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

17 May 2012

SCC – 09 – 0043

Claimants

1. **N.S., XX**
2. **P.S., XX**
3. **A.C., XX**

Represented by XX, lawyer from XX

vs.

Respondents

1. **XX,** SOE, XX
2. **XX,** JSC, XX

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 claimants are obliged conjointly to pay court fees in the amount of 50 Euros.**

Procedural and factual background

On 27 March 2009, Claimants filed a claim with the Special Chamber for the restitution of cadastral parcels nr 1502, 1325, 1372/4, 1320, 1350, 1483 and 1484 in Caglavica/Čaglavica, transferred to the SOE XX (predecessor of SOE XX) on the basis of Prishtinë/Priština Municipality decision on land exchange no.11/63, dated 24 January 1964. The Claimants request that the land is registered in their name in the cadastre and the reimbursement of procedural expenses.

Claimants state that pursuant to the above decision their predecessor, late V.S., was allocated cadastral parcels 236, 337, 373, 239, 301, 235. However, cadastral parcels 235, 236 and 337 were later restituted to other individuals.

The Claimants state that during a procedure for verification of the factual situation By Commission at the Municipality of Caglavica/Čaglavica on the basis of the land consolidation decision, in the presence of the legal successors of V.S. the following was established: N.S., son of the late V.S., is the possessor of cadastral parcel 337; L.S., son of the late V.S., is the possessor of cadastral parcel 236; P.C., son of the late V.S., is the possessor of cadastral parcels 299 and 273 instead of 235 allocated to V.S.

initially. The Claimants submitted Protocols from the above procedure dated 25 October 1989. They state that the second Claimant P.S. is the legal successor of L.S. and the third Claimant A.C. is the legal successor P.C.

Allegedly none of the above parcels were ever given to the Claimants or their predecessors.

On 18 October 2010 the claim was served on the PAK as the administrator of the Respondents. In defense to the claim filed on 17 November 2010 the PAK on behalf of the Respondents stated that the claim should be rejected as inadmissible or in the alternative as ungrounded. The Respondents argued that the Claimants did not provide legal arguments to the claim, did not submit any material evidence, did not prove their active legitimacy (lack of inheritance decisions) and failed to give prior notice to the agency. Further, the challenged decision is final as there was no legal review foreseen in the Law on the Use of Agricultural Land (OG RPFJ 43/59). Therefore, there is no legal basis for restitution of the property. The Respondents stated that they have acquired the property based on adverse possession (art.28 of the LBPR).

On 1 February 2011 the Claimants amended the claim, as a legal basis they indicated article 37 of the Law on Basic Property Relations (SFRY 6/80) and requested the execution of the expropriation decision. The Respondents stated that this claim is ungrounded because this law was passed in 1980 and is not applicable to contracts of 1964.

Pursuant to cadastral records received on 2 March 2011 cadastral parcels 235, 299, 273 and 337 are in private ownership, while parcel 236/2 (part of 236) is registered in the name of Kosovo Export.

At the hearing held on 6 April 2011 the parties stood be their previous statements, the Claimants amended the claim requesting substitute land parcels for those that are in private ownership. The Second Respondent submitted that the claim should be rejected, but acknowledged that the Claimants suffered damages because the expropriation decision was not executed.

At the hearing held on 19 April 2012 the Claimants clarified that the property subject to the claim is the property allocated to their predecessor pursuant to the land consolidation decision of 1964 because the property was never transferred to them or their predecessor.

Reasons at law

1. The claim is ungrounded.
a:
This already results from the fact that the Claimants did not prove the contested fact that they are the only heirs of the late V.S. The court may not just assume that this is the case and it is not be proved by the presented death certificates of Č.S. (also known as V.S.), L.S. and P.C. and birth certificates of N.S., P.S. and A.C. There may be brothers and sisters or the Claimants may have renounced their heritage. The position of the Claimants as heirs needs, if contested as in the case at hand, to be proven. The Claimants had been given the opportunity several times to provide evidence such as

Heritage Decision and had been warned of the consequences. The position of the Claimants, that the submitted birth and death certificates are sufficient in order to prove that they are the only legitimate legal successors cannot be followed for the reasons above. As the judge explained to the Claimants who are represented by lawyer, such documents are not sufficient to prove heritage.

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 1964 was valid under Yugoslavian law and remains valid under the law applicable in Kosovo. If both is the case, the Claimants, provided their position as the heirs 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 from 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 Claimants.
The Claimants have already paid the sum of 50 €, thus the Claimants 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