

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-28/12

Prishtinë/Priština, 7 August 2012

In the proceedings of:

Q.H

Appellant

vs.

S.J

Claimant/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/A/100/2011, dated 23 February 2011 (regarding case file registered at the KPA under the number KPA22979), after deliberation held on 7 August 2012, issues the following

JUDGMENT

1. **The appeal of Q.H is admissible.**

2. The decision of the Kosovo Property Claims Commission KPCC/D/A/100/2011, dated 23 February 2011 (regarding case file registered at the KPA under number KPA22979) is annulled and case returned for reconsideration.

3. The costs of the proceedings shall be decided upon by the KPA.

Procedural and factual background:

On 8 May 2007, S.J (hereinafter “the claimant”), as family member of the property right holder (PRH) R.J filed a claim with the Kosovo Property Agency (KPA) for confirmation of PRH’s property right over parcel 814, described as 6th class field in Vrnica, Vučitrn/Vushtrri. The claimant has “established” that the claim is related to immovable private property that was lost as a result of the armed conflict in 98/99 and the date of loss was 11 June 1999.

To support the claim he presented the following documents: possession list No. 63, issued in 1996 by the Immoveable property cadastre office in Vučitrn/Vushtrri, showing that parcel 814 was registered under the name of M.J; court decision No....., taken in inheritance proceedings by the Municipal Court in Vučitrn/Vushtrri on 29 May 1997 for the inheritance of D.J (R.J was one of the heirs); death certificate of R.J, establishing that M.J was his father.

On 06 March 2008 KPA officers went to the place where the parcel was allegedly situated and put up a sign indicating that the property was subject to a claim and that interested parties should file their response within 30 days. According to the notification report the land was found unoccupied.

2 years later on 22 July 2010 a new notification was made, this time through publication in KPA Notification Gazette no. 5. The publication was displayed in the entrance and the exit of village Sllatinë/Slatina, Vučitrn/Vushtrri Municipality and Cadastre in the same building and also in the Municipal Court ibid and in the KPA regional office in Mitrovicë/Mitrovica. In addition List and gazette was distributed to UNCHR, RO, Ombudsperson FO, DRC, PAK, UNMIK, OSCE. The notification was considered to have been properly and correctly done.

No one responded to the claim.

Based on the presented documents, the database available and the procedural measures taken pursuant to section 11.3 (c) and (d) UNMIK/REG/2006/50, as amended by law No. 03/L-079 the KPCC established that the claimant has proven the PRH’s ownership over the claimed property. In this regard a decision in favour of the claimant was granted – cover decision KPCC/D/A/100/2011, dated 23 February 2011 and decision for identification of the property dated 05 May 2011. The property was considered uncontested.

The decision was served to the claimant on 16. 12. 2011.

Regardless of the fact that the decision was already taken and served to the claimant, on 24 March 2011 a notice of participation was served to the appellant Q.H.

On the same day – 24 March 2011 the respondent, filed a declaration/statement, followed by a formal appeal - on 06 April 2011, claiming that he has bought parcel 814 in 1995 from D.J (it is not clear

whether D.J and R.J are one and the same person), but they did not concluded a written contract. They achieved verbal agreement and the appellant paid 3500 DM.

The decision was served to the claimant on 16. 12. 2011. The appeal was served to him on 12 April 2012. He did not reply to it.

Legal reasoning:

The appeal is admissible. The appellant was not properly notified regarding the proceedings in front of the KPA, therefore his right of appeal has not been precluded.

Section 10.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 provides that any person other than the claimant who is purporting to have a right on the disputed property shall become party of the proceedings provided that such person has informed the Executive Secretariat of his/her intention to participate in the proceedings within 30 days of being notified of the claim. For this intention to be brought to the attention of the KPA the person in question has to be informed of the proceeding that had been initiated. Depending on whether such a person responds the procedure in front of the KPA could develop either as purely uncontested or it could develop into a kind of civil – adversarial proceedings, whenever there is a respondent who would challenge the initial claims – argument after section 10.1 UNMIK/REG/2006/50 as amended by Law No. 03/L-079.

In adversarial proceedings, the parties have to have the opportunity to know and to comment on the claims filed and evidence adducted by the other party. Whenever a person is deprived of this opportunity, his/her right of a fair trial is violated.

The peculiarity of the procedures in front of the KPA is that unlike within the conventional civil cases, the respondent is not known in advance, but the Law presumes that there might be one/ones and therefore demands the adjudicating body “to make reasonable efforts to notify any other person who may have a legal interest in the property”.

As already noted the Law in section 10.1 *ibid* provides that the Secretariat shall “make reasonable efforts to notify any other person who may have legal interest in the property”. It does not provide for a specific description of what “reasonable efforts” mean with the exception that “in appropriate cases, such reasonable efforts may take form of an announcement in an official publication”. The grammatical interpretation of the text as well as the common logic and existing customs in serving documents and information to parties in adversarial proceedings invoke the conclusion that publication is an exception and it would be applicable only in certain cases, only if appropriate – one possibility would be if there are no other means to notify the interested person, for example in some civil proceedings it is acceptable to summon a person with a publication in the State gazette if the person has left his/her known address and did not provide a new one. However this solution would be completely unacceptable in the proceedings in front of the KPA as the respondent is not known in the beginning.

It is up until now accepted by the Court that by rule the notification is done by placing a sign (plate) with information regarding the claim in 3 languages (English, Albanian and Serbian) in/on the property in question and as long as the sign has been placed in/on the correct place/object – parcel, house, etc. the

notification is considered correctly done and possible interested parties duly notified of the procedure in front of the KPA, unless there is a reason to believe otherwise.

In the current case it is not disputed that in 2008 the notification sign was not put in the right place. Afterwards, in 2010 a new notification was made, but through publication.

In addition to that in March 2011 the appellant was notified regarding the proceedings (after the decision was already issued) and he has filed an appeal right after he was informed – on 24 March 2011. (Additional argument that the notification by publication was not considered as proper one – *i.e.* if the latter would suffice why the appellant would be served note of participation on 24 March 2011?)

As the appellant was denied the right to take part in the proceedings in front of the first instance – which is the KPA, the Court, in accordance with art. 197 LCP, to which UNMIK/REG/2006/50 refers in section 12.2, has to annul the decision and return the case for retrial/reconsideration by the KPA (in this regard the Court does not decide on the merits of the appeal).

During the procedure the KPA has to take into account the following:

Section 11.1 *ibid* provides that the provisions of the Law on Administrative Procedures are applicable *mutatis mutandis* to the proceedings of the KPCC, except as otherwise provided in UNMIK Regulation 2006/50 as amended by Law No. 03/L-79 and in UNMIK/DIR/2007/5 implementing the Regulation.

Art. 55 of the Law on Administrative Procedure – Law No.02/L-28 provides that the competent body **shall ask and shall be acquainted with all the facts necessary to reaching the final decision**, employing all the means of verification provided for by the Law. This resolution systematically follows from the principle of objectivity of the administrative process pursuant to art. 7.1 *ibid*: “During an administrative activity, public administrative bodies shall consider and weigh all the factors related to a specific administrative act”. Along the same line, art. 53.1 *ibid* states that during an administrative proceedings, the official running the proceedings shall consider all relevant factors for the matter at hand, and shall duly evaluate every factor and the principle of objectivity as a basic principle.

In addition, considering that most probably the PRH has lived in Kosovo till the end of his life (at least the death certificate states that R.J died on 5 September 1999 in Pristina), it should be further clarified whether the possession of the property was lost as a result of the armed conflict. As defined in UNMIK/REG/2006/50 (section 3.1) one of the conditions for the admissibility of a claim under this specific procedural mechanism, is that the claim is related to circumstances resulting from the armed conflict and not because of the occurrence of facts, non-related or not resulting from the conflict.

Cost of the proceedings:

Regarding the cost of the proceedings in front of the SC, as the appealed decision is annulled and the case is returned for reconsideration, the costs of the proceedings will be decided upon by the first instance (Art. 465.3 of the Law on Contested Procedure).

Legal Advice:

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the Law 03/L-079, this judgment cannot be challenged through ordinary or extraordinary remedies.

Anne Kerber, EULEX Presiding Judge

Sylejman Nuredini, Judge

Elka Filcheva-Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar