SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I PËR APELIT TË AKP-së
ŽALBENO VEĆE KAI

GSK-KPA-A-066/12 **Prishtinë/Priština 3 October 2012**

In the proceedings of:

F. Gj., E. R.,

S. D 1., H. M.

M. V., S. D 2.,

R. B., E. V.,

N. A., Z. I.,

Respondents/Appellants

Represented by

Lawyer
M. N.

vs.

D. S.

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/R/137/2011 (case file registered at the KPA under the number KPA18191), dated 07 December 2011 and the appeals against the decision of the Kosovo Property Claims Commission KPCC/D/A/134/2011 (case file registered at the KPA under the numbers KPA18192, KPA18193, KPA18194, 18195 and 18196), dated 07 December 2011, after deliberation held on 3 October 2012, issues the following

JUDGMENT

1- **The appeal of F. Gj., E. R., S. D 1., H. M., M. V., S. D 2., R. B, E. V., N. A., Z. I., represented by lawyer M. N. is rejected as unfounded.**

2- **The decisions of the Kosovo Property Claims Commission KPCC/D/R/137/2011 (regarding case file registered at the KPA under the number KPA18191), dated 07 December 2011 and KPCC/D/A/134/2011 (regarding case file registered at the KPA under the numbers KPA18192, KPA18193, KPA18194, 18195 and 18196), dated 07 December 2011 are confirmed.**

3- **Costs of the proceedings determined in the amount of € 530 (five hundred and thirty) are to be borne by the appellants (53 € for each of them) and have to be paid to the Kosovo Budget within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

1. On 13 November 2006, D. S. filed six claims with the Kosovo Property Agency (KPA), claiming to be recognized as the owner of several parcels of land and a house acquired by inheritance and seeking repossession. He asserted that he had inherited them from his

late father and that they were lost on 19 June 1999 as a result of the armed conflict in Kosovo in 1998/99.

1. The data of the claimed parcels, all registered in Possession List No. 5 of the Immovable Property Cadastral Directorate in Pristina, dated 19 April 1968, are the following:

Number of KPA case file, relevant to the claimed property	Data of the parcels
KPA18191	Parcel No. 476, located in the municipality of Pristinë/Priština, cadastral zone of Nente Jugoviq/Devet Jugovica, Bora (Bare) Stamenković, with surface of 22*a* 11 *sq. m*
KPA18192	Parcels No. 191 located in the municipality of Pristinë/Priština, cadastral zone of Nente Jugoviq/Devet Jugovica, Bora (Bare) Stamenković, with surface of 38*a* 15 *sq. m* **there is a discrepancy in the text of the original possession list in Serbian and Albanian and the English translation, the decision followed the data from the original document;*
KPA18193	Parcel No. 192 located in the municipality of Pristinë/Priština, cadastral zone of Nente Jugoviq/Devet Jugovica, Bora (Bare) Stamenković, with surface of 3*a* 70 *sq. m* **ibid*;
KPA18194	Parcel No. 477 located in the municipality of Pristinë/Priština, cadastral zone of Nente Jugoviq/Devet Jugovica, Bora (Bare) Stamenković, with surface of 19*a* 10 *sq. m* **ibid*;
KPA18195	Parcel No. 478 located in the municipality of Pristinë/Priština, cadastral zone of Nente Jugoviq/Devet Jugovica, Bora (Bare) Stamenković, with surface of 14*a* 68 *sq. m* **ibid*;
KPA18196	Parcel No. 479 located in the municipality of Pristinë/Priština, cadastral zone of Nente Jugoviq/Devet Jugovica, Bora (Bare) Stamenković, with surface of 9*a* 35 *sq. m* **ibid*;

2. To support his assertions the claimant presented Possession List No. 5 issued by the Immovable Property Cadastral Directorate in Pristina, dated 19 April 1968; decision of the Municipal Court of Pristina, taken in an inheritance procedure no. 96/2000, dated 9 November 2000; according

to the inheritance decision the inheritance of B. S., who died on 01 April 1992 included all the parcels, objects of the current dispute. The decision also recognizes the claimant D. S. as the only heir.

3. The Executive Secretariat of the Commission verified positively the documents presented by the claimant and also *ex officio* located the certificate of immovable property under the name of the claimant, dated 4/5 May 2010 in the Department of Cadaster in Pristina.

4. The properties were notified by the Secretariat as following: Parcel 476 on 21 August 2007 (KPA18191); Parcel 191 on 14 August 2007 (KPA18192); Parcel 192 on 14 August 2007 (KPA19193); Parcel 477 on 21 August 2007 (KPA19194); Parcel 478 on 21 August 2007 (KPA19195) and Parcel 479 on 14 August 2007.

The notification team went to the places where the parcels were allegedly situated and put up signs indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days. 10 different person identified themselves as having legal interest in the procedure as they were purporting to have legal rights towards the different properties. Therefore they contested the claim.

5. Z.I., E. V., M. V., N. A., F. Gj., H. M., E. R., S. D., R 1. B. and S. D. 2. claimed rights over different parcels or part of the parcels which are object of the claim of D.S.. All of them counterclaimed to have acquired their rights through written contracts concluded with I. Sh. and one of them with I. K., who for his part has acquired the property from the same I. Sh.

6. The agreements, that allegedly legitimize the respondents as owners are the following: Z. I. – purchase contract, ref No. 3294/2002, dated 21 June; E. V. – purchase contract, dated 15 September 2001, certified at the Municipal Court of Pristina under No. 5394/2001 on 08 October 2001; M. V. with a purchase contract, dated 31 October 2002, certified at the Municipal Court of Pristina under No. 5994/2002 on 01 November 2002; F.Gj.- purchase contract, dated 17 October 2001, certified at the Municipal Court of Pristina under No. 5589/2001 on the same date 17 October 2001; H. M., - purchase contract, dated 20 December 2001, certified at the Municipal Court of Pristina under No. 6853/2001 on 26 December 2001; E. R. – purchase contract, dated 03 March 2003, certified at the Municipal Court of Pristina under No. 1032/2003 on 03 March 2003; S.D. – purchase contract, dated 19 June 2002, certified at the Municipal Court of Pristina under No. 3293/2002 on 21 June 2002; R. B. - purchase contract (the date of the contract is illegible), certified at the Municipal Court of Pristina under No. 4780/2002 on 27 August 2002; S. D. with a purchase

contract, dated 16 May 2002, certified in the Municipal Court in Pristina under No. 2543/2002 on 17 May 2002.

In all these agreements, the seller was always the same person – I. Sh., who had declared to have been the property owner.

N.A. for his part has bought his parcel from I. K., who has purchased it again from I. Sh. The peculiarity in this case is that the contract between I. K. as a seller and N. A. as a byer preceded in time the contract between I. Sh. as a seller and I. K. as a buyer. The first one is from 10 September 2001 and the second from 5 October 2001. The first one was not certified and the second was certified in the Municipal Court of Pristina under No. 5393/2001 on 08 October 2001. This means that I. K. has sold the property to N.A. before he had bought it from I. Sh.

After the contracts all respondents were registered in different possession lists, issued by the Cadastral Municipality of Nente Jugoviq/Devet Jugovica.

None of the respondents disputes that the properties in question once (before the armed conflict) belonged to the claimant.

7. After the conclusion of the above mentioned agreements there has been a criminal investigation against I. Sh., M. I. and Z. B. and the Municipal Court of Pristina, with a verdict dated 27 April 2009 accepted that those three had committed the criminal offence of fraud, committed in perpetration and continuation under article 261, paragraph 2, read in relation to art. 23 of the Provisional Criminal Code of Kosovo (2003). The Municipal Court has also annulled authorization no. 1247 dated 23 April 2001, certified by the Basic Court of Biella Polje (this document was not presented in the current civil proceedings, but it is not disputed that this was a power of attorney allegedly given from D. S. to Z.B. to sell the properties of D. S. and on the basis of which Z.B. sold the properties to I. Sh., who on his turn sold them to the respondents) and several contracts on sale of immovable property, among which some of the contracts, listed above – such as No. 5994/2002 No., 6853/2001, No. 1032/2003, 3294/2002, No. 4780/2002 were declared null and void. The rest - No. 5394/2001, No. 5589/2001, No. 3293/2002, No. 2543/2002 and No. 5393/2001 were not explicitly declared null and void.

8. Within the criminal proceedings it has been established that I. Sh. in cooperation with the other two defendants with the intent to obtain a material benefit for himself, deceived a number of persons (now appellants in the current appellate civil proceedings and respondents to the claim in the proceedings in front of the KPA) by means of a false representation (namely by presenting false documents that he, I. Sh., was the owner of the disputed properties) and thereby inducing them (the same appellant/respondents to claim) to do acts (namely – to enter into contracts for transfer of

property, which did not belonged to the seller – I. Sh.) to the detriment of the property of another person (namely the appellee, claimant D. S.). During the criminal proceedings it was also established that sometimes in 2004 D. S. came back in Kosovo and warned one of the respondents not to work and use the property as he (D.) is going to claim it back, because he has never neither sold it nor given authorization to anyone to sell it on his behalf. Soon after that all respondents were aware that the claimant is the original owner and that he is going to ask to be repossessed (as explained by the respondent S. D. during the criminal proceedings. He has bought a property from I. Sh. in 2002 and explained that D. S. came 2 years later and told him that this is his land and that they should not cultivate it or raise buildings and afterwards all families who bought properties from I. Sh. were already aware of the pretentions of S.).

The facts that engaged the criminal responsibility of I. Sh. – regarding the fraud which he committed were established with *res judicata* by the criminal court.

It is also undisputable that at the time of the conclusion of the contracts I. Sh. was not the owner of the disputed properties. The appellants themselves do not argue otherwise.

The verdict of the Municipal court was appealed in front of the District court of Pristina and was confirmed with a decision, taken in appellate proceedings AP No. 393/2009, dated 13 November 2009.

9. On the basis of the presented evidence the KPCC with decisions KPCC/D/R/137/2011 (regarding case file registered at the KPA under the number KPA18191), dated 07 December 2011 and KPCC/D/A/134/2011 (regarding case file registered at the KPA under the numbers KPA18192, KPA18193, KPA18194, 18195 and 18196), dated 07 December 2011, accepted the claims of D. S.as grounded. The Commission has accepted that the right of the claimant is positively established on the basis of the presented possession list and inheritance decision (as mentioned in part 3) and the court judgment, verdict, dated 27 April 2009, taken by the Municipal Court in the above mentioned criminal proceedings. Regarding the counterclaims of the respondents the Commission has stated that the contracts presented by them cannot represent valid defense against the claimant.

10. The decisions were served to the parties and within 30 days after the service all respondents appealed them in front of the Supreme Court through an authorized lawyer – Mr. M. N. The appeal explicitly refers only to decision KPCC/D/A/134/2011 (which relate only to the proceedings in front of the KPCC – KPA 18192,18193,18194, 18195 and 18196 and not to KPA 18191), but the Court considers that this is technical error in the preparation of the appeal. It is obvious considering the fact that the appeal relates erroneously KPA 18191 with KPCC/D/A/134/2011, when KPA

18191 is subject of KPCC/D/R/137/2011. Therefore the Court accepts that the appeal is against the two mentioned decisions in the relevant parts - KPCC/D/A/134/2011 in the parts related to KPA18192, KPA18193, KPA18194, KPA18195 and KPA18196, and KPCC/D/R/137/2011 in the part related to KPA18191.

11. Lawyer N. asserts that in order for D. S. to realize his rights he has to address the Municipal Court in Pristina within 30 days of the receipt of this decision (it is not clear to which decision he refers. Probably to the above mentioned decisions of the Commission). The appeal invokes that the decision of the KPCC was taken in violation of the material law. The appellants are the owners of the disputed properties, as they have been registered in the possession lists for these properties. They have all acquired the properties pursuant to immovable property sales contracts, verified and legalized by the Municipal Court in Pristina and then based on these contracts they completed the administrative procedures at the Directorate of Cadaster and Geodesy in Pristina. They have purchased the properties from I. Sh. because they were registered under his name. I. Sh. had become the property owner pursuant to immovable property sales contract made with Z. B. (who is not respondent in these proceedings, like Mr. N. is stating). All the appellants/respondents to the claim built houses in the purchased properties and invested a lot in their construction. He admits that I.Sh. and two other persons – one of them Z. B. conducted fraud, damaging D. S. He also admits that the Municipal Court annulled the forged authorization and the contracts for the transfer of the properties (actually only some of them were explicitly mentioned or most probably there is some discrepancy between the numbers on the documents presented in the current proceedings and the documents as they are described in the verdict. However this is irrelevant as the facts of the fraud are established with *res judicata* and for the current property dispute it is irrelevant whether the documents were explicitly mentioned as annulled). Further on the legal representative, Mr. N., elaborates that despite the criminal proceedings, the appellants in good faith took the contracted properties in possession and use since they paid the contacted price and verified and legalized the immovable property sales contracts. In the verdict, regarding the criminal responsibility of the defendant, the now appellants (damaged persons in the criminal case) were instructed, in order to realize their property claim to initiate a civil dispute. In the meantime D. S. requested that KPA ensures that properties be vacated. The KPCC took a decision KPCC/D/A/134/2011, dated 07 December 2011 ordering the appellants to return the property to the claimant- now appellee. The legal representative finds this decision unlawful since the KPA has no right to decide on property issues but this is the exclusive right of the Municipal Court. The appellants took the lands in good faith. They were listed in the possession lists, which were legitimate and issued by competent authorities, contracts were verified by the Municipal court in Pristina. The appellants built houses,

whose value is much higher than the land itself. The legal representative asserts that it is provided by the applicable laws "that in cases when the premises are of greater value than the property then a solution must be found between the owners of premises and the ones claiming to be owners of those properties and this must be solved by court proceedings and not by administrative proceedings…". Probably the legal representative refers to the Law on Basic Property Relations (Official Gazette SFRY, No. 6/80 (articles 24-26)). In addition on 20 April 2012 the appellants have filed a claim for acknowledgement of their property rights against D. S., I. Sh., M. I. and Z. B. in front of the Municipal Court of Pristina (a copy of the claim is presented with the appeal).

12. Copy of the appeal was served to the claimant, now appellee. He did not respond to it.

13. In front of the Supreme Court no new evidence was presented, but the above mentioned claim, submitted with the Municipal Court of Pristina.

Legal reasoning:

14. The appeal is admissible and no procedural impediments exist for its adjudication. It has been filed against decisions of the KPCC, by a party in the proceedings and it has been filed within the 30 day period, after the notification for the decisions, as prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 (hereinafter the 2006 Regulation or the Regulation). However the appeal is unfounded and the decisions of the Commission have to be confirmed, according to section 13.3 of the *2006 Regulation*. The appealed decision neither involve a fundamental error or serious misapplication of the applicable material or procedural law, nor rest upon erroneous or incomplete determination of the facts (grounds for appeal as defined by section 12.3, (a) and (b) of the 2006 Regulation).

16.Appellate review of the Supreme Court under section 12.3 of the 2006 Regulation: The grounds for the appeal as defined in the appeal itself are: ""due to violation of material law" and "erroneous or incomplete determination of the facts".

16.1. In the first place the appeal invokes a misapplication of the regulations regarding the jurisdiction over the claim (meaning that the appeal, implicitly invokes misapplication of the procedural law).

The assertion that the KPA did not have the authority to adjudicate, through the KPCC, over the disputes in question is ungrounded. According to section 3.1 of the 2006 Regulation the

KPA has the competence, through the Executive Secretariat, to receive and register and, through the Property Claims Commission, to resolve, subject to the right of appeal in front of the Supreme Court of Kosovo, two categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999: ownership claims and claims involving property use rights with respect of private immovable property, including agricultural and commercial property rights

It is undisputable that prior to the armed conflict of 1998/1999 the disputed lands belonged to the claimant D. S.. It is established that the lands were registered back in 1968 under the name of B. S., the late father of the claimant (Possession List No. 5 issued by the Immovable Property Cadastral Directorate in Pristina, dated 19 April 1968). It is established that B. S. passed away on 01 April 1992 and it is established that with a decision taken in an inheritance procedure the claimant was recognized as the only heir of his late father (decision of the Municipal Court of Pristina, taken in an inheritance procedure no. 96/2000, dated 9 November 2000). Accordingly the claimant as the only recipient of all the properties of B. S. acquired in his patrimony all his properties, including the disputed ones.

No one disputes also the fact that until 19 June 1999 the claimant exercised possession, as one of the attributes of the ownership right, over the lands in question.

It is also undisputable that the claimant lost his possession on 19 June 1999 (as asserted in the claims regarding all lands in dispute) and that this loss was due to the armed conflict. Hence no doubt that the disputes regarding the lands of D. S. in Nente Jugoviq/Devet Jugovica were within the jurisdiction of the KPA, through KPCC and through the right of appeal within the appellate competence of the Supreme Court.

16.2. Regarding the erroneous or incomplete determination of the facts. According to art 183.1 of the Law on Contested Procedure (hereinafter LCP), which is *mutatis mutandis* applicable to the appeals procedure in front of the Supreme Court under section 12.2 of the *2006 regulation,* there is an erroneous and incomplete determination of the factual situation when the court a material fact incorrectly or if the court fails to establish that material fact. This allegation is non-based, as the KPCC, as first instance in this case, did not determine any relevant material fact incorrectly and did not fail to establish a relevant fact either. The KPCC has rendered its decision after considering all the relevant facts for the case – who was the owner before the armed conflict, who possessed the properties before the conflict, when was the possession lost, that the respondents did not buy the lands from the claimant, but that they have bought them from someone who was not the owner and the fact that the respondents have erected various buildings in the lands in question. The legal

assessment is a different issue and not a matter of right or erroneous establishment of facts. In conclusion there was no erroneous establishment of relevant facts.

16.3. Regarding the misapplication of the material law the appeal invokes two main allegations:

16.3.1. That the appellants have purchased the lands from I.Sh., that they have signed contracts with him as a seller, they have paid him the price of the properties and that afterwards the contracts were registered at the Municipal court. They do not dispute the fact that I.Sh. (in cooperation with other people) was successfully indicted in front of a criminal court and later on sentenced for committing fraud by forging documents and selling the respondents lands which did not belong to him. They consider that despite such "problems" they took the properties in good faith, they paid the contracted price, registered the contracts and consider themselves owners.

It is a principle in the property law that no one can give/transfer something which he/she does not have – *nemo dat quod non habet*. This means that if you buy from someone who is not the owner, you do not become the owner yourself. There is a exception of this principle in case of transfer of movables, then the transferee could acquire the property if he/she was acting in good faith in time of delivery (art. 22 of Law No. 03/L-154 on property and other real rights of 2009, hereinafter the 2009 Law). Such possibility does not exist in case of immovable properties. The latter, however could be acquired on the basis of adverse possession – art. 40 of the 2009 Law, after possessing a property for 10 (if under the colour of title and consecutively registered as possessor) or 20 years (if not). In any case simple factual occupation is not enough. For the adverse possession to transform into right of property it has to continue for the time limits mentioned above; it has to be aggressive, adverse to the interests of the true owner; this is the adverse part of adverse possession; it should be open, known and actual, so as to make the true owner aware that a trespasser is in possession and that the true owner has a cause of action against the actual possessor – these are all elements of the objective part of the possession (*corpus possesionis)*. The subjective element of the possession – the intention to possess for his/herself (*animus posidendi*) as part of the subjective thinking of the possessor has to be presumed unless otherwise proven.

In the current case the respondents, appellants in the appellate procedure neither claim, nor could have proved acquiring property on the basis of adverse possession. Regardless of the kind of possession hypothetically invoked they could have not proven the objective part – first of all they occupied the lands without the knowledge of their true owner, as he was no longer in Kosovo and could not have known that someone else has taken over his properties and secondly the moment he knew he reacted and started openly to object and to claim his rights. First of all he told to one of the respondents at the earliest in 2004 not to use the property as he will claim it back, then about the

same time all the respondents were aware that D. S. wants his lands back and later filed claims with the KPA for repossession. Consequently the open possession was interrupted from the true owner and the relevant time for transforming the possession no longer run.

16.3.2. On second stance the appellants claim that they have all build houses on the ground, the value of which is much higher than the value of the land itself, that it is provided by the applicable laws "that in cases when the premises are of greater value than the property then a solution must be found between the owners of premises and the ones claiming to be owners of those properties and this must be solved by court proceedings and not by administrative proceedings and these houses cannot be removed by administrative decisions of the Commission. Thus the appeal implies that the decision of the KPCC are of administrative nature and they cannot be a valid ground for the eviction of the respondents, now appellees and consequentially for the removal of the constructed buildings.

16.3.2.1. Regarding the applicable law:

Before, during, after and until the entering into force of the Law on Property and Other Real Rights/ Law No. 03/L-154, approved by the Kosovo Assembly on 25 June 2009 (hereinafter the 2009 Law) the basic property relations were regulated by the Law on Basic Property Relations (OG SFRY, No. 6/80, hereinafter the 1980 Law). According to art. 3 of the said Law "the property owner have the right to possess an object, use it and dispose of it within the limits defined by law". The same concept regarding the content of the right of property was adopted in art 18 of the 2009 Law).

Article 20, paragraph 1 of the same law tells us that the property right can be acquired by law itself, based on legal affairs and by inheritance. This means that anyone claiming to have the ownership right over a certain property has to prove how he/she has acquired it. If a claimant has positively established his/her acquisition of the property right it would be a task for the respondent to rebut the claimant and to establish either that the claimant has never acquired the property in the first place or that the respondent himself/herself has acquired it against the claimant, thus precluding the previous right of the claimant.

Article 21 further on gives a list of possible ways of acquiring a property right *ex lege* (by law itself). One of the ways is by building on somebody else's land.

Further on art. 24, paragraph 1 explains how a builder on somebody else's land can acquire not only the building he/she has built but also the land on which the building has been erected. It explicitly states that "a person who can be holder of the property right, and who builds a house or some other building (building object) on a land over which somebody else holds the property right (builder), he/she shall acquire the property right also over the land on which the building object has

been erected, as well as over the land that is necessary for regular use of such building object". However the builder can acquire the land in the parameters, explained in paragraph 1 under the conditions, defined in the same paragraph, i.e.: "if he/she (the builder) has not known nor could have known that he/she has built on somebody else's land, and the land owner has known for the building but has not put his/her objections immediately". Paragraph 2 of the same provision explains that in case of paragraph 1 of the same article the land owner has the right within the time limit of three years from the day when he/she learnt for the finished building, but at latest within 10 years from the date of the finished building, to request from the builder compensation for the value of the land in the amount of its market price in time when court decision has been made. This means that later after the building has been finished the owner could only request compensation within the time limits, as defined in the Law. Article 25, paragraph 1 deals with the hypothesis when the builder new that he is building on somebody else's land and the owner puts his/her objections immediately. Then the owner has the right to choose how to resolve this situation with the builder, which will be described below.

The analysis of the above mentioned provisions of articles 21, 24 and 25 of this Law regarding constructing buildings in somebody else's land leads to the conclusion that in 1980 the legislator deliberately deviated from the Roman maxima *superficies solo cedit* - the surface yields to the ground, in order to encourage owners to tend to their properties by either cultivating them or using them for building (depending on whether they were agricultural lands or urbanized territories) with the care of a good master and not to leave them unattended. Otherwise the land owners risked to lose the properties very easyly in favor of a builder if they did not object immediately to the building endeavor in the hypothesis of art. 24, paragraph 1 – if the builder did not know nor could have known that he/she is building in somebody else's land. In the cases of article 25, paragraph 1 – when the builder knew that he/she is building in somebody else's land, the owner of the latter did not automatically lose the property but in his favor three different possibilities appeared – either to be given the building in which case he/she would have to reimburse the builder for the value of the object, or to request demolition of the object and be compensated for the damage by the builder, or to request from the latter a compensation for the land. The idea of the legislator to encourage owners to take care of their properties was explicitly expressed in art 46 *ibid*, according to which the property right ceases to exist if the owner abandons the property. The provision explains that a property is abandoned when the owner in undisputable manner expresses his/her will not to hold the property anymore.

16.3.2.2. However the 1980 Law does not take into account emergency Situations like armed conflicts or force *major* such as storms, earthquakes, etc., in general, situations where people are forced to leave their properties unattended in order to protect the greater values of

their lives and physical integrity. This means that the application of articles 24 and 25 of the 1980 Law in cases of property disputes related to the armed conflict of 1998/1999 will lead to the absurd result of someone being deprived of his/her right of property because he/she was forced to protect his/her life and physical integrity. Obviously the purpose of the 1980 law – *ratio legis* was not to make people keep their properties with the expense of their lives, it is beyond reason to hold/guard a land just to have your own grave in it. Therefore if one had left his/her property unattended in order to protect a greater value – ones life, the "abandoned" properties cannot be acquired by another person simply by being built over. In addition if the property disputes related to the armed conflict should have been considered as usual property disputes the UN Interim Administration Mission in Kosovo would not have adopted a special legislation, by adopting Regulation No. 2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property, as called so far the 2006 Regulation. The latter is a *lex specialis* in the field of Kosovo property law and prevails over the general property legislation. Section 2.2 of Administrative Direction No. 2007/5, implementing the 2006 Regulation, explicitly states that that the Commission has to authorize reinstatement of the property right holder, unless the ownership has been acquired by a natural person through a valid voluntary contract for value before the date of which UNMIK Regulation No. 2006/50 entered into force. In the disputes in question it was established that the owner never sold his properties with valid contracts and for a value prior to the entering into force of the Regulation. The Regulation does not preview the owner to be refused reinstatement because someone else has built in his/her property.

16.3.2.3. At the end the respondents, if they would like to avoid eviction and stay in the properties, will have to buy the land from its real owner (it is a customary rule that the one who pays bad pays twice). The damages they have suffered they will have to require as a civil wrong (tort) from the one who caused those damages, the person who sold them the properties pretending to be the owner (see chapter II, section II of the Law of Contracts and Torts of 1978 or the relevant provisions of the Law No. 04/L-077 on Obligational Relations, adopted by the Kosovo Assembly on 10 May 2012 which will replace the 1978 Law 6 months after its publication in the Official Gazette of Republic of Kosovo, when it will come into force).

Finally, regardless of what kind of obligations there might have arisen between the respondents and the owner on one side and between the respondents and the seller of the properties they are outside the jurisdiction of the Appeals Panel, which is authorized to decide on the property claim only.

17. Regarding the assertion that "an administrative decision" cannot be a basis for the removal of buildings constructed in somebody else's land:

First of all it is not correct that demolition of buildings cannot be ordered by an administrative decision, on the contrary it is usually within the prerogatives of a specialized administration to order demolition of buildings (regardless in whose property they are situated), which are considered illegally build, dangerous for the human life, for example – according to art. 34.1 of Law No 04/L-110 of 2012 inspectors of the Ministry of Environment and Spatial Planning are authorized to order demolition of buildings, if there is an irreparable irregularity that endangers the stability of the building and *per argumentum a fortiori* the specialized administration would be authorized to order demolition of buildings for which no building permission was issued at all. This is not directly related to the current case, but it demonstrates the fallacy of the argument that administrations cannot order demolition of buildings.

18. Regarding the juridical nature of the decision taken by the KPCC:

According to section 11.1 of the 2006 Regulation, except as otherwise provided in the regulation itself and the Administrative Direction implementing the Regulation, the provisions of the Law on Administrative Procedures are to be applicable *mutatis mutandis*. The subsidiary application of the Law on Administrative Procedure dose not mean that the decision of the KPCC is a decision of administrative nature. As already explained the KPA was created to decide over property claims, related with the armed conflict of 1998/1999. In cases when the claim is uncontested (which the current claims are not) the procedure develops only between the KPCC and the claimant, the KPCC unilaterally, on the basis of its prerogatives, given by the Regulation and on the basis only on the claim decides whether to grant it or not – section 11.2, first proposal *ibid* . On the other hand, whenever a third person informs the Executive Secretariat of his/her intention to participate in the administrative proceedings, because he/she is currently exercising or purporting to have rights to the property which is subject to the claim, then the KPCC has to reach its decision on the basis not only on the claim but also on the replies and the evidence, presented both by the claimant and the respondents – section 11.2, in relation to section 11.6 and section 10.2 *ibid.* Section 11.6 in particular provides for the opportunity of the Commission to request further submissions by parties, to hold hearing of all parties involved, including witnesses and experts. This means, that in cases of contested claims the procedure in front of the KPCC becomes adversarial, i.e. it is no longer purely administrative. The final conclusion would be that the KPCC in cases of contested claims acts no longer as an administration, but as quasi-judicial body, with judicial functions.

And finally, regardless of the exact legal nature of the procedure in front of the KPCC and the decisions taken by it, the Regulation in section 15 explicitly states that the remedies for the execution of a decision of the Commission "may include, but are not limited to eviction, placing the property under administration, a lease agreement, seizure and demolition of unlawful structures and

auction". Consequently the invocation that demolition of buildings cannot be allowed is groundless. In addition, so far the Commission has not ordered demolition of buildings, but only eviction of persons occupying the properties, as it can be seen from the individual decision, relevant to each of the 6 claims, subject to the case.

19. In conclusion the decision of the KPCC is lawfully rendered without the grounds for its challenging under section 12.3 of the 2006 Regulation, invoked in the appeal and it has to be confirmed in accordance with section 13.3 (c) *ibid.*

Costs of the proceedings:

20. 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 (10.21 and 10.1 of AD 2008/2) considering that the value of the properties at hand could be reasonably estimated as being € 90000: € 500 (€ 50 + 0.5% of 90.000, yet not more than € 500).

These court fees are to be borne by the appellants (each of them will have to pay 53 euro) and have to paid within 15 of the notification of the current decision. 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 the 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