

**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-285/13

**Prishtinë/Priština,
6 October 2015**

In the proceedings of:

M. Ž. M.

Serbia

Appellant/Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/R/199/2013 (case file registered at the KPA under the number KPA08283), dated 18 April 2013, after deliberation held on 6 October 2015, issues not unanimous the following:

JUDGMENT

1. The appeal of M.Ž. M. against the decision of Kosovo Property Claims Commission no. KPPC/D/R/199/2013, dated 18 April 2013, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPPC/D/R/199/2013, dated 18 April 2013 regarding the claim registered at the KPA under the number KPA08283, is confirmed.

Procedural and factual background:

1. On 15 October 2007, M. Ž. M. (hereafter: the claimant) filed a claim with the Kosovo Property Agency (KPA) seeking confirmation of user right and repossession of an apartment in Klinë/Klina, street Kneza Miloša bb, Lamela A, with the surface 69, 38 m² (hereafter: the claimed property).
2. To support his claim, the claimant submitted the following documents:
 - Allocation decision for the claimed property and in the name of claimant Ref. no. 34 number 360-1905/98-67, issued by the Commission of Residential Issue of the Republic of Serbia on 7 May 1998;
 - Handover record letter without number, dated 14 May 1998. This document shows the handover of the keys of the claimed property to the claimant;
 - Phone bill for the claimed property issued in the name of claimant Ref. no. 71660, issued by the Post Telekom of Serbia on 1 April 1999;
 - Claimant's urgency letter/request for speeding up the case resolution procedure, dated 30 October 2012; and
 - Claimant ID card Ref no. II 97779, issued on 30 June 2005 by the Republic of Serbia.
3. On 14 January 2008, the KPA notified the claim. The claimed property was found occupied by Sh. H. She stated that she has the permission to stay in the claimed property. However, she did not claim any property right.
4. Since nobody appeared within the period of 30 days from the notification of the claimed property, the claim by the KPA/KPCC was processed as uncontested.
5. According to the KPA verification report dated 19 June 2007 the allocation decision (no. 34 number 360-1905/98-67) was found and positively verified.
6. On 18 April 2013, Kosovo Property Claims Commission (KPCC), through its decision KPCC/D/R/199/2013, refused the claim. In the reasoning of its decision, the KPCC indicates that *"The Commission notes that, according to the Law on Housing Relations (42/86) as amended by the Law on Housing (50/92), a mere allocation decision is not sufficient to establish a use right in the form for an occupancy right; such a right arises only if a contract on use is also concluded and the party takes possession of the*

property. In the circumstances, as the claimant has failed to produce sufficient evidence to show that he meets the relevant statutory requirements, the claim stands to be refused”.

7. The KPCC decision was served on claimant (hereafter: the appellant) on 13 August 2013, while he filed an appeal on 26 August 2013.

Allegations of the appellant:

8. The appellant alleges that the KPCC decision is based on an erroneously and incompletely established state of facts and misapplication of the substantive law. The appellant points out that he is the holder of a lease right for an indefinite period of time over the claimed property.
9. The appellant alleges that he acquired the right to use over the claimed apartment. According to him the owner of the claimed property is the Ministry of Internal Affairs (MIA) of the Republic of Serbia which based on the allocation decision allocated the claimed property to him and his family. He added that he and his family used to live in the claimed apartment until 1999 when due to well-known reasons they had to leave Kosovo. According to him it is clearly established that he and his family were in the possession of the claimed property in the period between 27 February 1998 and 20 June 1999, therefore he lost that right due to the circumstances resulting from the armed conflict that occurred. The fact that they lived in the claimed apartment can be supported with Post Office bills for month of January, February and March 1999.
10. The appellant alleges that nobody from the users of ten apartments (among them the claimed apartment) in the building for which the Ministry of Internal Affairs (MIA) of the Republic of Serbia issued the allocation decision concluded the contract on use or lease. He added that the contract on use could not be concluded as the Law on Housing Relations was not in force at that time, and that the legal institute of occupancy right did not exist at the time of the allocation. Therefore, the reason of not having concluded the contract on use or lease as legal reason for the KPCC to refuse the claim is not grounded.
11. The appellant suggests the Supreme Court of Kosovo to approve his appeal and issue the decision by which it would be established that he is entitled to a repossession of the claimed apartment.

Legal reasoning:

Admissibility:

12. The appeal is admissible. It has been filed within the 30 days period as prescribed in section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, on the resolution of claims

relating to private immovable property, including agricultural and commercial property (hereinafter Law No. 03/L-079).

Merits of the appeal:

13. The appeal is not founded. According to Section 3.1 of Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property, if the claimant proves not only the ownership right **or the right to use** the private property, including agricultural and commercial property, but also proves that he/she is not able to exercise such right due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
14. The Supreme Court notes that the Commission's decision KPPC/D/R/199/2013, dated 18 April 2013, relies on the fact that the appellant has not proved his use right over the claimed property. In the reasoning of this decision it is ascertained that *["a mere allocation decision is not sufficient to establish a use right in the form for an occupancy right; such a right arises only if a contract on use is also concluded and the party takes possession of the property; such a right arises only if a contract on use is also concluded and the party takes possession of the property. ...]"*
15. Based on the case files, allegations of the party and the overall assessment of this respective legal case, the Supreme Court considers that the appealed decision is fair and lawful. This is because the appellant could not prove that he concluded a contract on use, as defined by the legal provisions of the Law on Housing *[(OG of the SAPK no. 42/86 (Articles: 2, 37 paragraph 1 and 42 paragraph 1), OG of SRS no. 12/90 (Articles: 9, 11 and 14) and OG of the SR no. 50/92 (Articles: 5 paragraph 1, 7 paragraph 1)]* as a legal requirement (together with the allocation decision and factual possession) for the acquisition of right of use.
16. This means that a person alleging to have the right of use over the socially owned apartment must prove that there is an allocation decision of an apartment issued by the allocation property right holder (ARH), entry into factual possession and that **he/she concluded a contract on use** with Public Housing Enterprise (PHE), or the owner of the apartment.
17. Based on this review, analyses and overall evaluation, the Supreme Court finally concludes that the appealed decision issued by the KPCC does not involve the erroneous and incomplete established state of facts and misapplication of the substantive law, as emphasized by the appellant in his allegations.
18. On the basis of the above and in accordance with section 13.3 (c) of Law No. 03/L-079 the Court decided as in the enacting clause.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar