DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENCINË KOSOVARE TË PRIVATIZIMIT	SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY OF KOSOVO RELATED MATTERS	POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODNOSE NA KOSOVSKU AGENCIJU ZA PRIVATIZACIJU

11 May 2012

SCC-08-0240

J.V.R., XX
Represented by XX, lawyer from XX

Claimant

vs.

XX, Agricultural and Industrial Combine, XX

Respondent

The Specialised Panel composed by Alfred Graf von Keyserlingk, Presiding Judge, Shkelzen Sylaj and Ilmi Bajrami, Judges, issues the following

J U D G M E N T

1. **The claim is rejected as ungrounded.**

2. **The claimant is obliged to pay court fees in the amount of 50 Euros.**

Factual and Procedural Background

On 31 July 2008 the Claimant filed a claim with the Special Chamber requesting ownership right of the cadastral parcels 482, 821 and 959, cadastral zone Babin Most, registered in the name of the respondent (Possession List 110), registration of the property in his name in the cadastre and the reimbursement of the procedural expenses.

The Claimant alleges that in 1963 his late father V.R. donated the property to the Prishtinë/Priština Municipality without compensation but in return for children allowance. The claimant states that his father never received such an allowance and therefore he requested dissolution of the contract, which was not successful. In 1964 the Municipality allotted the property to the Respondent. The Claimant maintains that the contract was under the condition of obtaining an allowance, and therefore the property should be returned to him as successor of his father. Further he alleges that the property was never used by the Municipality or the Respondent but by the claimant and his predecessor. The claimant also argues that he did not have an inheritance decision because the property is registered in the name of the respondent.

The Claimant presents: Decision of 30 September 1963, Certificate of 7 June 1989 that the claimant's father never received children allowance.

On 15 May 2009 the Trial Panel rejected the claim as inadmissible on the basis that the Claimant had failed to submit an inheritance decision.

On 12 January 2010 the Appellate Panel quashed the decision and returned the case for retrial on the ground that the failure of the Claimant to provide the court with the requested evidence would not make the claim inadmissible.

On 12 May 2010 the claim was served on the PAK as the administrator of the Respondent.

In defence to the claim of 8 June 2010 the Respondent submits that the claim should be rejected as ungrounded. He claims that the transfer of ownership that took place in 1963 was valid under the Yugoslavian law and remains valid under the applicable law now in Kosovo. The Respondent contests the allegation that the Claimant is the only heir of his father. He alleges that the Claimant failed to give notice of his claim 60 days in advance to the PAK.

At the hearing held on 24 November 2011 the claimant stated his claim for restitution of property is also based on the fact that since 1963 the property was in possession of the claimant and his father and the respondent had not interrupted this. The claimant stated that the reason he does not have an inheritance decision is that he does not have an ownership certificate. The claimant stated that pursuant to the Law on Obligations he should be entitled to a compensation for the transfer of his land into social ownership. The respondent stated that the property was given voluntarily to the municipality, not to the SOE, therefore the claim against the SOE is ungrounded. The Respondent stated that there is no record of child benefits in the contract, contested that the claimant was using the land.

At the hearing held on 19 April 2012 the parties stood by their earlier submissions and requests. The Respondent additionally stated that the deadline for seeking annulment of donation contract is three years from its conclusion in 1963 and referred to the jurisprudence of the courts in Kosovo and the 1978 Law on Obligations.

Reasons at law

1. The claim is ungrounded.
a:
This already results from the fact that the Claimant did not prove the contested fact that he is the heir –and the only heir- of his father, the late V.R. The court may not just assume that this is the case and it is not be proved by the death certificate of his father and his own birth certificate. They may brothers and sisters or the claimant may have renounced on its heritage. The position of the claimant as a heir needs, if it is contested as it is in this case, to be proven. The argument of the Claimant, that he could not finish the heritage procedure because the claimant had no ownership document is not valid. As the judge explained to the Claimant who is represented by lawyer, the Heritage decision just confirms the general heritance and does not deal with the question, what did the deceased person own.
b:
As the claim cannot be granted because the heritage is not proved, the court in this case has not to decide, whether the transfer of ownership in the year 1963 was valid under Yugoslavian law and remains valid under the law applicable in Kosovo. If both is the case, the Plaintiff, provided his position as the heir one day will be proven, could be restituted only after the Kosovo Legislature had enacted a Law on Restitution which would cover his case. Such law does currently not exist. To that regard it is up to the legislator to follow Martti Ahtisaari's Comprehensive Proposal for Kosovo Status Settlement - according to Article 143

of the Constitution of Kosovo directly applicable and even superseding the Constitution itself - which explicitly names the requirement that the property restitution shall be addressed.

Costs

Pursuant to Section 12 Special Chamber Law and in accordance with the Special Chamber's Additional Procedural Rules regarding Court Fees as in force from 13 December 2010, Chamber's fees are on the basis of Section 10 of Kosovo Judicial Council Administrative Direction No. 2008/02 as follows:

For claims with a value in the amount between 5001 to 10000 Euro (Article 10.1): € 50
For the issuance of the Judgment (Article 10.12): is the same as mentioned above.

The value of the claim is determined by the court in the amount exceeding 5001 Euro.
Therefore, the amount of the Court fees is € 100.

The costs of the proceedings shall be borne by the unsuccessful party, here the Claimant.
The Claimant have already paid the sum of 50 €, thus the Claimant shall pay the Special Chamber an additional the sum of €50.

The Respondent did not present any request for reimbursement of its own costs of the proceedings and since the Respondent is represented by its own lawyer the Respondent is not entitled to receive reimbursement for reasonable attorney's fees.

Legal Advice

Against this decision within 21 days an Appeal can be submitted to the Appellate Panel of the Special Chamber. The Appeal shall also be served to the other party and submitted to the Trial Panel **by the Appellant**, all within 21 days. The Appellant shall submit to the Appeals Panel a proof that he has served the Appeal also to the other party.

The prescribed time limit begins at midnight of the day, when the Appellant has been served with the decision in writing.

The Appellate Panel shall reject the Appeal as inadmissible if the Appellant has failed to file it within the prescribed period.

The Respondent may file a response with the Appellate panel within 21 days from the date he was served with the appeal, submitting the response also to the appellant and the other party.

The appellant then has 21 days after being served with the response to its appeal, to submit to the Appellate panel and to serve the other party its own response. The other party then has 21 days after being served with the appellant's response to submit to the Appellant and to the Appellate panel its counter-response.

Alfred Graf von Keyserlingk, Presiding Judge [signed]

Internal order: this decision is to be served on the parties