

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-218/2014

Prishtinë/Priština
5 October 2016

In the proceedings of:

Z.S.

Koretishte/Koretiste village
Gjilan/Gnjilane

Appellant

vs

N/A

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini Presiding Judge, Anna Bednarek and Beshir Islami, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 dated 27 November 2013 (case files registered at the KPA under the numbers KPA01140 and KPA90309), after the deliberation held on 6 October 2016 issues the following:

JUDGMENT

1. The Appeals filed by Z.S. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 dated 27 November 2013 registered under the numbers GSK-KPA-A-218/2014 and GSK-KPA-A-219/2014 are joined in a single case under the number GSK-KPA-A-218/2014.
2. The Appeals of Z.S. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 dated 27 November 2013 with regard to the Claims registered with the KPA under the numbers KPA01140 and KPA90309 are rejected as unfounded.
3. The Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 dated 27 November 2013 with regard to the Claims registered with the KPA under the numbers KPA90309 and KPA01140 is confirmed.

Procedural and factual background

1. On 10 October 2007, Z.S. (henceforth “the Appellant”) filed two separate Claims with the Kosovo Property Agency (henceforth “the KPA”) in the capacity of the family household member of the property right holder: his now late mother S.S. . The Claims were registered at the KPA under the numbers KPA90309 and KPA01140, and referred respectively to the land parcel No 27/2 with a total surface area of 00.53.05 ha and to the land parcel No 29 with a total surface area of 1.04.28 ha, both situated at the place called “Sejtagin Zabel” in Gjilan/Gnjilane (henceforth “the claimed properties”).
2. None of the Claims contains the statement with regard to whether the loss of possession of the claimed properties was related to the armed conflict that occurred in Kosovo between 1998 and 1999.
3. To support his Claim, the Appellant provided the KPA, among others, with the following documents:
 - The Minutes up.br.463-52/91, drafted on 6 March 1997 by the Commission of the Ministry of Agriculture, Water and Forestry in the Municipal Assembly of Gjilan/Gnjilane regarding the administrative proceedings related to the restitution of the land. It can be read in the Minutes that the Commission unanimously established that the conditions for the restitution of land were met and informed the parties (the representative of S.S. and the Agricultural Industrial Enterprise AIE “Mladost”) that they could enter into an agreement compensating S.S. with another corresponding land, provided that the expropriated land had already been transferred into private property. During the session, the parties entered into an agreement and S.S. was compensated with the claimed properties;
 - The copy of the Birth Certificate of Z.S. No 77/1952 issued on 13 June 2007 under the No 200-6832/2 by the Municipality of Gjilan/Gnjilane;
 - The copy of the Death Certificate of the Appellant’s mother No 02/2005 issued on 24 January 2005 under the No 03-203-205/V-21 by the Municipality of Gjilan/Gnjilane;

- A copy of the claim filed on 10 June 200 to the Special Chamber of the Supreme Court of Kosovo for the establishment of the property right over the immovable property claiming to recognize Z.S. as the owner of the claimed properties and of the other parcels;
 - The copy of the Decision of the Special Chamber of the Supreme Court of Kosovo issued in the case No SCC-05-0215 on 20 February 2006 on the basis of which the case was referred to the Municipal Court in Gjilan/Gnjilane.
4. All of the above mentioned documents were negatively verified. On 21 August 2008 the KPA's Verification Team found ex-officio the Certificate for the Immovable Property Rights No P-70403013-00027 and 00029-0 issued by the Municipal Cadastral Office in Gjilan/Gnjilane. From the Certificates it results that the claimed properties are registered under the names of the different owners, respectively the entire parcel No 27 is registered under the name of Z.B. and the parcel No 29 under the name of I.H.. Moreover, on 1 August 2009 other Certificates were obtained. It appeared that the land parcel No 27 was registered under the names of four persons from S. family, while the land parcel No 29 was registered under the name of the Agricultural Industrial Combine "Agrokultura".
 5. The initial notification of the Claim in the case KPA 01140 was performed on 11 December 2008, but it was deemed as an incorrect one later on. During that notification the land was found to be a non-occupied pasture. The Notification Team of the KPA mentioned in the Notification Report that: "The property was found with the help of the claimant Mr. Z.S. he was present during the notification. The indicated respondent enterprise Mladost has been sold by Kosovo Privatisation Agency so the enterprise as indicated by respondent does not exist anymore".
 6. The initial notification of the Claim in the case KPA 90309 was performed on 15 December 2008, but it was deemed as an incorrect one later on. During that notification the land was found to be a non-occupied pasture. The Notification Team of the KPA mentioned in the Notification Report that: "The property was found with the help of the local people and according to the map".
 7. The new notifications of both Claims were done on 17 June 2010 through the publication at the KPA Notification Gazette No 2 (distributed to the Municipality of Gjilan/Gnjilane, the Cadastral Office in Gjilan/Gnjilane, the Municipal Court in Gjilan/Gnjilane, and the KPA Gjilan/Gnjilane Regional office). In addition the Gazette was distributed to the UNHCR Regional Office and the Ombudsperson filed office.
 8. The case was considered as uncontested by the KPA due to the fact that no interested party approached the Agency.
 9. With the appealed Decision KPCC/D/A/220/2013 dated 27 November 2013 the KPCC dismissed the Claims with the numbers KPA01140 and KPA90309 with the reasoning that the Appellant failed to show that the Claims involve circumstances directly related to or resulting from the 1998-1999 armed conflict. As a consequence, according to the Commission, the Claims fell outside its mandate.
 10. On 9 June 2014, the KPCC Decision was delivered to the Appellant.
 11. On 24 June 2014 the Appellant filed the Appeals.

Allegations of the Appellant

12. The Appellant challenges the KPCC's Decisions as, according to him, it rests upon an erroneous and incomplete determination of the facts and as such deprived him "of the constitutional and lawful right to use and register in the cadastral records in line with the Agreement No 463-52/91. He stated also, that the property was his "ownership until June 1999, invoking a valid agreement". He maintained that "it was being cultivated the arable surface area in 1997, 1998 and until 1999". He contested all the allegations that war activities in the area had not affected the loss of property and registration of it in the cadastral records. The appellant moreover requested "why himself as citizen of Kosovo cannot achieve his administrative rights to register a valid agreement ". He clarified also that "because of the situation that emerged in Kosovo the agreement was left unregistered in the cadastral records in Gjilan/Gnjilane. (...) The property in the Agreement, the now late S.S. alienated after having signing it to Albanians from Gjilan/Gnjilane. The very same are now asking (the Appellant) to transfer the property rights on their behalf, they are blackmailing (the Appellant) and threat". He added that the documents which can help him to prove the ownership right are destroyed due to the war.

Legal reasoning

Joining of the Appeals

13. According to Section 13.4 of Law No. 03/L-079, the Supreme Court can decide upon joined or consolidated appeals, when such joinder or consolidation of claims has been decided by the Commission in accordance with Section 11.3 (a) of the law. That Section allows the Commission to take into consideration the joining or consolidating of claims in order to review and render decisions when there are common legal and evidentiary issues.
14. The provisions of the Law on Contested Procedure that are applicable in the proceeding before the KPA Appeals Panel of the Supreme Court pursuant to Section 12.2 of Law No 03/L-079, as well as pursuant to the provision of Article 408.1 as read in conjunction with Article 193 of the Law No 03/L006 on Contested Procedure, provide for the possibility of joining of all claims through a ruling if that would ensure court effectiveness and efficiency of the case.
15. In the text of Appeals filed by the Appellant, the Supreme Court observes that apart from a different case number for which the respective Appeal is filed, the facts, the legal grounds and the evidentiary issues are exactly the same in both the cases. Only the cadastral parcels, subject of the property right which is alleged in each claim, is different. The Appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the Claims is the same one.
16. Thus the Appeals registered under the numbers GSK-KPA-A-218/14 and GSK-KPA-A-219/14 are joined in a single case under the number GSK-KPA-A-218/14.

Merits

17. The Supreme Court of Kosovo found that the appealed KPCC's Decision was issued in full and fair determination of the factual situation and on such ground both the material and the procedural law was properly applied. Therefore, the Appeal is rejected as unfounded.

18. The KPCC concluded that the Appellant failed to show that the Claims involve circumstances directly related to or resulting from the 1998-1999 armed conflict. The Appellant challenged the opinion of the KPCC. However, it is important to underline that the Appellant in his Claims indeed did not indicate when the loss of possession took place and that it was related to the armed conflict. In the reasoning of the Claims Z.S. indicated only that since the situation in Kosovo occurred he kept trying to register the claimed properties under his name, but he was not successful. The Appeal instead contains the statement of the Appellant that the Decision of the KPCC violated his constitutional right to use and register the property under his name. The documents he submitted together with the Claims referred to the question of the registration of the property rights within the cadastral records. Those circumstances lead to a conclusion that in fact the content of the request of the Claims consisted of the motion to enable the Appellant to register the claimed properties under his name. The KPCC however, and the KPA Appeals Panel neither, is competent to examine the question of the execution of the Agreement signed by the parties during the administrative procedure long before the armed conflict of 1998/1999. Such a request falls outside the jurisdiction of the KPCC, even though, as the Appellant indicated, the conflict could have an impact on the difficulties in the registration of the property rights within the cadastral records.
19. In the opinion of the Supreme Court the Appellant did not prove that indeed he was in possession of the claimed properties before the conflict and that the loss of possession of them took place between 1998 and 1999 due to or was related to the armed conflict. The documents submitted did not confirm that circumstance at all. It is not sufficient, for the Claim to be granted, to deny the content of the Decision of the KPCC. Those elements have to be proven without any doubt. None of the documents confirms that the Appellant or his late mother possessed the claimed properties before the armed conflict.
20. Moreover, the Appellant himself indicates in the Appeal that: “the property in the Agreement, the now late S.S. alienated after having signing it to Albanians from Gjilan/Gnjilane. The very same are now asking (the Appellant) to transfer the property rights on their behalf, they are blackmailing (the Appellant) and threat”. This statement clearly clarifies that the claimed properties were not in the possession neither of the late mother of the Appellant, nor in his already after 1991, long before the armed conflict started.
21. Therefore, the Decision of the KPCC establishing that the loss of possession due to the conflict was not proven and the Claims stand to be dismissed.
22. It is worth mentioning here that the Appellant submitted to the case file the documents confirming the circumstance that already in the year 2005 the claim for the confirmation of the property rights and the registration of the property under the name of the Appellant’s mother was filed to the Municipal Court of Gjilan/Gnjilane. Section 18 of the UNMIK Regulation 2006/50 as amended by Law 03/L-079 however foresees that “*The provisions of the present regulation shall apply to any claim under section 3.1 of the present Regulation which has been submitted to a court of competent jurisdiction, provided that judicial proceedings in respect of such claim have not commenced prior to the date of entry into force of the present Regulation*”. The fact that the claim with regard to the claimed property was filed to the Municipal Court before the UNMIK Regulation 2006/50 entered into force excludes the jurisdiction of the KPCC. Hence the Claims of the Appellant have to be dismissed also due to that fact.
23. For all the above mentioned reasons, pursuant to Section 13.3.(c) of UNMIK Regulation 2006/50 and Article 195, paragraph 1(d) of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment.

Legal advice

24. Pursuant to Article 13.6 of the Law 03/L-079 this Judgment is final and cannot be challenged through ordinary or extraordinary legal remedies.

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte ,EULEX Registrar