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-123/2014

Prishtinë/Priština, 27 July 2016

In the proceedings of:
Municipality of H.E./E.H.
Nuri Bushi Street
H.E./E.H.
Appellant
Representative: B.L. , Head of the Legal Office of the Municipality

vs.

the legal entity **U.K. DOO**
Represented by its director M.R.
Oraska 45
Velika Plana
Serbia
Appellee

and vs.

K.P.

Prishtinë/Priština
Respondent before KPA/KPCC, not joining in appeal

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decisions of the Kosovo Property Claims Commission (henceforth: the KPCC) nos. KPCC/D/A/211/2013 and KPCC/D/C/216/2013[1] both dated 21 August 2013 (case files registered at the Kosovo Property Agency (henceforth: the KPA) under Nos. KPA14321, KPA14322, KPA14323, KPA14327, and KPA14331), henceforth also: the KPCC Decisions, after deliberation held on 27 July 2016, issues the following

JUDGMENT:

1. **The Supreme Court joins the appeals with case numbers GSK-KPA-A-123/2014, GSK-KPA-A-124/2014, GSK-KPA-A-125/2014, GSK-KPA-A-127/2014 and GSK-KPA-A-128/2014 into one case under the case number GSK-KPA-A-123/2014.**
2. **The appeal of the Municipality of H.E./E.H. is accepted as grounded.**
3. **The Decisions of the KPCC nos. KPCC/D/A/211/2013 and KPCC/D/C/216/2013, both dated 21 August 2013, as far as they concern the claims nos. KPA14321, KPA14322, KPA14323, KPA14327, and KPA14331 are modified follows:**

   The claims of U.K. DOO nos. KPA14321, KPA14322, KPA14323, KPA14327, and KPA14331 are refused.

Procedural and Factual background

1. On 10 October 2006 M.R. as authorized representative of the legal entity U.K. DOO (henceforth: the Appellee) filed claims at the Kosovo Property Agency (KPA), seeking confirmation of his property rights over and repossession of three parcels of land and facilities and buildings on these parcels in H.E./E.H. – formerly known as Đeneral

[1] Claim KPA12331 is decided in decision no. KPCC/D/C/216/2013. The other claims are decided in the other KPCC decision No. KPCC/D/A/211/2013.

Jankovic - (henceforth all together: the claimed properties). The claims are registered at the KPA under the following numbers and relating to the following (alleged) parcels and (alleged) surface in the Cadastral Zone H.E./E.H. and facilities and buildings on these parcels. Also is mentioned in this table the appeal case number that is later allocated to the appeal against the decision on the respective claim.

GSK-KPA-A-123/2014	KPA14321	Parcel No. 16; 2.57.34 ha
GSK-KPA-A-124/2014	KPA14322	Parcel No. 17; 0.18.28 ha
GSK-KPA-A-125/2014	KPA14323	Parcel No. 20; 6.70.49 ha
GSK-KPA-A-127/2014	KPA14327	15 facilities: 11 storage buildings, guard house, gas station, fuel building, aggregate building; total surface 2,173 m^2
GSK-KPA-A-128/2014	KPA14331	(Some other) Facilities listed in the Contract no 2/99, dated 19 January 1999 (*see below in paragraph 3 and 13*)

2. The Appellee stated that he lost the claimed properties on 12 June 1999 as a result of the circumstances in 1998/1999 in Kosovo. He also stated that K.P. is using the claimed properties.

3. The Appellee submitted *inter alia* to KPA:

- A decision of the Commercial Court of Prishtinë/Priština, dated 15 May 1997, No. FI-403/97, on the registration of the Appellee;
- A decision of the Business Register Agency of the Republic of Serbia, dated 4 August 2005, no. 87619/2005; according to this decision M.R. is registered as director and representative of the Appellee;
- A 'Contract on exchange of immovable properties' dated 19 January 1999 and certified by the Municipal Court of Niš on 19 January 1999, No. 2/99 (henceforth: the 1999 Exchange Contract); the contract is concluded between the Federal

Republic of Yugoslavia - Secretariat of National Defence – Military Construction Directorate Niš (henceforth: SMO-VDG), represented by Colonel Svetomir Kovačević and the Appellee; according to this contract SMO-VDG allocates and transfers to the Appellee in exchange its rights for use, management and ownership of land (cadastral parcels nos. 16, 17 and 20; 14 steel fuel tanks, 15 buildings; an open construction and garage; auxiliary objects; infrastructure facilities and stationary equipment. According to the contract the Appellee will exchange ownership rights to 1,100 m² of residential surface in value equivalent to the exchanged properties.

4. KPA notified claim No. KPA14321 on 15 August 2008 by putting a poster about the claim on the parcel No. 16 in Cadastral Zone H.E./E.H.. The accuracy of this notification was confirmed by KPA on 2 March 2010.

5. Claim No. KPA14322 was also notified on 15 August 2008 by putting a poster on some land, but this notification was not confirmed. On 1 July 2010 this claim was notified by publication in the KPA Notification Gazette no. 3, distributed inter alia to the Municipality of H.E./E.H..

6. Claim No. KPA14323 was firstly notified on 6 Juli 2007 by putting a poster about the claim in a(n) (unkown) parcel of land. On 1 July 2010 this claim was notified by publication in the KPA Notification Gazette no. 3, distributed inter alia to the Municipality of H.E./E.H.. The claim was again notified on 11 July 2013 by putting a poster about the claim on the parcel No. 20 in Cadastral Zone H.E./E.H.. KPA confirmed this notification as accurate. The parcel no. 20 was then found in use by K.P. . That date O.D. signed in the name of K.P. (henceforth: K.P.) a Notice of participation form, stating to claim a legal right to the property.

7. Claims Nos. KPA14327 and KPA14331 were notified on 6 Juli 2007 by putting posters about the claims on land with the GPS coordinates 0524375 North Grid 1 and 4666546 Norths Grid 2. KPA found the properties occupied by K.P. . These notifications are not confirmed.

8. K.P. did not file any (further) reply to any of these claims nor submitted any evidence.

9. KPA found the 1999 Exchange Contract in the Municipal Court of Niš and verified it positively. KPA also verified positively the Registration decision of 2005 about the Appellee.

10. KPA added *ex officio* to the case file Possession List No. 229 from Cadastral Zone H.E./E.H., dated 6 May 2011. According to the Verification Report of KPA, dated 14 July 2011 about this Possession List parcel no. 17 is divided in two parts: 17/2 in the name of B.F. and 17/1. According to the Possession List parcels nos. 16, with as surface of 2.55.85 ha, 17/1, with a surface of 0.18.03 ha, and 20, with a surface of 6.70.49 ha are registered as socially owned in the name of 'P.SH. Sekretariati Mbrojtjesë' (SOE Ministry of Defence). De registration of parcels nos. 16 and 17/1 was updated lastly 11/2010.

11. On 20 August 2013 B.L. approached KPA by email. He states he has a power of attorney form the Mayor of the Municipality of H.E./E.H. (henceforth: the Appellant). He further states that he found information on claims at the KPA website, and that the Appellant is using these properties. He requested the Appellant to be a party in the proceedings.

12. The KPCC established on 21 August 2013 in the KPCC Decisions that the claims are contested.

    On claims KPA14321, KPA14322, KPA14323 and KPA14331 the KPCC reasoned as follows. As KPA could not locate parcel No. 17, but identified a parcel No. 17/1, the claim KPA14322 is processed as referring to that parcel no. 17/1. KPCC establishes further that the Appellee in claim KPA14331 seeks conformation of ownership right over parts of infrastructure on the parcels nos. 16, 17/1 and 20 that are accessory to the land claimed in the other three claims. The KPCC finds the 1999 Exchange Contract valid. The Possession List still identifying the Secretariat of Defence as owner of the claimed properties deems the KPCC to be erroneous and based on an incomplete determination of facts. As K.P. did not submit evidence in support of its allegations about the invalidity of the 1999 Exchange Contract and its alleged use rights, the KPCC concludes to grant the claims of Appellee.

On claim KPA14327 (in combination with two other claims) the KPCC reasons that the Appellee seeks confirmation of ownership right and repossession of properties on the land parcels Nos. 16, 17 and 20. Also on this claim the KPCC concludes and decides based on the 1999 Exchange Contract and in the absence of a valid defence of K.P. to grand the claim.

13. In the Certified Decision on granted claim KPA14321 the claimed property is described as parcel No. 16 in Cadastral Zone Han i Elezit/Đeneral Jankovic with surface 2.55.85 ha – this is the same surface as in the Possession List No. 229. In the Certified Decision on granted claim KPA14322 the claimed property is described as parcel No. 17/1 in the same cadastral zone with surface 0.18.03 ha. In the Certified Decision on granted claim KPA14323 the claimed property is described as parcel No. 20, also in the same cadastral zone with surface 6.70.49 ha. In the Certified Decision on granted claim KPA14331 is written about the claimed property that it is located in the Municipality of Kaçanik/Kacanik in Han I Elezit/Đeneral Jankovic, Cadastral Zone Han i Elezit/Đeneral Jankovic, parcel number N/A, 'with the surface '. In the Certified Decision on granted claim KPA14327 is written about the claimed property that it is located in the Municipality of Kaçanik/Kacanik in Đeneral Jankovic, Cadastral Zone Han i Elezit/Đeneral Jankovic 'with the surface 2173'.

14. The KPCC decisions were served upon the Appellee on 20 December 2013 and on K.P. on 18 December 2013.

15. The Appellant received the KPCC decision on claims Nos. KPA14321, KPA14322 and KPA14323 on 11 February 2014.

16. The Appellant filed three appeals, dated 11 March 2014, against the KPCC decision on the three claims Nos. KPA14321, KPA14322 and KPA14323. KPA received these appeals on 13 March 2014. The Appellant filed two appeals, both dated 2 April 2014, against the KPCC decision on claim No. KPA14331 and against the KPCC decision on claim KPA14327. KPA received those two appeals on 4 April 2014. The content of all appeals is the same.

17. The appeals are served on the Appellee on 15 July 2014 and on K.P. on 16 July 2014.

18. K.P. did not join proceedings in appeal.

19. The Appellee sent in responses to the appeals on 20 August 2014. The content of all responses is the same.

20. In answer to a Court Order dated 28 April 2016, the Municipality submitted a decision of the Mayor of the Municipality dated 14 February 2014, 02.No.1084/2014, to file 'appeals related to properties of the former army' for the competent court 'in relation to parcels in the KPCC decision listed in Certificates on immovable property rights as the cadastre parcels 16-0, 17/1 and 20-0', and a power of attorney dated 16 May 2016 authorizing B.L. , Head of the Legal Office and a Legal Representative of the Municipality to represent the Municipality in cases 123/2014, 124/2014, 125/2014, 127/2014 and 128/2014,.

Allegations of the parties

21. The Appellant alleges that by agreement dated 16 January 2009 between the Kosovo Protection Corps and the Appellant the parcels nrs. 16, 17 and 20 were handed over to the Appellant. The parcels are now used partly for a green market and a public road. There are plans for a city park and a bus station on parts of the parcels. The Appellant finds it unacceptable that the Appellee on 19 January 1999 concluded a contract with the Serbian military over these parcels. It further alleges that the agreement is not in compliance with the legislation of Kosovo. The contract was not concluded on the territory of the municipality where the parcels are located. Furthermore, as the Appellant alleges, the Kosovo lawmaker on 11 December 2003 announced all legal and sublegal acts and other acts issued by Serbia after 22 March 1989 unlawful. Therefor this contract is also unlawful. The Appellant also states that the contract is also invalid when taking into account the Law on Basic Propterty Relations (Official Gazette SFRY 6/80 of 30 January 1980). The Appellant announced the properties in 2013 to be of general interest of the municipality. The Appellant had the properties in use. The Appellee never had the possession. The KPCC decision is according to the Appellant also not compatible to the laws as the

Serbian name of the Municipality is since 2012 no longer Đeneral Jankovic but Elez Han. The Appellant proposes to quash the KPCC decisions and to declare the claim ungrounded or return the case for retrial.

22. To support the appeal the Appellant submitted *inter alia* the Agreement on handing over between the Kosovo Protection Corps and the Appellant, dated 16 january 2009, Possession List No. 229 and some urban planning decisions from 2010, 2011 and 2013.

23. The Appellee contests that the contract that it concluded in 1999 is invalid. The Appellee states that the allegation that it did not use the claimed properties before June 1999, when the security situation did not allow it to stay in Kosovo, is ungrounded. The Appellee further states that it is not in principle against the plans the Appellant made for the claimed properties, but the expropriation of the Appellee from the claimed properties must be in accordance with the relevant laws.

Legal reasoning:

Admissibility of the appeals

24. The appeal is inadmissible if the Appellant had not taken part in the proceedings before the KPCC, unless the Appellant is an interested party who did not receive a notification of the claim and otherwise was not aware and reasonably could not be aware of the claim before the Appellant approached the KPA, nor had a reasonable opportunity to join the proceedings in time (Section 12.1 in conjunction with Sections 10.1 – 10.3 of Law on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (henceforth: Law No. 03/L-079).

25. The Appellant is an interested party as it claims that it has gained property rights to the claimed properties in 2009 and is currently using the properties. The Appellant was not personally notified by KPA of the claims, as to the Appellee and also the KPA was not clear and could from the filed claim forms not be clear that the Appellant pretends

property rights to the claimed properties, since the Appellant (alleges to have) gained these property rights just some time (in 2009) after filing of the claims by the Appellee in 2006.

26. The claim No. KPA14321 was notified on 15 August 2008 by putting a poster about the claim on the parcel No. 16. This notification was found accurate. But by that time the Appellant, that alleges to have gained property rights only in 2009, was not involved in that property yet. Therefor this notification cannot go to the detriment of the Appellant. The physical notifications by putting posters on the properties for the other claims were not confirmed by KPA as accurate, so they also cannot go to the detriment of the Appellant, except for the (second) notification of claim No. KPA14323 on 11 July 2013 when a poster about that claim was put on the parcel No. 20. But it is clear that the Appellant after that notification as soon as possible tried to join proceedings, which also follows from the email of 20 August 2013 from its representative to KPA.

27. For this reasons the appeal by the Appellant is admissible. The fact that the claims were (partly) also published in the KPA Notification Gazette do not lead to another decision, as from the published claims in the KPA Notification Gazette is not exactly clear to which cadastral parcels they are related, as they refer only to buildings and other infrastructure facilities, etcetera, and a no longer existing parcel No. 17.

Joining of the appeals

28. 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 KPCC pursuant to Section 11.3 (a) of the Law No. 03/L-079. This section allows the KPCC 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.

29. In this case KPCC factually processed four of the five claims together.

30. Except otherwise provided the provisions of the Law on Contested Procedure are mutatis mutandis applicable in the proceedings before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of Law No. 03/L-079. According to Article 408.1 as read with

Article 193 of the Law on Contested Procedure the Supreme Court can join the cases through a ruling if that would ensure court effectiveness and efficiency of the case.

31. In the text of the appeals filed by the Appellant, the Supreme Court observes that the facts, the legal grounds and the evidentiary issues are the same in the five cases.

32. The appeals are therefore joined in a single case.

Merits of the appeal

33. The fact that the Serbian name of the Appellant is no longer Đeneral Jankovic does not make the KPCC Decisions unlawful. Mentioning the former Serbian name Đeneral Jankovic instead of the recently by Kosovar law amended Serbian name Eliz Han in the Decision does not create any confusion. Therefor this ground for the appeal is not successful.

34. According to Section 3.1 of the Law No. 03/L-079 the KPCC has the competence to resolve the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999: a) ownership claims with respect to private immovable property, including agricultural and commercial property, and b) claims involving property use rights in respect of private immovable property, where the claimant for both categories is not now able to exercise such property rights.

35. From the grounds to the appeal follows that the question to be answered in this case is whether the Appellee gained property rights to the claimed properties based on the 1999 Exchange Contract. The Appellant alleges that this contract is invalid. The Appellee alleges that the property rights to the claimed properties were in a valid way transferred to the Appellee by that contract. To answer this question the Supreme Court reasons as follows.

36. In 1999 the transfer of property rights to properties like the claimed properties - land and (immovable) structures and buildings on that land that were owned by the State and

therefore socially owned - was governed by the Law on Basic Property Relations (Official Gazette SFRY No. 6/80) (henceforth: LBPR) and the Law on Transfer of Immovable Properties (Official Gazette SRS No. 43/81) (henceforth: LTIP).

37. According to Article 20 LBPR a property right could be acquired by law itself, based on legal affairs and by inheritance. According to Article 33 of that same law the property right over a real estate (immovable property) on the basis of a legal work (legal affair) shall be acquired by registration in the public notary book (Cadastral books) or in some other appropriate way that is described by law.

38. According to Article 2 LTIP the transfer of immovable properties (agricultural and construction land, buildings and premises) in the sense of LTIP is *inter alia* considered to be the acquisition of the property right to a socially-owned immovable property. In this case the parcels Nos. 16, 17/1 and 20 were socially owned properties as follows from the ex officio to the file added Possession List no. 299.

39. According to Article 3 LTIP immovable property in general use cannot be transferred. A contract on such property is null and void.

40. According to Article 4.2 LTIP contracts on the alienation of socially-owned immovable property and on the exchange of socially-owned immovable property shall be concluded in writing and the signatures of the contracting parties shall be certified by the courts.

41. At that time, in 1999, according to Article 13 of the Law on Non-Contested Procedure (SAPK 42/86), when a non-contested issue was related to real estate, exclusively the court in the region of which the real estate was located, had territorial jurisdiction. The same provision also provided that if the real estate was located in a region under the jurisdiction of more than one court, each of the courts had territorial jurisdiction for the issue.

42. As the claimed properties are located in H.E./E.H. and this place was in 1999 not in the region of the Municipal Court of Niš – which place is now in Serbia and not in Kosovo -, but in that time in the region of the Municipal court of Kaçanik/Kacanik, the Municipal Court in Niš did not have territorial jurisdiction to certify the (signatures on the) 1999 Exchange contract. This means that the contract on which the Appellee bases his claim is

not legally certified and is not a valid contract to transfer the ownership property rights to the claimed properties, meant in the 1999 Exchange contract.

43. The fact that the 1999 Exchange contract refers to an exchange of the claimed properties with one or more other properties (1,100 m² of residential surface) does not mean that the Municipal Court of Niš also had competence, because in the contract is not specified which immovable real estate exactly was to be exchanged, and moreover it was not specified that the exchanged property was located in the region of that court.

44. The Supreme Court further reasons as follows.

45. According to Article 5 LTIP the transferee does not acquire the right of ownership to the immovable property if the legal transaction exceeds the limits established by law and such legal transactions are null and void.

46. The transfer and exchange of the claimed properties is never registered in the Cadastral books. This follows from the ex officio to the case file added Possession List No. 299.

47. At this moment the Republic of Serbia is no longer owner of publicly or socially owned properties like military immovable properties as the parcels Nos. 16, 17/1 and 20 in this case. This follows from the declaration of independence of the Republic of Kosovo and the execution of the Athisaari Plan. Since that moment all properties, that were properties of the Federal Republic of Yugoslavia/Republic of Serbia, like this kind of military immovable properties, are owned by the Republic of Kosovo. This means that the claimed properties are no longer properties of the Republic of Serbia.

48. This means that at this moment the transfer of property rights to the claimed properties in Kosovo by registration in the Cadastral books of Kosovo can no longer be based on a purchase contract or contract on exchange with the Serbian State/ SMO-VDG as party, as that State is (no longer) entitled to this publicly/socially owned property.

49. The Supreme Court concludes, that the Appellee until now did not gain a property right to the claimed properties as the transfer and exchange of the claimed properties is not registered in the Cadastral books and the Appellee also cannot gain that property rights

anymore based on the 1999 Exchange contract as this contract is not verified before the competent court and this verification is no longer possible as the Republic of Serbia is not the owner anymore.

50. Therefor the appeal is grounded and the claim has to be refused.

51. The Court can leave aside the answer to the question – also raised by the Appellant - whether the 1999 Exchange contract was valid or not when it was concluded.

Conclusion

52. Consequently, pursuant to Section 13.3 sub a) of Law No. 03/L-079 the Supreme Court decides as in the enacting clause of this judgment.

Legal Advice

53. Pursuant to Section 13.6 of Law No. 03/L-079 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Signed by: Sandra Gudaityte, EULEX Registrar