

**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-62/12

Prishtinë/Priština, 5 December 2012

In the proceedings of:

SOE “Urata” (in Liquidation)

and

SOE KAN “Ramiz Sadiku”

represented by

Privatisation Agency of Kosovo
Str. Rexhep Mala Nr. 2
Prishtinë/Priština

Appellant

vs.

V. M.
Pariske Komune 59 B 5
11070 Beograd

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/C/111/2011 (case file registered at the KPA under No. KPA13070), dated 13 May 2011, after deliberation held on 5 December 2012, issues the following

JUDGMENT

- 1- The appeal is dismissed as impermissible.
- 2- The appellants have to pay the costs of the proceedings which are determined in the amount of € 60 (€ sixty) in equal shares (€ 30 – thirty – each) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 13 July 2006, V. M. filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized as the owner of a property located in Prishtinë/Priština, parcel No. 7090/12, a shop with a surface of 337 m² together with a yard of 376 m² (in total 7 ar 13 m²). He explained that he had acquired the land by buying it and by signing the claims form stated that he had lost it on 11 June 1999 and that the loss was the result of the circumstances 1998/1999 in Kosovo. To support his claim, the claimant provided the KPA amongst others with the following documents:

- Contract on the sale of immovable property with which V.M. bought from S. P. Parcel No. 7090/12 registered in Possession List No. 9883, located in Istarska Street in Prishtinë/Priština; the contract was certified by a court in Belgrade on 31 August 1993 – 14016/93;
- Decision of the Ministry of Finance of Serbia – 464-08-24492/93 – of 13 April 1993 approving the request of S. P. to sell the litigious property;
- Letter of the Assembly of Prishtinë/Priština, dated 12 November 1993, informing S.P. that he would not need a certificate stating that there would be no other party interested in the purchase of the litigious property;
- Extract from Possession List No. 9983 of the Cadastral Municipality of Prishtinë/Priština, issued by the Municipal Geodesy Office of Prishtinë/Priština on 22 November 1993, showing that parcel No. 7090/12 “Istarska” with a total surface of 7 ar 13 m² was registered in the name of V.M.;
- Contract of 20 September 1996, signed by V. M. and the Deputy Minister of Finance for the Republic of Serbia, with which part of parcel No. 7090/12 (owner: the claimant) with a surface of 1 ar 58 m² was given to the Municipal Assembly of Prishtinë/Priština in exchange for a part of parcels

No. 7090/13 and 7090/14 with a surface of 1 ar 58 m².

The submitted Extract from Possession List No. 9983, purchase contract and exchange contract could be verified.

From the documents submitted to the KPA the Court concludes the following:

With letter of 8 September 1991, the Socially Owned Enterprise “Vočar” agreed on transferring the rights to use the construction land parcel No. 7090/12 to the Enterprise for Industrial Construction “Ramiz Sadiku”. On 23 December 1991, the New Socially Owned Enterprise “Ramiz Sadiku” changed its name into the Enterprise for Industrial Construction “Grading”. With decision No. 351-292/93-01, dated 31 May 1993, the Municipal Assembly of Prishtinë/Priština revoked the right of the socially owned enterprise “Vočar” to use the parcel 7090 [correctly: 7090/12] with a surface of 7.13 acres and gave the same parcel No. 7090/12 with a surface of 7.13 acres to the Enterprise for Industrial Construction “Grading”. With contract of 8 November 1993 the New Socially Owned Enterprise “Ramiz Sadiku” sold the litigious parcel to S. P. The contract was signed by the Enterprise for Industrial Construction “Grading” as legal successor to “Ramiz Sadiku” and S. P., possibly represented by V. M. – the contract was certified by the Municipal Court of Kuršumljia – branch of Podujevë/Podujevo –, Ov.br. 591/93, on 11 November 1993, the text of the certification regarding the representation is not clear. S. P. with the above mentioned contract of 31 August 1993 sold the parcel to the claimant.

In 2007, the KPA notification team went to the place where the claimed parcel allegedly was located and put up a sign indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days. The team found the place occupied by I.M. who refused to take part in the proceedings. Later the Kosovo Property Claims Commission (KPCC) issued a decision granting the claim. Further on in the proceedings this decision had to be invalidated as it was not clear whether the right parcel had been notified.

The KPA repeated the notification by publishing the claim in the KPA Notification Gazette No. 3 of May 2010 and the UNHCR Property Office Bulletin. The Gazette and the list were left with the Municipality of Prishtinë/Priština who accepted to make it available for interested parties. The same publications were published in the Municipality of Prishtinë/Priština, the Cadastral Office of the Municipality of Prishtinë/Priština, the Municipal Court of Prishtinë/Priština and the Prishtinë/Priština Regional Office of the KPA on 30 June 2010. In addition, the List and Gazette were distributed to the Head Office of the UNHCR, the Ombudsperson, the Kosovo Cadastral Agency, the Danish Refugee Council (DCR) and the

UNMIK Office in Graçanicë/Gračanica. The Court checked the KPA Claim Notification Gazette No. 3 in its online version and found the following entry: Municipality: Prishtinë/Priština; Cadastral Zone: Prishtinë/Priština; City Town/Village: Prishtinë/Priština; Street: N/A; Street No.: 59 B; Parcel No.: 7090/12; Claim No.: KPA 13070; Publication Date: 01.07.2012.

Later on in the proceedings, the KPA even found out that the original notification had been correct.

As nobody responded to the claim, the KPCC with its decision KPCC/D/C/111/2011 of 13 May 2011 granted the claim.

The decision was served on the claimant on 9 September 2011, on 15 December 2011 on I.M..

On 17 April 2012, the Privatisation Agency of Kosovo (PAK) which is administrating both SOE Urata and SOE Ramiz Sadiku on behalf of both SOEs filed an appeal against the KPCC's decision. They stated that only on 21 February 2012 the Regional Office of the PAK in Prishtinë/Priština was informed by a third party about the decision of the KPCC. Before this neither PAK nor any of the appellants had been aware of the proceedings. From a letter dated 23 March 2012 to the KPA it is apparent that I.M. informed them of this decision on 22 February 2012. In the appeal, the PAK stated that the case was not related to the armed conflict. Furthermore they stated that the parcel was socially owned as the sales contract of 31 August 1993 was invalid for a number of defferent reasons. In the opinion of the PAK the consent of socially owned enterprise Urata, the legal successor of "Vočar", as well as the decision of the worker's council would have been necessary. Also the transfer should have been achieved through a public auction. The PAK claims that there is no evidence of payment in the books of any of the enterprises. The PAK also stated that in 2000 SOE Urata and Ramiz Sadiku (who on 10 May had reached an agreement about the joint use of the parcel) had filed a lawsuit against the allegedly illegal occupants of the parcel F. K. and S. S. The lawsuit was granted by the Municipal Court of Prishtinë/Priština with judgment 314/2000 dated 15 October 2001. The PAK also conceded that this judgment could not be executed because the parcel number was not correct (the claim relates to parcel No. 2779/2, a parcel of 20 ar and 26 m² with a supermarket which is registered in Possession List No. 2010 of for Vočar). To sustain its statements the PAK submitted various documents to the Court.

V. M. replied to the appeal, insisting on his ownership right to the parcel.

Legal reasoning:

The appeal is impermissible on procedural grounds (Section 13.3 (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079) as the appellants, represented by PAK, have not taken part in the proceedings in the first instance.

Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 stipulates the following: "Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, **a party** may submit [...] an appeal against such decision" (emphasis by the Court). Also Art. 176.1 of the Law 03/L-006 On Contested Procedure provides that the right to file an appeal belongs to the parties at the first instance proceedings.

A party to the claim and the related proceedings is "*any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim and/or any other person who may have a legal interest in the claimed property [...], provided that such person informs the Executive Secretariat of his or her intention to participate in the administrative proceedings within thirty (30) days of being notified of the claim by the Executive Secretariat in accordance with Section 10.1*" (Section 10.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, emphasis added).

The appellants, represented by PAK, however, have not been parties in the first instance proceedings before the KPCC. To explain such a situation, the appellants assert that they, respectively PAK, were not aware of those proceedings. Indeed, Section 10.3 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079 reads: "*A person with a legal interest in the claim who did not receive notification of a claim may be admitted as a party at any point in the proceedings.*"

Therefore, the Supreme Court has to check whether the appellants/PAK were notified of the claim. The way to notify of a claim in this exceptional mass claim process is foreseen by section 10.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079. According to this provision, the Executive Secretariat has to make reasonable efforts to notify any person who may have a legal interest in the property of the claim. The same provision adds that "in appropriate cases, such reasonable efforts may take the form of an announcement in an official publication of the Executive Secretariat".

The Court notes that the original notification in 2007 had been correct. This concludes not only from the statement of the KPA but also from the fact that indeed I.M. occupies the litigious parcel. He was found to occupy the parcel on which the notification was done in 2007, he informed the PAK of the decision of the KPCC regarding the litigious parcel in 2011, so this means that the litigious parcel was notified already in 2007.

The Court, however, needs not to decide whether with this notification the appellants were notified of the proceedings at hand or whether this notification was valid only for the (part of the) proceedings in which the KPCC's decision was invalidated. In this specific case the notification by publication of the claim in the Official Gazette in 2010 and distributing it in 2011 had been the correct way to inform the appellants, represented and administrated by PAK, of the claim to the parcel.

The Court usually deems the notification by publication as insufficient. This is because the occupant, usually a natural person, in general will not take notice of the publication in the Official Gazette of the KPA wherever it might be distributed. The Court in general also finds no obligation of a natural person to take notice of the KPA publications.

The case is different, however, when an independent "public body" like the PAK (Art. 1.1 of the Law 04/L-034 on the Privatisation Agency of Kosovo) is involved. This public body had already been established in 2008 (Law Nr. 03/L-067) by the Assembly of Kosovo in order to administrate the privatization of socially owned enterprises. This administration includes the management of the assets of the enterprises, namely the parcels which have been (or have been allegedly) in the ownership of the enterprises. To the knowledge of the Court the ownership of parcels attributed to socially owned enterprises often is disputed. From there arises the obligation of the PAK to make use of the sources available which can inform about a dispute on such parcels. One main source of such information is the Official Gazette of the KPA in which the claims registered with the KPA are enlisted. The PAK therefore can be expected to make itself acquainted with the publications of the KPA and get informed about any claims concerning land the PAK claims for one of the enterprises it administrates. This obligation also can be easily fulfilled. The PAK has no difficulty to obtain the publications of the KPA, which are not only published in printed but also in electronic form in the internet and have been available not only at the publication date in 2010 but also during the whole proceedings (the Court was able to check the online version even in 2012). The Court also finds no reason why it should be difficult to compare the parcels claimed in proceedings before the KPA/KPCC with those claimed by the PAK. The PAK from the time of its establishment up to the decision of the KPCC had time and opportunity to inform itself of the claims processed by KPA. The Court also notes that the publication of the claim had been sufficient even if the street's name was not mentioned (former Istarska). The parcel is defined by its cadastral number 7090/12, which enables everybody to distinguish this parcel from any other and to know what is the subject of the claim.

As the PAK therefore did not fulfill its obligation to inform itself about the pending claim, the PAK has no excuse as to why it did not take part in the first instance proceedings before the KPA. This omission of PAK

goes to the detriment of the appellants who are represented and administrated by PAK (Art. 6 of Law No. 04/L-034).

Therefore the appellants/PAK also cannot be admitted as parties to the proceedings in the second instance before the KPA Appeals Panel. The appeal has to be dismissed as impermissible (Section 13.3 (b) of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079; see also Art. 195.1 of the Law On Contested Procedure).

As the appeal is impermissible, the Supreme Court is not allowed to decide on either the question of the jurisdiction of the KPCC/KPA Appeals Panel or the legal questions concerning the purchase of the parcel.

Costs:

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 (10.15 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being comprised more than € 100.000: € 30 (half portion of the fee according to 10.1 yet no more than € 30).

These court fees are to be borne by the appellants who lose the case to € 30 each (Art. 459.1 LCP). According to Article 45 Paragraph 1 of the Law on Court Fees, the deadline for fees' payment is 15 days. Article 47 Paragraph 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