R. ć testify that T. and T. Đ. is the same person.
3. The Notification of the Claim occurred on 22 July 2010 by publishing the claim in the KPA Notification Gazette No 5 and the UNHCR Property Office Bulletin. The Gazette and the list were left with the Head of village who accepted to make it available for interested parties. The same publications were left in the entrance and exit of the village Zakut Municipality of Podujevë/Podujevo, the Cadastral Office of Podujevë/Podujevo, Municipal Court of Podujevë/Podujevo and Prishtinë/Priština Regional Office of the KPA. In addition, the List and Gazette were distributed to the Head Office of the UNHCR, the Ombudsperson, the Kosovo Cadastral Agency (KCA), the Danish Refugee Council (DCR) and the UNMIK Office in Graçanicë/Gračanica.
4. On 23 December 2013, Kosovo Privatization Agency through A. B. (Manager of the Regional Office of Prishtinë/Priština) referred a letter at KPA by showing the legal interest regarding the claimed properties. The Kosovo Privatization Agency shares the following information’s with the KPA:
- The claimed properties were under the administration of the SOE “Agricultural Cooperative Krpimej/Krpimeh” during the period 1996-1999,
 - The SOE “Agricultural Cooperative Krpimej/Kerpimeh” is not yet included at the liquidation process,

- The claimed properties were under the administration of the SOE “Agricultural Cooperative Krpimej/Krpimeh” while after the year 1999 the claimed properties were under administration of the Kosovo Privatization Agency,
 - The Kosovo Privatization Agency has privatized/sold the claimed properties during wave 57 of privatization,
 - Kosovo Privatization Agency considers that the KPA does not have the jurisdiction over the properties of the SOE since according to the legal provisions applicable this is an exclusive competence of the Special Chamber of the Supreme Court of Kosovo,
 - Certificate for Immovable Property Rights UL-71712034-0034 issued by Cadastral Office of Podujevë/Podujevo Municipality on 27 August 2013 listing the claimed properties as a Socially Owned Properties, registered on the name of “Agricultural Cooperative Kripimej/Krpimeh”.
5. According to the verification reports of the KPA Executive Secretariat, the Cadastral Data’s shows that the claimed properties are Socially Owned Properties and registered on the name of “Agricultural Cooperative Krpimej/Krpimeh”.
 6. On 13 March 2014, Kosovo Property Claims Commission dismissed the claim through its Decision KPCC/D/A/228/2014. In paragraph 19 of the Cover Decision, which according to the Certified Decision applies specifically to the claim at hand, it is said that the Executive Secretariat has found that the claimed properties were subject of the Privatization Agency of Kosovo, in the course of which they were sold to the third parties after 2005. The commission therefore concludes that the loss of possession over the claimed properties was not as a result of the circumstances directly related to the or resulting from the 1998-99 conflict, but instead due to subsequent privatization process, accordingly, the claims fall outside the jurisdiction of the Commission and stand to be dismissed.
 7. The Decision was served on Appellant on 28 October 2014. He filed an appeal on 26 November 2014.

Allegations of the appellant

8. The Appellant states that the KPCC Decision contains incomplete and erroneous determination of the facts and wrongful application of the material and procedural law.
9. The Appellant alleges that his family gained the claimed properties based on the Contract on Sale that was concluded between Agricultural Cooperative from Krpimej and his late grandfather, V.Đ. and later through the Judgment No 89/78 and also the Decision 192/82 of Municipal Court of Podujevë/Podujevo dated on 23 June 1983 after which the Contract on Sale was finally realized.

10. The Appellant declared that his family had a possession over the claimed properties until year 1999 when due to the overall circumstances had to leave Kosovo, therefore, the fact, if true, that the claimed properties were at the disposal of the Kosovo Privatization Agency cannot be reason to dismiss his claim because at least three (3) years prior the establishment of the Agency his family was not able to use their properties.
11. According to the Appellant, the sale of the properties by Kosovo Privatization Agency, if there was a sale, is illegal because no one can sell something that does not belong to him, the Privatization Agency of Kosovo could not sell the property which was in private ownership of physical person.
12. Based on the above, the Appellant seeks the Supreme Court to accept his appeal as grounded and to confirm the repossession right over the claimed properties in favour of the Appellant.

Legal reasoning

Admissibility of the appeal

13. The appeal was filed within 30 days as foreseen by Article 12.1 of the Law No 03/L-079 and is admissible.

Merits of the appeal

14. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of Law on Contested Procedure No 03/L-006 (henceforth: LCP) and after evaluating the allegations of the Appellant it found that the appeal is unfounded.
15. The Supreme Court finds that the KPCC has rendered a correct Decision when dismissed the claim due to its Jurisdiction; however, the Court reasons slight differently the KPCC's conclusion.
16. Pursuant to Section 3.1 of the 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 a private immovable property or use rights of the 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.
17. The Appellant alleges that his family gained the ownership right over the claimed properties based on the Contract on Sale, concretely, based on the Judgment on Default No 89/78 issued by Municipal Court of Podujevë/Podujevo on 15 January 1979 and Decision No 192/82 of Municipal Court of Podujevë/Podujevo.

18. Pursuant to Article 20 of the Law on Basic Property Relations (Official Gazette No 6/80) the right of property can be acquired by law itself, based on legal affair (legal transfer) or inheritance.
19. However, Article 33 of the Law on Basic Property Relations (OG SFRY, No 6/80), stipulates that on the basis of the legal affair 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.
20. The Appellant presents the Possession List No 79 issued by Dislocated Cadaster of Kruševac/Serbia on 5 November 1999 listing the claimed properties on the name of V. Đ.
21. The Executive Secretariat of the KPA has found *ex officio* the Certificate for Immovable Property Rights that shows the properties as Socially Owned Properties, registered under the name of the Enterprise “Agricultural Cooperative Kripimej/Kripimeh”.
22. It is obvious that there is a discrepancy between the records in the cadastral office in Podujevë/Podujevo and those in the dislocated cadastral archives in Serbia for Podujevë/Podujevo. While the claimed property is registered as Socially Owned Property in the archives in Kosovo, the alleged Property Right Holder is identified as the owner in the dislocated archives. The Executive Secretariat of KPA was unable to locate *ex officio* any supporting documents in order to establish the basis for registration of the claimed properties on the name of the Appellant’s grandfather. The Decision No192/82 of Municipal Court of Podujevë/Podujevo which was submitted by the Appellant is not related to the claimed properties.
23. This lead to the conclusion that the Appellant’s family has not gained the property right since the conditions of Article 33 of the Law on Basic Property Relations (SFRY, No 6/80) were not fulfilled, which means that the claimed properties were socially-owned property. Pursuant to Article 321, paragraph 1 of the LCP there is no need to prove neither the facts that are widely known nor the facts that have been proved in previous court verdicts.
24. Confirmation and protection of the property rights over socially-owned properties and/or state-owned properties is not in the jurisdiction of KPCC, respectively the KPA Appeals Panel.
25. Based on all above mentioned points, the Supreme Court finds that the KPCC instead of dismissing the Appellant’s claim as outside the scope of its Jurisdiction because the Appellant did not loss a possession over the claimed properties due to the 1998-1999 conflict, should have dismissed the claim due to lack of its Jurisdiction as the establishment of right **over socially owned properties** is not within the Jurisdiction of the KPCC (according to the provision 3.1 (a) of the Law No 03/L-079), respectfully the KPA Appeals Panel.
26. The Supreme Court finds that no violation of the substantial law or incompletely establishment of the facts has been made.
27. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this judgment.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar