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 – 0304

A.Đ., XX
Represented by XX lawyer from XX

Claimant

Vs.
1. AIC XX, XX
2. Privatisation Agency of Kosovo, Ilir Konushevci no.8 str., Prishtinë/Priština

Respondents

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 125 Euros.**

Factual and Procedural Background

On 22 December 2008 the Claimant filed an ownership claim for cadastral parcel no.1467/2, surface of 0.47.33 ha, location "Slani Potok", Cadastral Zone Çagllavicë/Čaglavica, registered in the name of XX as per possession list No.222, Prishtinë/Priština Municipality. He requests registration of the property on his name in the cadastral office and the reimbursement of his procedural expenses.

The father of the Claimant, whose only heir is the Claimant was co-owner of this parcel together with S.T., R.T. and I.T.

The Commission for Land Consolidation at the Prishtinë/Priština Municipal Assembly by Decision No. 35/63 of 24 January 1964 allocated the fore- mentioned property to AIC XX in exchange for cadastral parcel no.273, with surface of 0.54.43ha, CZ Çagllavicë/Čaglavica, Municipality of Prishtinë/Priština. In this decision only A.T. is named as owner of the parcel no. 1467/2.

The Parcel 273 was never transferred or registered to the Claimant or his father and later it was registered on the name of other natural persons. Instead the Claimants father and the Claimant without any break continued to cultivate the former parcel no.1467/2. The reason

for this is that the SOE declared to the Claimants father, the SOE would do all the paperwork to have the land change registered and that they could continue to cultivate his old land as long as this procedure would last. Neither the Claimant nor his father ever initiated an administrative dispute, legal action or request for cadastral changes of the property which should have been allocated to them in exchange. Cadastral parcel 273 was never in possession of the Claimants family while cadastral parcel 1467/2 remained in possession of the Claimants family.

On 2 June 2009 the Claimant submitted a certificate dated 25 May 2009 from the Municipality of Prishtinë/Priština on the current registration and history of the property: cadastral parcel no. 1467/2, registered as socially owned property, in the name of AIC XX, while cadastral parcel No. 273 before 1999 was registered in the name of four co-owners, namely J., M., S. and S.J. and after 2005 it was divided between 11 individuals.

On 14 January 2010 the Privatisation Agency of Kosovo (PAK) as the administrator of the Respondent SOE was called into the suit as the second Respondent.

In defense to the claim of 19 February 2010, the PAK submits that the claim should be rejected as inadmissible or as ungrounded. PAK holds that the decision on land consolidation as a legally binding administrative decision cannot be annulled through a new contested procedure.

On 20 January 2011 the Trial Panel rendered a decision rejecting the claim as ungrounded. The court held that the 1964 land consolidation decision had not been challenged in accordance with the 1986 Law on Administrative Procedure and that the ownership of the exchanged property would be a matter of execution of the decision and not of its validity. The ownership claim on the basis of adverse possession would be ungrounded on the basis of Section 20 of the Law on Basic Property Relation (no.6/1980).

On 2 December 2011 the SCSC Appellate Panel quashed the Trial Panel decision and returned the case for retrial. The Appellate Panel held that the first instance court erroneously applied law that was not in force at the time of the challenged decision (1986 Law on Administrative Procedure) while the matter is regulated under Article 68(f) of the Law on Changes and Utilization of Agricultural Land (OG 49 SFRJ 30 December 1962), which provides that decisions of the Commission on Land Consolidation cannot be contested in an administrative procedure. Therefore, the Claimant did not have the possibility to challenge the expropriation decision. Further, the claim should be handled as an ownership claim contesting the expropriation. The Appellate Panel confirmed that the claimant's claim based on adverse possession is ungrounded. The Appellate Panel held that the first instance court shall take stance on the grounds which according to the claimant caused the invalidity of the expropriation.

On 17 April 2012 the claimant submitted a claim enlargement by which L.T., R.T. and S.T. requested to step in the proceedings as claimants. The Claimant presented a heritage decision dated 21 January 1960 pursuant to which the inheritors of J.T. are A.T., S.T., R.T. and L.T. He argues that they inherited the disputed property together with his father. However, the property was erroneously expropriated only from the father of the claimant and therefore the expropriation decision is void.

At the hearing held on 19 April 2012 the SCSC rejected the enlargement of the Claim , because the Respondent refused to declare his consent to the enlargement and the claim could have been enlarged earlier and by fault was not enlarged earlier (Article 258.4a of the Code of Contested Procedure).

Reasons at law

Claimant is only A.D., not S.T., R.T. and L.T. The court did not admit the further Claimants because the Respondent opposed to it and it would have required postponement to decide also about these further Claimants. The Court held that the Claimant who submitted his request to include further Claimants only after a procedure of more than three years and only two days before the final hearing acted with fault (Art. 258.4a Code of Contested Procedure).

The Claim is ungrounded.

This results already from the fact that the Claimant by claim of 22.12.2008 requires that the Premise 1467/2 is handed over to him and that he is registered as the owner of this premise, although he clarified by his submission of 17. 4. 2012 that his legal predecessor, T.J.A., was only one of four co-owners of the premise. The Claimant could only inherit what was owned by his predecessor. So even if the decision of the the Commission for Land Consolidation at the Prishtinë/Priština Municipal Assembly No. 35/63 of 24 January 1964 would have been invalid the Premise 1467/2 could now not be handed over to the Claimant alone and he could not become registered in the cadaster alone. Also the other owners then would have the right to be reinstalled as owners.

But also apart from this the claim is ungrounded.

The challenged decision is rendered by the Committee for Land Consolidation at the Municipality of Prishtinë/Priština pursuant to the Law on Agricultural Land Use (FNRJ OG 43/59) in Connection with the Decree number 53 of 31, December 1962 ,Official Gazette FNRY 1962 (also the decision does not mention the decree) . These provisions set out the procedure for land "Redistribution" for the benefit of agricultural organisations.

The redistribution decision according to the fore-mentioned law could be challenged for two different reasons in two different procedures:

1. An Appeal to the republican administrative authority in charge of agricultural affairs (Section 65 Paragraph 3 and Section 66 Paragraph 1 of the Law on Agricultural Land Use). Such Appeal may not regard the compensation issue.
2 Only regarding the compensation, a proposal to the court to the determinate the compensation by a non-contested procedure (Section 66 Paragraph 2 and 3 of the Law on Agricultural Land Use)

However the fore-mentioned Decree of 1962 restricted the legal remedy:
According to this Decree Restoration to the original status and reopening of the procedure was not any more allowed in the reallocation procedure (Article 68j). This means that the claimant had no legal remedy to get back his parcel 1467/2. Insofar the Redistribution decision remained final.

Nevertheless the claimant cannot now require that the redistribution decision is lifted and he gets back his parcel1467/2.

The claimant challenges the redistribution decision on two grounds:
1. The Decision named only one of four co-owners.
2. The promised exchange land has never been given to the claimant or his father.

The first objection cannot be raised by the Claimant because his father from whom he derives his right is mentioned in the Redistribution decision. The fact that the other three co-owners are not mentioned has no bearing on the position of the claimant. Regarding the Claimant the Redistribution decision was legally correct.

The second objection does not concern the legality of the Redistribution decision, but only its execution. The redistribution decision remained unexecuted insofar as the Claimant did not receive parcel 273. But this is not the parcel the Claimant is requiring in the case at hand.

As the Appellate Panel in the decision ASC-11-0045 of 2 December 2011 held the claimant also had not acquired ownership over the land parcel by adverse possession since the law applicable at the time did not foresee this possibility. The Law on the amendment of the Law on Basic Property Relations of 1996 abolished the prohibition for acquiring state/social property by adverse possession. The claimant would have to prove 20 years of uninterrupted possession since the entry into force of this law.

The court also considered that the Claimant has been allowed by the SOE to go on cultivating his former parcel 1467/2 till the SOE did the paperwork necessary to transfer the land exchange and that the SOE never did this. This fact may be have given to the Claimant a right to possession, but not the ownership or a right to acquire ownership.

As the Claimant is not owner of the parcel 1467/2 and as he has no right to become owner of the parcel 1467/2 the claim is dismissed as ungrounded.

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(ADJ) are as follows:

The amount of fee for filing the claim as governed by Section 10.1 ADJ is 50 Euros, as the Specialized Panel considers the value of claim is falling under the category of 5.001 to 10.000 Euros taking into account the size of the land in question. Section 10.12 ADJ determines that for decision of the first instance based on the value of the object the fee shall be paid according to tariff's number 10.1 which amounts to 50 Euros.

Court Fee Tariff Section 10.1 (filing of the claim)	50 Euros
Court Fee Tariff Section 10.12 (decision)	50 Euros
Court Fee Tariff Section 10.21 (appeals proceedings)	100 Euros
Total	200 Euros

The costs of the proceedings shall be borne by the unsuccessful party, here the Claimant.
The Claimant have already paid the sum of 75 Euros, thus the Claimant shall pay the Special Chamber the remaining sum of 125 Euros.

Legal Remedy

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