SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI

GSK-KPA-A-106/12 **Prishtinë/Priština**

12 April 2013

In the proceedings of

D. R.

Claimant/Appellant

vs.

E. D.

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/R/145/2012 (case file registered at the KPA under the number KPA 22487), dated 29 February 2012, after deliberation held on 12 April 2013, issues the following

JUDGMENT

1- The appeal of D. R. against the decision of the Kosovo Property Claims Commission KPCC/D/R/145/2012 (case file registered at the KPA under the number KPA 22487), dated 29 February 2012, is rejected as unfounded.

2- The appellant has to pay the costs of the proceedings which are determined in the amount of € 55 (€ fifty five) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 15 March 2007 D. R. (the claimant/now appellant) filed a claim with the Kosovo property Agency (KPA) seeking compensation for a property described as an apartment of 32 m² in parcel 615, Vitomiricë/Vitomirica, Pejë/Peć. He claimed he bought the apartment from the municipality in 1993, in addition to the apartment he built a house of approximately 200 m². He left Kosovo in June 1999. His property has been destroyed by the respondent E. D. and now he, the claimant wants to be compensated.

In support of the claim Mr R. presented a contract on use of apartment dated 1 September 1982 and contract on purchase of the same apartment dated 30 September 1993.

The claimant has indicated E. D.as the occupant of the property.

The KPA processed the notification on 21 March 2011 by putting a poster on the wall of an object built in the parcel. The respondent E. D. confirmed that in 1999 the house-apartment in that parcel was destroyed and he claimed that the land belongs to the Municipality. In 2001 the latter has granted him permission to construct an object of about 160 m². He presented a possession list which indicated the Municipality as the owner of the parcel.

It is undisputed that the claimant purchased an apartment of 32 m² in the above mentioned parcel and that this one was "upgraded" up to a house of 200 m², which was eventually destroyed in the armed conflict of 1998/1999. It is established that the parcel, in which the apartment was build belongs to the Municipality. It is also undisputed that after the war in 2001 the respondent erected a construction which is used as auto-repair shop.

With cover decision KPCC/D/R/145/2012 (case file registered at the KPA under the number KPA 22487) the KPCC 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's sole claim is for compensation of the destroyed property and such claims fall outside the mandate of the Commission, therefore the KPCC dismissed it.

Following the cover decision, on 6 April 2012 the KPCC issued an individual decision for the dismissal of the claim.

The claimant was notified of the decision on 02 July 2012.

On 20 July 2012 he has filed an appeal with the Supreme Court against the aforementioned decision. In the appeal he asserts that he has requested affirmation of his right of property over an apartment in Vitomiricë/Vitomirica, Pejë/Peć with a surface of *"36,22 m², but in real surface of about 200 m² including 20 m² of basement and 700 m² yard"*. He claims that the KPCC wrongly stated that he only asked for compensation. He asserts that he requested from the Commission to confirm his right of property.

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 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 proves ownership of, or use right over private immovable property, including agricultural and commercial property and if he/she is not now able to exercise such 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. The KPCC does not have the mandate to deliver decisions over claims for compensation in respect of destroyed private immovable property. **UNMIK/REG/2006/50 itself does not provide for compensatory mechanism for destroyed property.**

As the claim is out of the jurisdiction of the KPCC, the Commission had not to decide on the ownership of the appellant.

In the appeal it is stated that the claimant did not ask for compensation but for repossession which does not correspond to the claim he submitted in front of the KPA. It explicitly states that the claim is for compensation. The scope of the claim did not include request for ownership confirmation and/or repossession.

For the first time with the appeal the appellant notes that his claim was not for compensation but ownership, however this is not supported by the content of the first instance file, neither by the claim, nor by any other document or statement within it. Therefore the assertions in the appeal are to be treated as defensive arguments only. The Court, neither in the first, nor in the second instance can deliberate *plus petitum,* the Court adjudicates only within the scope of the claim submitted – argument after art. 2.1 of the

Law on Contested procedure, applicable *mutatis mutandis* under section 12.2 of UNMIK/REG/2006/50, as amended by Law No. 03/L-079.

Costs of the proceedings:

The appellant asked to be released from the obligation to pay fees under art. 468 of the Law on Contested Procedure. The Court with an order requested him to present evidence that he is unemployed and/or a beneficiary of social welfare assistance or any other evidence that supports his allegation that paying fees for the appeals procedure would endanger his survival or the survival of his family. The appellant did not present any of that, he noted that he is not unemployed but his income is not enough to cover the expenses for his family. However he did not provide the court with any data regarding his income so that the Court to assess whether the allegations of the appellant are true.

In addition the appellant asserted that "*the practice of tax collection is contrary to article 13.2 of the United Nations principles on Housing and property restitution for Refugees and Displaced Persons (Pinheiro Principles), which envisages that states should ensure that all aspects of the restitution claim process, including appeals procedure are timely, accessible and free of charge. Art. 29.2 of the UN Guiding principles on Internal Displacement is not respected, which obliges the competent authorities to assist displaced persons to recover the property. In direct discrimination against displaced persons is committed by collection of the tax because their difficult financial situation, caused by their resettlement is not taken into account".*

It has to be clarified that the application of the Pinheiro Principles as a "soft law" instrument is a matter of governmental policy, not of a direct application of courts. "Soft law" instruments, such as the one in question do not have legal value and binding force and they do not and cannot provide full judicial protection. They can be used as preparatory tools for the creation and establishment of binding legislative acts. *"The Principles are designed to provide practical guidance to States, UN agencies and the broader international community on how best to address the complex legal and technical issues surrounding housing, land and property restitution",* as formulated in the introduction to the brochure "The Pinheiro Principles", issued by the Centre on Housing Rights and Eviction. As noted the Principles cannot be applied directly by the Court. The Court applies the national Laws and the international legal instruments to which the State in question became a party.

Therefore the established court fees regime is applicable in this case:

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, considering that the value of the claim could be estimated at € 96.00 (Section 10.21, 10.15 and 10.1 of AD 2008/2): € 25;

The court fee is to be borne by the appellant who filed an inadmissible claim and became a reason for the appeals procedure. According to Article 46 of the Law on Court Fees, when a person with residence or domicile abroad is obliged to pay a fee, the deadline for the payment may not be less than 30 days and no longer than 90 days. The Court decides that the deadline here is 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