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-224/11 **Prishtinë/Priština**
2 August 2012

In the proceedings of

D. R.

Kragujevac
Srbija

Claimant/Appellant

vs

1. J. Sh.

Podujevë/Podujevo

2. A. R. Sh.

Podujevë/Podujevo

Respondents/Appellees

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/102/2011 (case file registered at the KPA under the numbers KPA24354, KPA24675, KPA24679, KPA24680, KPA24681, KPA24685,

KPA24688, KPA24689, KPA24692, KPA24694, KPA24697, KPA24698, KPA24700 and KPA24701), dated 23 February 2011, after deliberation held on 2 August 2012, issues the following

JUDGMENT

1- **The appeal of D. R. is rejected as ungrounded.**

2- **The decision of the Kosovo Property Claims Commission KPCC/D/A/102/2011, dated 23 February 2011, as far as it regards the cases registered under Nos. KPA24354, KPA24675, KPA24679, KPA24680, KPA24681, KPA24685, KPA24688, KPA24689, KPA24692, KPA24694, KPA24697, KPA24698, KPA24700 and KPA24701, *ex officio* is annulled and the claims are dismissed as they do not fall within the jurisdiction of the KPCC.**

3- **Costs of the proceedings determined in the amount of € 530 (five hundred and thirty) 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 21 February 2007, D. R. as a family household member of the property right owner filed fourteen claims with the Kosovo Property Agency (KPA), seeking repossession and compensation for the unlawful use of the claimed parcels. She explained that her late father had been co-owner of the parcels which had been usurped by an unknown person. By signing the claims form, D. R. declared that the property was lost on 12 June 1999.

The data concerning the claimed parcels are the following:

Case file number	Data of the claimed parcel
GSK-KPA-A-224/11 (KPA24354)	Parcel No. 2966, pasture located at a place called “Suvi Do” in Dumnicë e Poshtme/Donja Dubnica, Podujevë/Podujevo, with a surface of 1 h 86 ar 41 m^2;

GSK-KPA-A-225/11 (KPA24675)	Parcel No. 2958, pasture located at a place called "Suvi Do" in Dumnicë e Poshtme/Donja Dubnica, Podujevë/Podujevo, with a surface of 1 h 32 ar 20 m^2;
GSK-KPA-A-226/11 (KPA24679)	Parcel No. 3007, pasture located at a place called "Suvi Do" in Dumnicë e Poshtme/Donja Dubnica, Podujevë/Podujevo, with a surface of 0 h 83 ar 26 m^2;
GSK-KPA-A-227/11 (KPA24680)	Parcel No. 2984, pasture located at a place called "Suvi Do" in Dumnicë e Poshtme/Donja Dubnica, Podujevë/Podujevo, with a surface of 2 h 38 ar 95 m^2; (Possession List No. 382: 2 h 30 ar 10 m^2);
GSK-KPA-A-228/11 (KPA24681)	Parcel No. 2962, a field located at a place called "Suvi Do" in Dumnicë e Poshtme/Donja Dubnica, Podujevë/Podujevo, with a surface of 0 h 13 ar 14 m^2;
GSK-KPA-A-229/11 (KPA24685)	Parcel No. 2983, pasture located at a place called "Suvi Do" in Dumnicë e Poshtme/Donja Dubnica, Podujevë/Podujevo, with a surface of 0 h 16 ar 00 m^2; (Possession List No. 382: 0 h 38 ar 00 m^2);
GSK-KPA-A-230/11 (KPA24688)	Parcel No. 2982, pasture located at a place called "Suvi Do" in Dumnicë e Poshtme/Donja Dubnica, Podujevë/Podujevo, with a surface of 2 h 13 ar 96 m^2; (Possession List No. 382: 1 h 40 ar 81 m^2);
GSK-KPA-A-231/11 (KPA24689)	Parcel No. 2963, pasture located at a place called "Suvi Do" in Dumnicë e Poshtme/Donja Dubnica, Podujevë/Podujevo, with a surface of 0 h 45 ar 58 m^2;
GSK-KPA-A-232/11 (KPA24692)	Parcel No. 2981, pasture located at a place called "Suvi Do" in Dumnicë e Poshtme/Donja Dubnica, Podujevë/Podujevo, with a surface of 0 h 07 ar 70 m^2;
GSK-KPA-A-233/11 (KPA24694)	Parcel No. 2980, pasture located at a place called "Suvi Do" in Dumnicë e Poshtme/Donja Dubnica, Podujevë/Podujevo, with a surface of 0 h 09 ar 95 m^2;
GSK-KPA-A-234/11 (KPA24697)	Parcel No. 2964, pasture located at a place called "Suvi Do" in Dumnicë e Poshtme/Donja Dubnica, Podujevë/Podujevo, with a surface of 1 h 66 ar 67 m^2;
GSK-KPA-A-235/11 (KPA24698)	Parcel No. 2979, pasture located at a place called "Suvi Do" in Dumnicë e Poshtme/Donja Dubnica, Podujevë/Podujevo, with a surface of 0 h 26 ar 29 m^2;
GSK-KPA-A-236/11 (KPA24700)	Parcel No. 2978, pasture located at a place called "Suvi Do" in Dumnicë e Poshtme/Donja Dubnica, Podujevë/Podujevo, with a surface of 2 h 38 ar 95 m^2; (Possession List No. 382: 0 h 99 ar 28 m^2);
GSK-KPA-A-237/11 (KPA24701)	Parcel No. 2965, construction land, located at a place called "Suvi Do" in Dumnicë e Poshtme/Donja Dubnica, Podujevë/Podujevo, with a surface of 0 h 99 ar 28 m^2; (Possession List No. 382: 0 h 77 ar 96 m^2);

To support her claim the claimant provided the KPA with Decision No 07-461-18, issued by the Municipal Assembly of Podujevë/Podujevo on 14 August 1993. With this decision the Commission for Land Restitution amended Decision No 07-461-18 of 24 February 1993 with which the following

parcels had been returned to S. and P. P. (and other legal successors of V. P.): cadastral parcels Nos. 2958, 2962, 2963, 2964, 2965, 2966, 2972/2, 2980, 2981, 2982, 2983, 2984, 3006, 3007, 2979 and 2978. With decision of 14 August 1993 the decision of February 1992 was modified insofar as instead of parcel No. 2979/2 parcel 1882/3 was given to the legal successors of V. P. In the decision of August 1993 the Commission also mentioned that the decision of February 1992 had become final on19 March 1992.

On request of the KPA, the claimant furthermore submitted amongst others the following documents:

- Appeal against the decision of the Municipal Commission for Land Restitution, stating that the Cooperative Perparimi, in whose name the parcels were registered, should have been informed of the plans of the Municipal Commission and should have approved of the returning of the property;
- Decision No 461-02-1067/94, issued by the Ministry of Finance of the Republic of Serbia in Belgrade – department for property rights 13 - on 30 October 1995 which annulled the Decision of the Commission for Land Restitution of the Municipality of Podujevë/Podujevo No. 07-461-18, dated 24 February 1992 and 14 August 1993;
- Judgment No 7038/95, issued by the Supreme Court in Belgrade on 2 April 1997, which (as the Ministry of Finance had not sent the case files) annulled Decision No 461-02-1067/94 and ordered the respondent (the Ministry of Finance) to decide anew.

The claimant explained that her family had not used the property as they had not been able to register the changes and that due to the conflict they had not been able to register the property in their name. She herself had lived in Kragujevac from 1985 on, her father, however, had lived in Podujevë/Podujevo before the conflict and died in Kragujevac.

The KPA tried to verify the decisions yet did not succeed. The decisions could not be found either in the Cadastral Office of Podujevë/Podujevo or the Municipality of Podujevë/Podujevo or in the Department of Cadastre in Niš (Archive of the Dislocated Cadastre).

After the interested parties had been notified of the claim – either by putting up signs indicating that the property was subject to a claim or by publication in the KPA Gazette – J. Sh., who as – allegedly – director of the cooperative Perparimi already had been present at several of the notifications, responded to the claims. He explained that the land registered in Possession List No. 382 was

owned by the Cooperative Perparimi in Podujevë/Podujevo. He provided the KPA amongst others with Possession List No. 382, issued by the Municipality of Podujevë/Podujevo for the cadastral zone Dumnicë e Poshtme/Donja Dubnica on 9 October 2003. Possession List No. 382 shows that the claimed parcels are in the possession of the Cooperative "Kooperative Bujqësore Slloga". According to a note in the KPA's file, Perparimi is a smaller organization under Slloga. The Possession List No. 382 could be verified. In the United Nations Excerpt of Possession List No. 382 of 25 October 2007 parcels Nos. 2964, 2979, 2978 and 2965 are not registered, in the Certificate for the Immovable Property Rights from 28 May 2009 all parcels are registered in the name of Kooperativa Bujqësore Slloga.

J. Sh. also submitted to the KPA a response of A. R. Sh., dated 25 September 2007. With this document A. Sh. responded to the claims registered under KPA 24689, KPA24674, KPA24632, KPA24680, KPA24681, KPA24688, KPA24685, KPA24634, KPA24354, KPA24692 and KPA24699. He declared that a part (4 ha) of the litigious parcels had been the land of his grandfather since 1952 and that he had cultivated this land since 1980. He also stated that the documents regarding this land had been burned in 1999.

On 23 February 2011, the KPA with its decision KPCC/D/A/102/2011 rejected the claims as the claimant had been unable to establish the existence of a private property right over the properties in the name of her father.

The decision was served on the claimant on 14 October 2011, on J. Sh. and A. Sh. on 6 July 2011.

On 11 November 2011, the claimant (henceforth: the appellant), filed an appeal with the Supreme Court regarding all the mentioned cases. She challenged the decision for reason of violation of the material and procedural law and for erroneous and incomplete determination of facts and proposed that the challenged decision be reversed.

She declared that she had lost the property due to the conflict as her father had requested to register the property under his name but due to the conflict no decision on this request had been made. To support her allegations, the appellant submitted a copy of a receipt, showing the date as "15.6.1998" and the case number 08 952-01-1/98-14c. On the same page there is a copy of rectangular stamp showing the date "201", filled in with a stamp "11 NOV 2011" and a round stamp with an illegible signature. The appellant states that the receipt is the receipt for her father's request to register the property under his name and that the rectangular and the round stamp certify the receipt and say that

the decision (the appellant obviously means the decision allegedly attached to the request) was final and executable. The appellant furthermore states that the receipt only would have been issued if the decision which was the basis of the request for registration was a final one. According to the appellant also the registration book in which requests had to be registered would show that a decision was attached to the request and that this decision was executable. The appellant invites the Court to search for the entry in the registration book and the executable decision in the cadastral office of Podujevë/Podujevo as well as in the dislocated cadastre. She and her legal predecessor would not be to blame for dislocation of the cadaster and the conflict and so she should not bear the harmful consequences.

The appeal was served on J. Sh. on 13 December 2011, on A. Sh. on 20 April 2012, neither of them did 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 claims could not be granted as the cases are not within the scope of jurisdiction of the KPCC (Section 11.4 (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). However, as the KPCC did not dismiss the claims due to the lack of jurisdiction, but decided on the merits of the cases and refused the claims, this decision *ex officio* had to be annulled and the claims instead of being refused had to be dismissed.

Although the KPCC as a quasi-judicial body by deciding on the merits of the claim already has accepted its jurisdiction, the Court *ex officio* assesses whether the cases fall within the scope of its jurisdiction (Art. 194 and 182.2 b) of the Law on Contested Procedure).

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 or even only given enough indications that the loss of the property is in any connection with the armed conflict of 1998/1999. The only way in which the loss of the property could have been caused by the armed conflict is that the registration of the property in the name of her father could not be obtained because of the conflict. The Court needs not to decide whether even a situation like this fulfills the requirements of its jurisdiction. In any case, the appellant has not proven that the registration did not take place because of the armed conflict.

The dispute about the property between the father of the appellant and the Cooperative Perparimi already dated from 1992 when the first decision of the Commission for the Land Restitution of the Municipality of Podujevë/Podujevo was issued. The claimant has provided no evidence that the dispute had been resolved, that a final decision in favour of her father existed and that only the registration could not take place because of the armed conflict in 1998/1999 and that consequently her father could not use the property because of the armed conflict.

The KPCC correctly concluded that the decisions submitted by the appellant only showed that the decision of the Commission for Land Restitution by which her father had been given the ownership of the parcels was not a final one.

The KPA even searched for a final decision in favour of the appellant's father yet could not find one. Even with her appeal, the appellant has not submitted a final decision but confined herself to declaring that the final decision had to be with the cadastre. The allegations of the appellant are not sufficient to prove the existence of documents, namely a final decision of the Commission for Land Restitution, which could have justified the registration of an ownership right.

1. The appellant in the appeals instance for the first time stated that her father had made a request to register his alleged property on 15 June 1998 and – also for the first time – submitted a copy of a paper which allegedly was a receipt to the request and which showed a registration number. From this the appellant, who claims that the copies of stamps which she also submitted certify the receipt, concludes that a final decision in favour of her father existed. The Court does not follow this conclusion.

a. As for the receipt, it does not prove anything as it is - contrary to the allegations of the appellant – not stamped. The copies of stamps which according to the appellant should certify the receipt are not only bigger than the receipt itself (and so could not fit to the receipt), they also do not show the date 1998, but the date 2011. The Court notes that the allegations of the appellant insofar obviously are false.

b. As for an extract of the registry which in the opinion of the appellant would prove the validity of the request and that the decision submitted by her father was final: Even if in the registry every document attached to the claim would have been registered as valid and the decision registered as valid and final as well, this does not prove anything at all as there is the possibility of a mistake of the registrar. It is not up to the registrar or the clerk who accepted the request to decide whether the submitted documents are sufficient to grant the request.

2. As far as the appellant requests the Court or the KPA to search for the final decision the Court notes that the KPA already did search and did not find a final decision giving the property right to the appellant's father. There is no obligation of the Court to have a new search conducted.

a. This already results from the fact that there is no reason why the appellant herself should not be able to obtain the documents. There is no reason why she should not go herself or send a representative and request the documents either from the cadaster in Podujevë/Podujevo or the dislocated cadaster in Niš. The appellant, however, in spite of being informed by the KPA on several occasions and at last by the decision of the KPCC that she needed to submit the final decision, does not do so but just requests the Court to go and search. This is not sufficient.

b. A second reason for denying the necessity of a new search ex officio is that the new information of the alleged request's date is contradictory to the appellant's statement to the KPA regarding the date of her father's request for registration. In the claims form the appellant stated that the date of the loss was 12 June 1999. In a call with a KPA officer the claimant stated that her father had requested the registration somewhere in February 1999. Finally, in her appeal she alleges that the request for registration dated from 15 June 1998 (and even and obviously falsely states that the attached copies of stamps certified the receipt). Contradictory information,

however, does not oblige the Court to search ex officio. The Court wants to add that furthermore the alleged receipt does not even prove that it was issued for the request of the appellant's father.

Consequently the appellant has not proven that a final decision existed which could have justified the registration of her father in the cadastre. As therefore there is no indication that the appellant lost the property because of the armed conflict (and not because there simply was no final decision in favour of the appellant's father), the Court finds that the case is without the scope of its jurisdiction.

For these reason, the appeal had to be rejected as ungrounded whereas the decision of the KPCC regarding the claims *ex officio* had to be annulled and the claims dismissed as being without the jurisdiction of the KPCC and the Court.

The Courts decision is without prejudice to the right of the appellant to seek confirmation of her property before the competent local authorities.

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 above € 100.000: € 500 (€ 50 + 0.5% of 100.000, yet not more than € 500).

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 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