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-026/14

Prishtinë/Priština, 11 November 2015

In the proceedings of:
L.G.
Str./Ul. 210/17 Nova
Popva Bara
Borča
Belgrade
Serbia
Appellant

vs.

I.H. , who changed his name during proceeding to: **I.H.G.**
Bregu/Kodra I Diellit
Zona Qendra
Hyrja 3, nr. 11
Prishtinë/Priština
Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/R/199/2013 dated 18 April 2013 (case file registered at the KPA under No. KPA50803), henceforth also: the KPCC Decision, after deliberation held on 11 November 2015, issues the following:

JUDGMENT:

1. **The appeal of L.G. is accepted as grounded.**
2. **The Decision of KPCC no. KPCC/D/G/199/2013, dated 18 April 2013, as far as it concerns claim no. KPA50803 is annulled.**
3. **The claim no. KPA50803 of L.G. is dismissed whereas the claim is not within the scope of jurisdiction of the Kosovo Property Agency.**

Procedural and Factual background

1. On 29 November 2007 L.G. as claimant (henceforth: Appellant) filed a claim at the Kosovo Property Agency (KPA), seeking repossession of the apartment located on Sunny Hill/Suncani Breg/Kodra I Diellit, Zone Center, Building/Lamella 3, 4th Floor, apartment nr. 11, in Prishtinë/Priština, surface 68.88 m² (henceforth: the apartment). He states in the claim form that he acquired a tenancy right over an ideal part of the apartment on 4 December 1998 and became co-owner of an ideal part of the same apartment and had to give in exchange another apartment with surface of 34.50 m² that his wife had purchased earlier. He further states he lost his rights to the apartment as a result of the armed conflict on 26 June 1999.

2. Appellant submitted *inter alia* to KPA:

- A document on a Decision, number 2658, dated 4 December 1998 stating that a Steering Committee on 27 November 1998 decided to allocate to Appellant, employee, the apartment and give it to him for indefinite lease;
  according to the document the decision is based on article 13 of the Decision on amendments and changes to the Decision on founding of Regional Water Supply Company 'Batlava' as Public Utility Company and article 75 of the Regulation for resolving residential issues of employees of P.U.C. Regional Water Supply Company;
- Decision number 61, dated 12 January 1999, based on article 47.2 of the Law on housing (Official Gazette of the Republic of Serbia, first 52/92 and latest

49/95), article 75 of the Regulation for resolving residential issues of employees of P.U.C. Regional Water Supply Company (Regionalni vodovod I kanalizacija) 'Batlava' in Prishtinë/Priština and based on a decision of the Steering Committee, number 2658, dated 4 December 1998, (henceforth: Allocation decision 1999);

according to this decision, as far as relevant, to Appellant as an employee is allocated for indefinite lease the apartment; according to the decision Appellant is obliged to handover the apartment he was using until then and Appellant is recognized as owner of the apartment; further according to this decision Appellant shall use the apartment with his family members based on a contract on lease for indefinite term and to be concluded with Public Utility Enterprise/Public Housing Company of Prishtinë/Priština;

- A 'Contract, nr. 206, on lease of the ideal part of the apartment and on participation of the owner of ideal part of the apartment as separate part of the building in maintenance of residential building' between Public Housing Company Prishtinë/Priština on his own behalf and on behalf of the owner of the apartment – holder of the disposal rights over the socially-owned apartment (PHC) and Appellant (henceforth: the Contract on lease 1999);

  according to the content of this contract is found that it is based on the decision, number 61, dated 12 January 1999, of the Regional Water Supply Company 'Batlava' in Prishtinë/Priština; the contract entered in force per 1 January 1999.

3. KPA notified the claim on 16 January 2008 at the address of the apartment and found it occupied by I.H. , (henceforth: Appellee). At that same date Appellee signed a notice of participation in the proceedings before KPA/KPCC.

4. KPA, according to a verification report dated 11 February 2008, found and verified the three documents meant in paragraph 2 here for at the Public Housing Enterprise.

5. Appellee sent in a Response to the claim, dated 15 February 2008 and submitted *inter alia* to KPA:

- A Decision on allocation of the apartment, number 1386, dated 21 October 1986 (henceforth: Allocation decision 1986) (inter alia p. 038 of the KPA case file);
- A Contract on use of the apartment, number 1193/13309, dated 20 January 1987 (henceforth: Contract on use 1987) (inter alia p. 039 of the KPA case file);
- A Certified Decision of the Housing and Property Claims Commission (HPCC), dated 20 June 2005, based on Cover Decision HPCC/D/181/A&C, dated 30 April 2005, on claim number DS001501 (henceforth: the HPCC 2005 Decision); according to this decision no respondent joined proceedings before HPCC; HPCC decided to grant the Category A claim and to restore occupancy right to Appellee; HPCC reasoned that Appellee had established that he had a valid occupancy right and that this right was revoked as a result of discrimination during the period 23 March 1989 and 24 March 1999

6. KPA verified the HPCC 2005 Decision positive. According to verification reports of HPD dated in 2002 the Allocation decision 1986 was found and verified positive and the Contract on use 1987 was not found.

7. Appellant and Appellee sent in some additions and replies on each other's allegations and response on the claim. These letters are dated on 25 and 28 February 2008 and 1 March 2009, 16 July 2009, 29 January 2012, 9 April 2012, 11 February 2013, 19 March 2013 and 8 July 2013.

8. The KPCC decided in the KPCC Decision to refuse the claim of Appellant. For the reasoning on this claim KPCC refers in the certified decision to paragraph(s) 9, 52 and 53 in the Cover decision. In its reasoning, as far as relevant, KPCC states that Appellant was allocated the apartment under the condition that he, respectively his wife, gave up the possession of another apartment previously granted to Appellants wife by 'Batlava'. KPCC further states that Appellant had failed to provide any evidence that would suggest that he complied with this condition, nor has KPA been able to obtain such evidence ex officio. KPCC concludes that Appellant had not acquired a property right on the apartment.

9. The decision was served upon Appellant on 26 August 2013 and on Appellee on 21 August 2013.

10. Appellant filed an appeal against the KPCC decision on 13 September 2013. The letter of appeal was served on Appellee on 28 March 2014.

11. Appellee did not reply to the appeal and did not participate in the appeal procedure before the Supreme Court.

<u>Allegations of the parties</u>

12. Appellant alleges the following. He states that the Contract on lease 1999 was never rescinded. According to that contract he concluded an agreement on lease on an ideal part and on the participation as the owner of an ideal part of the apartment as separate part of the building. So he obtained legal possession over the apartment. The issue of fulfilment of the obligations in the Allocation decision 1999 is not an issue which can be discussed in this procedure. The non-fulfilment of the obligation might eventually be a reason for non-recognition of ownership over ideal part of the apartment, but not for non-recognition of legitimate ownership and his right to repossession of the apartment. Appellant states he is the legal and conscientious acquirer of joint ownership and possession rights on the apartment. He also refers to article 8 of the European Convention in which is determined the obligation of state bodies to ensure his right to respect for private and family life and article 1 of Protocol 1 of the European Convention on protection of human rights and fundamental freedoms, in which is guaranteed the right to a peaceful enjoyment of property.

<u>Legal reasoning:</u>

Admissibility of the appeal

13. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the Law No. 03/L-079.

Jurisdiction

14. According to Article 194 in conjunction with Article 182.2 sub b of the Law on Contested Procedure (henceforth: LCP), which is mutatis mutandis applicable according to Section 12.2 of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (henceforth: Law UNMIK 2006/50) the Supreme Court shall examine *ex officio* whether the KPCC Decision is rendered in relation to a claim which did not fall under the jurisdiction of the KPCC.

15. According to Section 3.1 of Law UNMIK 2006/50 the KPCC shall have the competence to resolve the following categories of conflict-related claims involving circumstances directly related or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999: a) ownership claims with respect to **private** immovable property, including agricultural and commercial property, and b) claims involving property use rights in respect of **private** immovable property, including agricultural and commercial property, where the claimant is not now able to exercise such property rights. (*Underlining and bolding by the Supreme Court.*)

16. Before KPCC Appellant alleged that he acquired a tenancy right to the apartment on 4 December 1998 and gained co-ownership on an ideal part of the apartment and had to give in exchange another apartment that his wife had purchased earlier. He does not challenge, that, as KPA/KPCC established, he did not handover the previous apartment of his wife as meant in the Allocation decision 1999.

17. Taking into account these allegations the Supreme Court has to answer two questions: 1. whether Appellant gained an ownership right with respect to an ideal part of the apartment, assumed that is a private immovable property; and 2. whether his claim on a property use rights of an ideal part of the apartment involves a **private** immovable property. The Supreme Court answers these questions as follows.

18. In his letter of appeal the appellant clarifies that he gained an co-ownership right to an ideal part of the apartment and that ideal part of the apartment became private property because he gave, or had an obligation to give, another apartment in exchange. The Supreme Court does not follow this reasoning. In the Articles 5 and 10 of the Law on co-ownership of an apartment (Official Gazette of SAPK, NO. 43/80, 22/87), which law was in force at the time of the alleged transfer of property right, are pointed out the conditions to gain an ownership right as the appellant alleges to have on the apartment. According to Article 5.1.5 of that law – as far as relevant - co-ownership can be acquired through purchase of an ideal part of an socially owned apartment when the owner of an apartment in agreement with a social-legal person transfers to social-ownership his apartment in exchange for a larger apartment to which he shall acquire co-ownership in proportion to the value of the apartment he transferred to social ownership. According to Article 10.1 of that law - as far as relevant - the contract shall specially include conditions, terms and timeframe for fulfilling the contract. In this case is a fact that the appellant did not fulfil the condition the Purchase contract as pointed out in the Allocation decision 1999. Therefor he did not gain co-ownership to an ideal part of a (private property) apartment. So based on this allegation the claim cannot relate to a property right over a private property.

19. As far as Appellant by the Allocation decision 1999 was allocated the apartment for use and concluded the Contract on lease 1999 on this apartment, the Supreme Court concludes also this use right is not given in respect of private property. From the documents presented by the Appellant results that the socially owned enterprise, Regional Water Supply Company 'Batlava', allocated the apartment to him and the Public Housing Company Prishtinë/Priština leased the apartment to Appellant on behalf of Regional Water Supply Company 'Batlava'. From these facts follows that the apartment was in 1998/1999, when Appellant gained and enjoyed his use right to the apartment, a socially owned property and not a private property. So the use right is also not related to a private property.

20. Because the claim does not relate to private immovable property, KPCC lacked jurisdiction to decide on the claim. From this *ex officio* applied provision follows that the

appeal of Appellant is grounded and his claim still is to be dismissed. From this reasoning also follows that t the appeal grounds of Appellant that are related to the European Convention on Human Rights and fundamental freedoms, cannot lead to another conclusion.

Conclusion

21. Consequently, pursuant to Section 13.3 of Law UNMIK 2006/50 the Supreme Court decided as in the enacting clause of this judgment.

Legal Advice

22. Pursuant to Section 13.6 of Law UNMIK 2006/50 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Signed by: Urs Nufer, EULEX Registrar