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-84/12 **Prishtinë/Priština, 30 October 2012**

In the proceedings of

D. R.

Claimant/Appellant

vs

Municipality of Klina
Represented by Y.M.

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/C/132/2011 (case file registered at the KPA under the number KPA 08655), dated 26 October 2011, after deliberation held on 30 October 2012, issues the following

JUDGMENT

1- **The appeal of D. R. against the decision of the Kosovo Property Claims Commission KPCC/D/C/132/2011 regarding case file registered at the KPA under number KPA 08655, is rejected as unfounded.**

2- **The decision of KPCC/C/132/2011 regarding case file registered at the KPA under number KPA 08655 is confirmed.**

3- **The appellant has to pay the costs of the proceedings which are determined in the amount of € 60 (€ sixty) within 90 (nineteen) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 21 January 2007 D. R. (the claimant) filed a claim with the Kosovo Property Agency (KPA) seeking repossession over a commercial building – shop of 64 square meters, situated in parcel 585 in the Klinë/Klina. The claimant declared that he is the owner of the property, which is usurped. He requested repossession.

To support his claim he presented a decision, taken by the Municipality of Klinë/Klina, department of urbanisation, housing and property–legal affairs on 19 February 1996. The decision allowed the claimant to build a temporary building facility with dimensions of 6.00x5.00 meters of one floor. The temporary facility was to be used for sale of food and bakery products. The decision stated that if the location is needed for the realization of the urbanization plans of the town of Klinë/Klina the beneficiary of this permit (i.e. the claimant) will remove the facility on his expenses and the Municipality of Klinë/Klina will have no responsibilities towards this person. The permit, as said in the decision, was valid for three months after the issuance and if the beneficiary would not install the facility within three months the permit would have been considered as if it had not been issued. The claimant also had a contract with the Municipality for the usage of 30 square meters of land on which to erect the temporary facility. The contract was concluded the same day when the above mentioned decision for the building permit was issued. It is not disputed that instead of a temporary object the claimant has built a solid brick building.

The KPA processed the claim by putting a poster on the wall of the building on 06 February 2008. The Municipality of Klinë/Klina, represented by Mr Y. M. claims that the parcel on which the building is erected, is property of the Municipality.

With cover decision KPCC/D/C/132/2011 regarding case file registered at the KPA under number KPA 08655 the KPCC has decided that the claim falls 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 the claimant seeks repossession of a shop erected on the basis of a temporary allocation decision issued on 19 February 1996 by the Municipality in Klinë/Klina. The allocation decision was of temporary character, limited to the construction of and the use of prefabricated structure on municipal land and as such did not allow the user to construct a permanent immovable object. In breach of the permit the claimant has built a permanent structure - shop. The Commission stated that the permit was issued for 2 years *(in fact the reading of the text of the permit shows that it was issued for 3 months)* and there is no data that it was renewed and in that regard claimant's building permit ceased to exist on 18 February 1998. In absence of a valid property right the claim stands to be refused. In the individual decision, dated 10 January 2012 for the individualization of the claimed property it is clarified that the claim is dismissed, i.e. that Commission accepted that the claim is outside its jurisdiction.

The claimant was notified of the decision on 18 May 2012. On 14 June 2012 he has filed an appeal with the Supreme Court against the aforementioned decision.

The appellant asserts that the decision of the KPCC has to be annulled as it has been decided on the basis of erroneous and incompletely established facts and there was a misapplication of the substantive law. There is no clarification as to what substantive law was breached. With regards to the erroneous and incomplete determination of the facts he claims that the Municipality has renewed his building permit but he longer has it, because he had to leave Klinë/Klina. This he considered to be confirmed by the fact that he had built a facility of permanent characteristics, because no one would invest a considerable amount of money in a construction if one did not had the permit to use the facility. The existence of his right he asserts is also confirmed by the fact that he pays taxes. He cannot use the property because it is usurped. Alternatively he elaborates the view that even if he did not have received a renewal of the permit to use the parcel it is undisputable that he had the parcel in his possession till 1999. He claims to have been the possessor of the parcel (parcel 585) and owner and possessor of the facility.

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 case is not within the jurisdiction of the KPCC.

According to section 2.1 of UNMIK Administrative direction 2007/5, implementing UNMIK/REG/2006/50 on the resolution of claims relating to private immovable property, including agricultural land and commercial property as amended by Law No. 03/L-079, hereinafter the

Administrative direction (AD) "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 Law clearly defines that only ownership right, lawful possession of or any lawful right of use of private immovable property could be subject to the proceedings in front of the KPA. This means that property that was not private remains outside of the scope of UNMIK/REG/2006/50, respectively UNMIK/AD/2007/5.

In this case, according to the assertions in the appeal the claimant was in possession of parcel 585 and had the ownership and was in possession of the building he has erected on it.

Regarding the parcel:

It has to be clear that the parcel was not part of the subject matter of the current case, which subject matter is defined by the claim that was earlier filed with the KPA. The claimant requested repossession over the building-shop of 64 square meters, situated in the parcel. It is impermissible to invoke now for the first time with the appeal the subject matter of the claim to be enhanced. The filing of a claim regarding the parcel had to be done within the time limits as defined by section 8 of the AD, which was 3 December 2007. In this regard any pretence regarding the parcel is not part of the subject matter of the current case and the court should not adjudicate, because otherwise the court will breach the principle of the party disposition, meaning that the court cannot adjudicate on a subject matter that was not included in the claim. The principle of party disposition (*non ultra petita*) is defined in the Kosovo Law on contested procedure – art.2.1 which is applicable in the proceedings in front of the Supreme Court – section 12.2 of UNMIK/REG/2006/50.
It could be noted however that even if the parcel was part of the subject matter of the current claim the latter would be inadmissible as the parcel belonged to the Municipality of Klinë/Klina, i.e. it has never been private immovable property and in this respect is outside the scope of application of the proceedings in front of the KPA. In this regard it is irrelevant whether the claimant exercised possession or use right.

Regarding the building:
As noted above according to section 2.1 of UNMIK Administrative direction 2007/5 "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 Law clearly states that the subject matters of claims in front of the KPA, respectively the Supreme Court in the appeal proceedings could be only rights related to immovable property. Movable object are outside the scope of application of this specific procedure. In this regard the KPCC has rightfully accepted that the claimant was given the right to erect a facility of temporary character that could have been removed at any time when this would be necessary for the implementation of the city regulation plans. Exceeding the right given to him, the claimant has built a permanent building which he did not have right to do and against the will of the owner of the land. In this regard the claimant did not have "an ownership right, lawful possession of or any lawful right of use", in the meaning of section 2.1 of UNMIK Administrative direction 2007/5, of the existing building as long as it was built in breach with the right given to him by the Municipality. It is an established principle in law that no one shall be permitted to profit from his own wrongdoings. The claimant had acquired neither the right of property nor the lawful possession, nor the use right over the object and no one can lose something he/she never had. What the claimant had was a use right over a municipality parcel with the right to erect a temporary facility that could have been removed any time (i.e. he head the right to use a movable object) and neither of those could be pursued within the procedure in front of the KPA, the first one because the land was not private and the second because it does not relate to an immovable object.

As seen from the above the claim regarding the building is also outside the jurisdiction of the KPCC, as the Commission has accepted.

The claimant might have some legitimate claims towards the Municipality in Klinë/Klina if the Municipality uses the *de facto* erected ted building in the framework of "acquiring without ground", as defined in chapter II, section 3 of the Law of contracts and torts, for the material and labour he invested in the building, but if such claims would be legitimate, as regular obligation claims they should be decided upon by the regular courts and not by the KPCC, respectively the Appeals Panel, whose mandate is to resolve the property disputes as described in section 2.1 of UNMIK/DIR/2007/5.

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 (10.15, 10.21 and 10.1 of AD 2008/2), which is half portion of the fee, according to point 10.1 of the AD 2008/2, but not more than 30 euro: 30€ ;

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***