

**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-198/2014

**Prishtinë/Priština,
25 January 2017**

In the proceedings of:

M. Đ.

Appellant

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 (the case files registered at the KPA under the numbers KPA17501 and KPA17502), after the deliberation held on 25 January 2017 issues the following:

JUDGMENT

1. The Appeals filed by M. Đ. 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-198/2014 and GSK-KPA-A-199/2014 are joined in a single case under the number GSK-KPA-A-198/2014.
2. The Appeals of M.Đ. 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 KPA17501 and KPA17502 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 KPA17501 and KPA17502 is confirmed.

Procedural and factual background:

1. On 16 October 2006, M. Đ. (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 father P. Đ. The Claims were registered at the KPA under the numbers KPA17501 and KPA17502, and referred to the properties, respectively the land parcels Nos 2243, 2244, 2245 and 2246 with the total surface area of 05.92.56 ha and the land parcel No 2247 with a total surface area of 00.20.65 ha, both located at the place called “Restavica Šuma” in Junik, Municipality of Deçan/Deçane (henceforth “the claimed property”). According to the Appellant, he does not know who is currently using the claimed property.
2. In the Claims form the Appellant stated that the loss of possession over the claimed property that took place on 12 June 1999 was related to the armed conflict which occurred in Kosovo between 1998 and 1999.
3. To support his Claims, the Appellant provided the KPA, among others, with the following documents:
 - The copy of the Appellant’s Birth Certificate No 03-9/90, issued on 30 January 1961 by the Municipality of Gjakovë/Đakovica;
 - The copy of the Appellant’s ID card No CG017263, issued on 30 April 1982 by the Socialist Federative Republic of Yugoslavia – Socialist Republic of Montenegro;
 - The copy of Plan, issued on 26 September 1995 by the Cadastral Municipality of Junik/Junik, Municipality of Deçan/Deçane;
 - The copy of the Background Information No 952-2/695, issued on 26 September 1995 by the Directorate of Cadastre of the Municipality of Deçan/Deçane stating that in 1952 the claimed property was moved into the Possession List No 574 under the name of State Farm “Ereniku”, Đjakovica and that such a factual situation exists until now, as the mentioned parcels remain registered under the name of the Agricultural Combine “Ereniku”;
 - The Copy of the Possession List (PL) No 310, issued on 26 September 1995 by the Cadastral Municipality of Junik, Municipality of Deçan/Deçane;

- The copy of the Appellant's Report, dated 27 June 2006, in which he stated: "... I was acting as the personal escort in 1952, when the land was transferred to State Farm "Ereniku" in Djakovica.";
 - The copy of the Certificate No 462-47731/2006-02, issued on 18 September 2006 by the Property Directorate of the Republic of Serbia;
 - The Appellant's written Statement, dated 23 January 2008, legalised by the Municipal Court of Nikšić, Republic of Montenegro with No 7263, in which he stated: "In 1952 I was employed as police officer, when my father's land was transferred to State Farm "Ereniku" from Djakovica. At that time I lived in Serbia. (...) In 1957 I have moved to Niksic, Montenegro. My mother continued to live in Rastavica until 1966, after which she also moved to Niksic. Until today, as I was told (...) no one is living on my land";
 - The copy of the Appellant's Note, dated 4 February 2010, in which he clarifies that "In 1952, I was employed as police officer, when my father's land was transferred to State farm "Ereniku" from Djakovica. At that time I lived in Serbia (...);"
 - The copy of the Appellant's statement, received by the KPA on 22 November 2010. The Appellant repeated that the claimed property was transferred to State Farm "Erenik" in Gjakovë/Đakovica. He also added that his neighbours, S. family, have asked him to sell the land, but he refused to sell it to them;
 - The Copy of Housing and Property Claims Commission (HPCC)'s Declaratory Order, by which the claim of the Appellant (Claimant before the HPCC) with regard to a destroyed house located in the parcel No 2246, was granted.
4. The initial notification of the Claims was performed on 9 October 2010. During that notification the claimed property was found to be a non-occupied forest (KPA17501) and grassland (KPA17502).
 5. Subsequently, the notifications of both Claims were done again on 17 June 2010 through the publication at the KPA Notification Gazette No 2 (distributed to the Municipality of Junik, the Municipal Court, and the KPA Pejë/Peć Reginal office). In addition the Gazette was delivered to the DRC, OSCE, UNHCR and the Ombudsperson.
 6. According to the KPA's Consolidated Verification Reports of 9 September 2011 the Possession List No 310 of 20 September 2007 was negatively verified. From the Verification Reports dated 1 and 3 August 2007, the Cadastral Plan (CP) and PL were negatively verified. On 3 August 2007 and 13 January 2010, the KPA's Verification Team *ex-officio* found the Partial Possession Lists (not signed) Nos 37, 923, 736, 665, issued on 20 April 2007 by the Department for Cadastre Geodesy and Property of the Municipality of Deçan/Deçane (United Nations Interim Administration Mission in Kosovo). From these documents it results that the claimed property is being registered under the names of the different owners: respectively the entire parcels Nos 2243 and 2247 under the name of M. Sh., the land parcel No 2244 under the name of F. S., the land parcel No 2245 under the name of C. A., and the parcel No 2247 under the name of M. Sh..
 7. The KPA Verification Report dated 1 June 2007, shows that an official from the Cadastral Department of Municipality in Junik, confirms that the Possession List No 310, submitted by the Appellant was issued on 1952. The Report highlights also the fact that the (claimed property) parcels were recorded in Junik until 1983, when by aéro-recording of 1983 which came into force in 1990 were transferred in Babaloq/Babaloć. Further, the same report explains that the old parcels (Nos 2243, 2244, 2245, 2246 and 2247) of Possession List No 310 have received new numbers, respectively the (old) parcel No 2243 became (new) parcel number 728, the (old) parcel No 2244 became (three-new) parcels Nos 732, 736 and the part of 737, and that the (old) parcels Nos 2245, 2246 and 2247 became (new) parcel No 737. In regard to this the KPA Verification Unit has been able to obtain *ex-officio* the Unit Base Data Nos P-70505002-00728-0, P-70505002-

00732-0, P-70505002-00736-0 and P-70505002-00737-0, issued on 13 January 2010 by the Municipal Cadastral Office of Baballoq/Babaloc, Municipality of Deçan/Deçane.

8. The cases were considered as uncontested by the KPA due to the fact that no interested party approached the Agency.
9. With the appealed Decision No KPCC/D/A/220/2013 dated 27 November 2013, the Kosovo Property Claims Commission (henceforth “the KPCC” or “Commission”) dismissed the Claims with the numbers KPA17501 and KPA17502, 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 12 June 2014, the KPCC’s Decision was delivered to the Appellant.
11. On 30 June 2014 the Appellant filed the Appeals.

Allegations of the Appellant

12. The Appellant challenges the KPCC’s Decision claiming that it rests upon an erroneous determination of the facts and erroneous application of the substantive law. The Appellant requests the Supreme Court to uphold his Appeals and to recognize his ownership right over the claimed property in order to be registered as an owner. He moreover asks to reinstate the land to him. The Appellant explains that the owner of the claimed property was his father P. Đ. who died on 1937, leaving him and his mother J. on the property. The Appellant adds that he and his mother had lived and as the owners used the claimed property until 1952, when the property was transferred to “State-owned Enterprise Erenik- Gjakovë/Đakovica”, in order to create an Agricultural Combine. He notes that at the time of transfer of the claimed property it was not any doubt that that the owners will be compensated and that their property will not be reinstated. He claims that no one lived on his property and the same was not occupied until 2012. Finally, he added that he is unaware of what happened with property after this year.

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 cases. Only the cadastral parcels, subject of the property right which are mentioned in each Claim, are different. The Appeals are based on the

same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the Decisions is the same one.

16. Thus the Appeals registered under the numbers GSK-KPA-A-198/14 and GSK-KPA-A-199/14 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 Appeals are 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 this opinion of the KPCC. However, it is important to underline that the Appellant in his statement (received by the KPA on 22 November 2015) submitted to the KPA indicated that he and his mother in 1957 left for Nikšić in Montenegro. Further, the Appellant stated almost the same when he was contacted by the KPA (*see page 103 of the KPA case file KPA17501, and page 102 of the KPA the case file KPA17502*). In fact the KPA asked the Appellant when did he lose the possession, why, and who was using the claimed property - he replied that: “[...*the property was confiscated by the State in 1952...*]”, and that he: “[...*with his family, then moved to Montenegro...*]”. Moreover, the Appellant confirmed that: “[...*they have not initiated a procedure for returning the property.... from 50's he or his family never visited Kosovo again, and that property is in use by SOE “Ereniku” since then*]”
19. In the opinion of the Supreme Court the Appellant did not prove that indeed he was in possession of the claimed property before the conflict and that the loss of possession took place between 1998 and 1999 due to or was related to the armed conflict. The documents submitted by the Appellant did not confirm that circumstance at all. It is not sufficient for the Claim(s) 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 mother possessed the claimed property right before the armed conflict.
20. Moreover, the fact that the Appellant (and his mother) have not lost possession over the claimed property due to the circumstances directly related to or resulting from the 1998-1999 armed conflict, is also supported with his (repeated) statements made in the Appeal when he noted that: (a) “*During 1941, the Claimant and his mother were banished from Kosovo and they came to Nikšić ...*”, and (b) “*The Claimant and his mother lived and as the owners used the property, subject to filed claim, until 1952*”. In none of the submission of the Appellant, neither before the KPCC, nor before the Appeals Panel, he has ever claimed that the loss of possession was related to the armed conflict. The scope of the examination of the claims by the KPCC, was however limited to those cases where the loss of possession of the property took place in the period between 1998 and 1999. Considering, that in the case at hand the circumstance of the loss of possession took place in 1952 was uncontested, made the case fall outside the jurisdiction of the KPA and the KPA Appeals Panel of the Supreme Court.
21. Therefore, the Decision of the KPCC establishing that the loss of possession due to the conflict was not proven was a correct one and had to result in dismissing the Claims as inadmissible.
22. 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, the Appeals are unfounded. Thus it is decided as in the enacting clause of this Judgment.

Legal advice

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.

Syljman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Sandra Sandra , EULEX Registrar