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-60/2014 **Prishtinë/Priština,**
5 December 2014

In the proceedings of:

M.V.

Serbia

Claimant/Appellant

vs.

M. of I/I

Represented by J. B, the Director of Urbanism, Cadastre and Environmental Protection

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Esma Erterzi, Presiding Judge, Willem Brouwer and Sylejman Nuredini Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/C/217/2013 (case file registered at the KPA under the number KPA38606), dated 21 August 2013, after deliberation held on 5 December 2014, issues the following:

JUDGMENT

1. **The appeal of M. V. against the decision of Kosovo Property Claims Commission KPPC/D/C/217/2013, dated 21 August 2013, is rejected as unfounded.**
2. **The decision of Kosovo Property Claims Commission KPPC/D/C/217/2013, dated 21 August 2013 regarding the claim registered at the KPA under the number KPA38606, is confirmed.**

Procedural and factual background:

1. On 1 June 2007, the Claimant, M. V. in his capacity as the father of N. M.Đ., filed a claim with the Kosovo Property Agency (KPA) seeking confirmation of ownership right, repossession and compensation over a business premises (shop). He claimed that his daughter N. M. Đ.(hereafter to be referred to as: Property Right Holder (PRH)) is the owner of the business premises (hereafter to be referred to as: the claimed property) of 20 m², located on parcel no. 1771/1 of Cadastral Zone Istog/Istok, street "Vuka Karađića", Municipality of Istog/Istok. He further claimed that PRH lawfully acquired the right to use the land as well as property right over the claimed property. He alleges that the loss of possession of the claimed property is due to circumstances related to the armed conflict that occurred in Kosovo in 1998/1999, indicating 14 June 1999 as the date of loss. In addition, he pointed out that the claimed property was totally destroyed in July 1999.
2. To support his claim, the claimant submitted the following documents:

● Construction Permit of Istog/Istok-Department for Economy, Budget and Finances no. 03-350-761 dated 27 August 1996. This document allocated PRH the parcel no. 1771/1 as location for constructing of the claimed property. Besides several technical-constructions standards that should have been applied during construction of claimed property, the document concluded also that the claimed property is a temporary prefabricated construction. Moreover, the permission to do so was for definite term e.g. for the years without the possibility to extend;

● Decision of the Municipal Assembly of Istog/Istok-Department for Economy Budget and Finances no. 03-351-776 dated 28 August 1996. By this decision PRH is given an approval to construct the claimed property on the parcel no.1771/1 registered in Possession List no. 828. In addition to this, the decision indicated that the investor-PRH of the claimed property is obliged to remove it without any compensation and at its own expenses;

● Decision of the Ministry of Health of the Republic of Serbia-Inspector of Sanitary no. 530-361/517 dated 19 December 1997. By this decision it is confirmed that the claimed property was built in compliance with the sanitary-hygienic and health requirements;

- Written statement dated 12 June 2013. In this statement the claimant repeats his allegation that the PRH acquired a right of use of the land as well as property right over the claimed property. He attached the list of the documents which were submitted previously;
- PRH's Birth Certificate no. 200-4020/2003, issued by the Municipality of Pejë/Peć on 6 June 2003; and
- His ID no.CP16405623 issued on 6 December 2005.

3. The claim was registered at the KPA under KPA38606. The claim is contested.
4. On 15 January 2009, the KPA notified the claim. The claim property was found destroyed by Municipality of Istog/Istog. On 13 June 2013, the KPA confirmed that the notification based on ortophoto and GPS coordinates was done properly.
5. On 25 March 2009, the KPA had asked the Municipality of Istog/Istok if there was any legal basis for the demolition of the claimed property, and whether any decision is rendered in regard to this. On 25 March 2009, the Municipality of Istog/Istok-Directorate for Urbanism, Cadastre and Environment Protection on its reply explained that the claimed property had a temporary character and was permitted by the previous administration in the years 1995-1999
6. According to the Certificate for the Immovable Property Rights UL-70806020-00846, issued on 17 March 2009 by the Municipal Cadastral Office of the Municipality of Istog/Istok, parcel no.1771/1 is public/state-owned property.
7. On 21 August 2013, Kosovo Property Claims Commission (KPCC), through its decision KPPC/D/C/217/2013, dismissed the claim due to the lack of jurisdiction. In the reasoning of its decision, the KPCC indicates that according to the evidence the claimant submitted the claim relates to movable property rather than a private immovable property. KPCC emphasizes that its jurisdiction is limited to claims for repossession of a private immovable property, including commercial property.
8. On 13 November 2013, the decision was served on the claimant M. V. and he filed an appeal on 3 December 2013 (hereafter to be referred to as: the appellant). A. A., the Public Lawyer of the MC of Istog/Istok, received the KPCC decision on 31 October 2013 in capacity of appellee but he did not file a response to appeal.

Allegations of the appellant:

9. The appellant alleges that the appealed and unfounded decision is based on an erroneously and incompletely established state factual situation as well as on erroneous application of material law. He states that his claim was wrongly dismissed when the claimed property was considered to be movable rather than immovable; therefore, it resulted with the misapplication of the material law. He points out that the claimed property was permanent construction since the same was built of a solid materials and it was incorporated into the grounds and could not be

removed without changing its essence. He states also that PRH before having left Kosovo concluded a contract on the permanent use of land, but due to the conflict circumstances the same could not be preserved.

The appellant proposes to Supreme Court of Kosovo that his appeal be granted and renders the decision confirming that the PRH has the right to repossess the claimed property.

Legal reasoning:

Admissibility:

10. The appeal has been filed within 30 days as foreseen by law (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). The Supreme Court has jurisdiction over the appeal. The appeal is admissible.

Merits of the appeal

11. Following the review of the case file and appellant's allegations, pursuant to provisions of Article 194 of LCP, the Supreme Court found that the appeal is unfounded.
12. 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 not only proves ownership right or user right of private immovable property, including agricultural and commercial property, but also that he or 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. In view of this provision, it follows that the jurisdiction of the KPA Property Claims Commission and hence of the Supreme Court is limited exclusively to resolution, adjudication and settlement of property right claims for private immovable property, including agricultural and commercial immovable property.
13. It is not disputable that according to the Construction Permit no. 03-350-761 of the Municipality of Istog/Istok, dated 27 August 1996, and Decision no. 03-351-776 of the same institution, dated 28 August 1996, the PRH was given a permit to install a temporary prefabricated construction. The land on which the claimed property was constructed is defined as a public/state land. Moreover, the permit to use it is set for a limited period of time (five-5 years). The appellant alleged that claimed property owned by the PRH was object of a permanent nature and not temporary, but he did not present any evidence to prove this allegation.
14. The Supreme Court considers that the claimed property according to provision of Article 9, paragraph 1 of the Law on Property and Other Real Rights (Law No. 03/L-154) is a moveable object. According to this legal provision, it results that provisional prefabricated buildings, kiosks, and provisional prefabricated structures, such as in the concrete case, are not considered

immovable objects. Moreover, Article 14, para. 1 and Article 26, para. 2 of the Law on Construction Land (Official Gazette of SAPK no. 14/80) provides that when the competent body makes an allocation on provisional use for provisional needs of applicants for placement of temporary prefabricated structures, then that body has the right, in line with the needs of urban planning, to dislocate that structure on personal expenses of the user. Provisional premises cannot even be a matter for recognition of property right and neither can be registered in the property register of cadastral office. In any case the land itself is a state owned property and not a private one and the right granted to the PRH was the right to use for a certain period of time. The loss of possession of that object does not derive from the armed conflict but the nature of the right granted on object as such for a certain period of time which was than demolished. Accordingly, pursuant to paragraph 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the KPCC has no jurisdiction to decide on movable properties.

15. Therefore, the appealed decision neither contains any incorrect and incompletely established state of facts nor any erroneous application of material law, as appellant alleges in his appeal.
16. This judgment has no prejudice to the claimant's right to pursue his rights before the competent courts.
17. In the light of foregoing and pursuant to Section 13.3 (c) of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079, it is decided as in the enacting clause of this decision.

Legal Advice

18. 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.

Esma Erterzi, EULEX Presiding Judge **Sylejman Nuredini, Judge**

Willem Brouwer, EULEX Judge **Urs Nufer, EULEX Registrar**