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-013/13 **Prishtinë/Priština,**
10 December 2013

In proceedings of:

M.M
Claimant-Appellant

vs.

R.A
Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva - Ermenkova, Presiding Judge, Willem Brouwer and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/152/2012 (case file registered at the KPA under the number KPA 13855), dated 19 April 2012, after deliberation held on 10 December 2013, issues the following:

JUDGMENT

The decision of the Kosovo Property Claims Commission KPCC/D/R/152/2012 (case file registered at the KPA under the number KPA 13855), dated 19 April 2012 is annulled and the claim of M.M is dismissed as falling outside of the jurisdiction of the KPCC.

Procedural and factual background:

1. On 28 October 2006, M.M filed a claim with Kosovo Property Agency (KPA), seeking to be recognized as the owner of an apartment with a surface of 59 m² located at "Beogradi" street no. 27/23 in Prishtinë/Priština. Possession of this immovable property was lost on 17 June 1999 as a result of circumstances in Kosovo in 1998/1999. He asked for confirmation of ownership and repossession.
2. To support his claim, the claimant provided KPA with the following evidentiary documents:
   - contract on unilateral settlement of use of apartment of Military Post no. 5374 dated.18 December 1998, by which the user right over the apartment located at Prishtinë/ Priština in "Beogradi" street no. 27, apartment no. 23 with a surface 59 m², was withdrawn from A.N;
   - decision of the Military Post 7357 dated 23.12.1998, whereby the apartment no. 23 located at "Beogradi' street no. 27 was allocated for temporary use to M/M – the claimant;
   - Decision no. 2687/66, dated 11 January 1978, of Garrison Command in Prishtina, whereby the apartment no. 23, entrance 1, located at "Beogradi' street no. 27 was allocated for temporary use to e A.N;
   - Sale contract no. 432-2 of 28 January 1999 for the apartment, the possession right of which belongs to SRY Military Post 1, by which contract the claimant bought the apartment located at "Beogradi" street no. 27, apartment no. 23;
   - Certificate of Municipal Court of Nis, dated 11 January 2007, whereby it was confirmed that the contract I.OV-br.463/99 was registered in the name of the third party E.S.O from Prizren for the purchase of the apartment at "Narodnog Osllobogjenje" street no. 139, apartment 3 in Prizren concluded by the Military Post in Nis. This document was positively verified by the KPA Verification Commission. All the other documents submitted by the claimant were **negatively verified**.
3. In 2008, KPA notified the apartment. The respondent stated that in 1978 the Garrison Command allocated the right to use the apartment to his mother who lived in the apartment until her death in 1985. In addition the respondent stated that the right to use the apartment was recognised to him with a judgment of the Parallel Municipal Court of Prishtina, dated 29 May 2009, but that decision was annulled by the judgment of the Parallel Supreme Court of Belgrade and the procedure is on-going. **These documents were deemed unnecessary as they were issued by parallel courts**. The respondent stated that he sold the same

apartment to M.K according to the contract dated 02 October 2006, which contract was not certified before the competent Municipal Court.

4. To support his allegations, the respondent presented the following documentation:
   - decision no. 2687/66, dated 11 January 1978, of Garrison Command in Prishtina, whereby the apartment no. 23, located at "Beogradi' street no. 27 was allocated for permanent use to e A.N;
   - death certificate of A.N (23.11.1985);
   - power of Attorney by R.A given to R.A2 to enable him possession of the apartment located at "Beogradi" street no. 27, which apartment he inherited from his mother N.A, certified before the General Consulate of Montenegro in Dusseldorf of the Republic of Germany;
   - Sale contract for the immovable property, dated 19 June 2009, whereby it is confirmed that R.A sold to M.K the apartment located at "Beogradi" street no. 27, now known as "Fehmi Agani" no. 27 with a surface of 59 m^2 .
5. With decision KPCC/D/R/152/2012, dated 19 April 2012, the claim was rejected. The Commission accepted that the claimant has failed to prove the property right over the apartment. With the allocation decision, dated 11 January 1978, the right to use the claimed property was granted to the respondent's mother N.A. On the other hand, the documents presented by the claimant in support of his request could not have been verified by the KPA Executive Secretariat. In addition, according to a certificate issued by the Municipal Court of Nis, dated 11.01.2007, it is confirmed that the same contract for the apartment evidenced under I.OV.br.463/99 dated 28 January 1999, was concluded between the Military Post in Nis and E.S.O from Prizren for the sale of apartment no. 139 with a surface of 42.81 m^2 located at "Liria Kombëtare"street in Prizren. I.e. this sale contract is not at all related to the disputed property. The decision was served to the claimant who filed an appeal.
6. The appeal was filed on 15 October 2012, challenging the KPCC decision on grounds that it was based on erroneous and incomplete determination of factual situation and misapplication of substantive law, proposing to have the possession right established and restitution of user right over his apartment. The claimant stated that the apartment was acquired in a legal manner according to decision no. 3-1195/1 dated 23 December 1998 issued by the Military Post of Nis no.7357 and that the KPCC finding that this decision could not have been verified positively is unfounded. He admits the fact that the apartment was previously allocated for use to the mother of the respondent R.A, but the same apartment was taken away from her since she did not use it. This is due to the fact that he had the right to use the claimed property and he therefore asked the Supreme Court to

confirm such right. He lost the apartment due to circumstances which are directly linked or result of the armed conflict that occurred between 27 February 1998 and 20 June 1999.

7. The decision was also served to R.A and M.K. They did not appeal and did not respond to the appeal of M.M.

Legal dispute:

The appellant asserts that the occupancy right was granted to him in 1998 and he lost it in 1999, therefore he is entitled to be repossessed.

Legal reasoning:

8. The appeal is admissible. It has been filed in a timely manner. According to Section 12.1 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079, 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".
9. However, the claim does not fall within the jurisdiction of the KPCC as the use right, claimed by the appellant/claimant is related to a property which was state owned, not private.
10. According to section 2.1 of UNMIK Administrative direction 2007/5, implementing UNMIK/REG/2006/50 on the resolution of claims relating to private immovable property, including agricultural land and commercial property as amended by Law No. 03/L-079, hereinafter the Administrative direction (AD) "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 apartment in question has never been private immovable property and in this respect is outside the scope of application of the proceedings in front of the KPA.**
11. It is not disputed that the apartment was owned by the Yugoslav People's Army, i.e. it was state owned and it was given for usage to the mother of the respondent in 1978. There is no argument that she used it until her death. There is no argument that the apartment remained in usage of the members of her family after that. However this is irrelevant as there is no data that after the death of the primary user N.A and until the events of 1998/1999 anyone

purchased the apartment using the rights under the relevant legislation for the purchase of state or socially owned apartments at the time.

12. After 1990 was in force the Law on Securing Housing for the Yugoslav People's Army, OG, SFRY No 84/90. The aim of the law was to provide regulations how to be satisfied the housing needs of the members of the Yugoslav People's Army. This Law seized to be in force in 1993. It was revoked with the Law on the Property of the Federal Republic of Yugoslavia OG, FRY 41/1993. The latter regulated the acquisition, utilization and disposal of property that belonged to the Federal republic, including the property used by federal agencies, such as those in charge of defence. Art. 18 of the said Law prescribed that it is the Federal Minister of defence in concurrence with the Federal Government who decides on the acquisition and disposal of residential buildings, apartments, garages and commercial premises in residential buildings used by the federal agencies in charge of Defence and the Jugoslav Army.
13. There is no data in the file that anyone – the inheritors of the deceased primary user N.A or the claimant M.M purchased the property before the war in order to claim ownership. Both claims only right to use.
14. However establishment and defence of use rights over socially and/or state owned properties is not within the jurisdiction of the KPCC, respectfully the KPA Appeals Panel. Irrelevant but worth mentioning is the fact that the claimant has not even been granted use rights, as the document he presented to the KPCC were not positively verified.
15. In the current case there is also data that the respondent has initiated a procedure to purchase the property. This is in favour of the position that the property is still state owned (most probably under the conditions of the Law on Housing (Official Gazette of the Republic of Serbia No. 52/92; 67/92; 33/93; 46/94 and 49/95. The 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 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 to 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 at the relevant Municipal Court, whose decision would replace the non-concluded contract. It is also possible that the procedure may have been initiated under the Law on sale of apartments in which there is tenure right, Law No.04/L-61 from December 2011. It is absolutely unclear how the

respondent R.A2 sold the apartment in 2009 to a third person, M.K - the second respondent, when his right to purchase the apartment was not yet recognised by the local courts. But this issue is not to be commented in the current proceedings).

16. In any way the property when allocated for use both at the time of the armed conflict, was, and still is state property, therefore outside of the jurisdiction of the KPCC and KPA Appeals panel.
17. Although the KPCC as a quasi-judicial body by deciding on the merits of the claim already has accepted its jurisdiction, the Court ex officio assesses whether the case falls within the scope of its jurisdiction (Art. 195.1 (b) of the Law on Contested Procedure).
18. Therefore the decision of the KPCC insofar as it has been appealed had to be annulled and the claim dismissed (Section 11.4 (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079), not rejected/refused, as determined in the first instance decision.

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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge ***Sylejman Nuredini, Judge***

Willem Brouwer, EULEX Judge ***Holger Engelmann, EULEX Registrar***