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-002/13

Prishtinë/Priština
15 May 2013

In the proceedings of

B. A. M.
Serbia

Claimant/Appellant

vs.

J. P.
Prishtinë/Pristina

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/159/2012 (case file registered at the KPA under the number KPA34141), dated 6 June 2012, after deliberation held on 15 May 2013, issues the following

JUDGMENT

1- **The decision of the Kosovo Property Claims Commission KPCC/D/R/159/2012, dated 6 June 2012, as far as it regards the case registered under No. KPA34141 is annulled and the claim of B. A. M, is dismissed as falling outside of the jurisdiction of the KPA.**

2- **Costs of the proceedings determined in the amount of € 60 (sixty euro) 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 4 April 2007 B. A. M. as a property right holder filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of use right and repossession of an apartment (in a lower basement) with the surface of 42 m², located in Prishtinë.

The claimant stated that he is the sole occupancy right holder over the claimed property. He also added that he made the transformation with the consent of tenants and the consent of Municipality Assembly of Prishtinë/Pristina. Moreover, he stated that the property in question is used without authorization by the respondent (J. P.) or his son who converted it into business premises and uses it as a coffee shop or store.

To support his claim, he provided the KPA amongst others with the following documents:

- Request to the Secretariat of Urbanism and Housing Matters of Municipality of Prishtinë/Pristina, without number and date (showing that the claimant asked for Urban Permission in relation to the conversion of the basement into an apartment);
- Claimant's request to the Secretariat of Housing Matters of Municipality of Prishtinë/Pristina, dated 10 July 1995 (showing that the claimant requested temporary decision for the basement);
- Minutes 2-360-032, issued on 10 July 1995 by the Secretariat of Urbanism and Housing Matters of Municipality of Prishtinë/Pristina (showing that the claimant converted the claimed property from basement

into an apartment with the consent of the tenants and the same is seeking that the Municipality of Prishtinë/Pristina issues a decision on legalization of the property);

- Different utility bills in the name of the claimant for usage of water and electricity in the claimed property;
- Administrative decision No. 352-1500, issued on 28 January 1999 by the Secretariat of Urbanism and Housing Matters of Municipality of Prishtinë/Pristina;
- Minutes and decision (without number), issued on 20 March 1999 by the Council of the Building (showing that the tenants of the building where the claimed property is located, provided consent to the claimant to use the converted basement on a permanent basis); and
- Claimant's ID card, issued on 19 August 2002.

Except the utility bills and ID card, the KPA could not verify any of the above mentioned documents.

On 16 March 2012 two statements have been made by the claimant, he stated that the respondent – J.P. (or his son) has been using the claimed property without any legal basis since June 1999. He further stated that the documents submitted to the KPA by the respondent or his representative are not valid and important, because they do not prove the respondent's ownership over the claimed property, but the ownership of another flat, which is not subject matter of the concrete case. The claimant indicated the fact that all required documents have been submitted to the KPA, by adding also that documentation would have been be more complete and meaningful if he and his family had not been expelled by force on 12 June 1999 – number of documents remained in the disputed apartment.

On 11 August 2008 the KPA organized the notification of the claim. The claimed property was found occupied by the respondent, who was present in the property. The KPA notification report indicates that at the time of the notification the property has been transformed from apartment into shop.

At the same date (11 August 2008), after receiving the notification of the claim, the respondent signed the application for taking part in the proceeding. He claimed a legal right to the claimed property.

On 4 September 2008, the respondent through his representative – lawyer Xh. B., stated that he is the property right holder over the claimed property and not the claimant.

To support his allegations the respondent provided the KPA amongst others with the following documents:

- Allocation decision No. 1464, issued on 14 March 1978 by the Energy Mining and Metallurgical Combinat "Kosova" (not related to the claimed property);
- Contract on use No. 1193/9655, issued on 21 February 1981 by the Public Housing Enterprise (not related to the claimed property);
- Court decision No. 715/93, issued on 22 May 1996 by the Municipality of Pristina (not related to the claimed property);
- `Power of attorney Ov.br. 5695/08 dated 18 August 2008, with which the respondent authorized the lawyer to represent him in the KPA claim;
- Information letter, dated 28 August 2008, sent by the respondent's representative who is informing the KPA that he will represent the respondent in the proceeding;
- Letter partially illegible;
- Respondent's ID card, issued on 15 May 2009.

Except the POA and the ID cards which were positively verified, the KPA considered the verification of the other above mentioned documents unnecessary.

In his reply dated 8 February 2011, the respondent's representative alleges that the claimant's allegations are not founded. He stated that the documents submitted are falsified and that the same cannot be verified at the competent organs. He furthermore stated that the signatures in the alleged and presented consent, allegedly given by the other tenants from the same building in which the claimed property is situated, which permitted the claimant to convert the claimed property from basement into an apartment, are falsified as well. Finally, he proposed that the claimant's claim be rejected as unfounded.

On 25 February 2011 the respondent notified the KPA that the former representative – lawyer Xh. B. will not represent him in front of the KPA anymore, because he was very negligent and not focused on the issue. In the same submission he requested from the KPA to dismiss the claimant's claim as not grounded.

On 4 March 2011, the respondent has made a statement by which he explained that the apartment in Pristina (which is not the disputed property) is allocated to him based on the allocation decision no. 1464, dated 14 March 1978. He added that the apartment consists of 3 rooms, kitchen, bathroom, closet, anteroom, hall, basement and 2 balconies. He also indicated that from the time when the contract on use Nr. 1193/9655, dated 21 February 1981, is concluded (with the Public House Enterprise), he lived in this apartment with his family, using also the basement (subject matter of the case file, converted into an apartment), which belonged to them as well.

On 5 October 2012, the KPCC in its decision KPCC/D/R/159/2012 refused the claimant's claim as he did not prove property right over the claimed property.

The KPCC decision was served to the claimant on 14 November 2012, while the same was served to the respondent's son on 14 December 2012.

On 15 November 2012, the claimant (henceforth: the appellant) filed an appeal with the Kosovo Property Claims Commission (and not to the Supreme Court). He stated that the KPCC decision is based on erroneously and incompletely established factual state; it contains fundamental error and seriously violates applicable material and procedural law.

The appellant argues that it is not true that he moved out of the mentioned apartment due to the conflict, but that he was literally expelled from the apartment and that he left everything behind in the apartment. He stated that in October 1999 he received from competent authorities a decision on ownership but this decision remained together with other belongings in the apartment. He also stated that on the basis of this decision he could connect to electricity and water supply, otherwise without a proof of ownership this would have been impossible. Moreover, the Commission's allegation that he did not lose the documents related to the apartment are not true, because the documents along with other things (furniture and other personal belongings) were destroyed by those who illegally occupied the apartment and transformed it into business premises. The appellant claims the respondent is lying when saying that he acquired the apartment in 1984. The evidences presented by the respondent are related to his (another) apartment which is located in the same entrance . He refers to the decision of the Public Housing Enterprise (PHE) when the number 14/10 of the apartment is assigned to him where his name was mentioned as the owner. He proposed the decision of the KPCC to be annulled and that KPCC issues a decision recognizing his ownership of the apartment in question.

The appeal was served to the respondent (from now on: appellee) on 16 January 2013. In his response to the appeal the appellee stated that he stands after the documentation submitted in front of the KPA (the documents are listed).

Legal reasoning:

Admissibility of the appeal:

The appeal is admissible. It has been filed within the 30 day period prescribed in section 12.1 of the UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079. The provision states that a party may submit an appeal "*[ ]within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim*".

On the merits:

The appeal is ungrounded but the decision of the KPCC has to be annulled *ex officio* as the case does not fall within its jurisdiction. The KPCC had not to decide on the merits of the case but to dismiss it - Section 11.4 (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). As this has not been done the appealed decision *ex officio* has to be annulled and the claim dismissed (argument after art. 198 (1)) of the Law on Contested Procedure which is applicable *mutatis mutandis* for the procedure in front of the Appeals Panel of the Supreme Court under section 12.2 of the UNMIK/REG/2006/50. According to art. 198 (1) LCP if the first instance has taken a decision over claim which does not fall within its jurisdiction the court of second instance has to annul the decision and dismiss the claim.

According to Section 3.1 of UNMIK/REG/2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of private immovable property towards which he/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. According to section 2 General principles, point 2.1 of UNMIK/DIR/2007/5 as amended by Law No. 03/L-079 "any person who had an ownership right, lawful possession of or any lawful right of use of or to private immovable property, who at the time of filing the claim is not able to exercise his/her rights due to circumstances directly related to or resulting from the armed conflict of 1998/1999 is entitled to reinstatement as the property right holder in his/her property right". The Regulation does not apply to property rights or use rights towards publicly/socially owned property.

In this particular case the claimant considers to have become the owner of the property. He presents a decision from 28 January 1999, issued by the Secretariat for Communal-Housing Affairs in the Assembly of the City of Pristina.

In point I of the enacting clause the decision refer to the claimant as "the owner-user" to whom a house with number 14/10 in the residential building in "XXXXX" street in Pristina is assigned. In point II *ibid* it is clarified that the "item" in point I was up-to date located in street "XXXX" SU 1/3 entrance IV, basement. In the argumentative part of the decision it is explained that the Committee was acting in exercise of its duties related to the determination of the names of the inhabited places, on marking streets, squares and houses with numbers. *I.e.* the decision is related to the change of the name of the street where the disputed apartment is and not to the allocation of property or property related rights, such as use rights.

The right of property can be acquired by law itself, based on a legal transfer (legal affair) or inheritance - art. 20 of the law on Basic Property Relations (OG SFRY, No 6/1980), applicable at the time of the alleged transfer of property (as pointed by the claimants it occurred in 1996).

The claimant neither asserts to have purchased the property from another person, nor to have inherited it. What he claims is that he has acquired in private ownership an apartment which was previously socially or publicly owned. And as long as there is no evidence that he has validly purchased/acquired this socially owned apartment it has to be accepted that the form of property has not yet changed, *i.e.* the apartment is still socially/publicly owned – most probably by the Municipality of Pristina. In this regards the KPCC had no jurisdiction over the dispute as it does not relate to a claim with respect to a private property – arg. after section 3.1UNMIK/REG/2006/50 as amended by Law No. 03/L-079

For clarity the Court considers necessary to explain that in the period between 1995, when the claimant asserts to have started using the apartment and 28 January 1999, the date of the issuance of the above mentioned decision the purchase of socially and publicly owned apartments was regulated by the Law on Housing (Official Gazette of the Republic of Serbia No. 52/92; 67/92; 33/93; 46/94 and 49/95 (hereinafter the LH). Articles 16-29 describe the procedure in its details.

According to art. 16 (1) the holder of the right on disposal of the apartment in the social ownership and owner of the apartment in public ownership (the so called "allocation right holder", which in this case should/may be the Municipality of Pristina) was obliged to enable on written request of the holder of the occupancy right, respectively lessee who had already acquired this right (the occupancy right) to purchase the apartment he/she already uses in accordance with the provisions of the Law. Further in art. 16 (4) the Law prescribes that if the allocation right holder refuses the request for purchase of the apartment or does not conclude the purchase contract within 30 days of filing of the request, the person who filed the request has

the right to file a request with the relevant Municipal Court, whose decision would replace the non-concluded contract.

In this particular case there is no data that the claimant ever filed a request to purchase the apartment, there is no contract concluded and there is no decision of the Municipal Court, issued under art. 16 (4) of the LH, to replace the missing contract.

Factual occupation of the apartment and payment of electricity bills do not create legal rights.

In addition there is no data that the claimant even had a legally allocated use right over the socially or publicly owned apartment. And in case he had, the dispute would have been again outside the jurisdiction of the KPCC and this Court as only use rights related to private properties (not socially or publicly owned) could be defended within the framework of UNMIK/REG/2006/50, as determined in section 3.1 (b).

As the dispute is related to a socially/publicly owned property, it falls outside the jurisdiction of the KPCC and this Court, according to art. 198(1) LCP, had to *ex officio* annul the decision and dismiss the claim..

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, 10.1 and 10.15 *mutatis mutandis* of AD 2008/2) considering that the value of the property at hand could be reasonably estimated at € 10.000: € 30 (yet no more than 30 €).

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 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 the 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***