

**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-135/14

Prishtina,
27 January 2016

In the proceedings of:

D.D.E.

28/3-8 Vasil Gorgov str.

Skopje

FYROM

Appellant/Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/223/2013 (case file registered at the KPA under No. KPA17141), dated 27 November 2013, after deliberation held on 27 January 2016, issues the following

JUDGMENT

1. The appeal of D.D.E. is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/A/223/2013 (case file registered at the KPA under no. KPA17141), dated 27 November 2013, is confirmed.

Procedural and factual background:

1. On 28 September 2007 D.D.E. (hereinafter: the appellant), filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of her user right over apartment no.9, 43 M.Tito str. (ex-Cara Dusana str.) in Suharekë/Suvareka with surface of 16,85 square meters (hereinafter: the claimed property). In the claim the date of loss of possession is not specified.
2. The appellant alleged in the claim that she used the claimed property from 1969 until 1993 with her family and she lost the possession based on a decision issued by the Municipality of Suharekë/Suvarekaq because she changed her working place.
3. To support his allegations, the appellant among others provided KPA with the following documents:
 - Tenancy contract dated 28 January 1977 between Housing authority from Suharekë/Suvareka and the appellant regarding the claimed property.
 - Allocation decision no.373 dated 08 December 1969, issued by the Executive board of the Health House in Suva Reka whereby the claimed property is allocated to the appellant. In the decision is mentioned that if the appellant loses her employment, she will also lose the possession right over the claimed property.
 - Decisions on the amount of rent, issued by the Secretariat of the Directorate of Housing, Utilities and Urban Planning in Suva reka on 08 November 1990, 25 April 1991 and 06 May 1992.
 - Decision no.360-1933/03 dated 03.11.1993 reached by the Department for Urban planning, Utility- Construction and Residential Affairs- Municipality of Suva Reka, by which the appellant was ordered to vacate the claimed property.
 - Decision no.360.01.360-424/93 issued on 13 December 1993 by Ministry of urban planning, residential and utility services and construction of Republic of Serbia, Kosovo County, whereby the abovementioned Decision of the Department for Urban planning, Utility- Construction and Residential Affairs- Municipality of Suva Reka no.360-1933/03 dated 03.11.1993, by which the appellant was ordered to vacate the claimed property, is proclaimed as null and void.
 - Verdict issued by Municipal court in Suva Reka on 08.07.1994 by which the eventual claim of Municipality of Suva Reka is accepted and the contract on use of the claimed property concluded between the appellant and the Municipality of Suva Reka is cancelled. The appellant is ordered to transfer the possession over the apartment to the Municipality of Suva Reka within 8 days from the verdict.
 - Minute dated 02.08.1993 confirming the handover of the claimed property from the appellant to the Municipality of Suva Reka.

4. On 24 June 2009 the KPA Notification Team notified the claim. The claimed property was found occupied by Sh.H. who did not sign a notice of participation.
5. Following the notification of the property and within the legal time limit of 30 days, nobody presented himself/herself as respondent or interested party before the KPA/KPCC, thus the KPA/KPCC treated the filed claim as uncontested.
6. Based on KPA verification report dated 29 May 2012, the Tenancy contract dated 28 January 1977 and the Verdict issued by Municipal court in Suva Reka on 08.07.1994 were negatively verified.
7. The Executive Secretariat of KPA contacted the appellant on 24 September 2013 and she confirmed that she lost the possession over the claimed property in 1993 due to a municipal expropriation.
8. The KPCC, with its decision KPCC/D/A/223/2013 dated 27 November 2013, dismissed the claim due to jurisdiction. The KPCC acknowledged that the case is not related to the armed conflict of 1998/1999.
9. The decision was served on the appellant on 26 February 2014 and she filed an appeal on 26 March 2014.

Allegations of the appellant:

10. The Appellant alleges that the claimed property was illegally confiscated from her because she used the apartment for a long time, based on a contract on use and duly paid rent and other obligations. She also filed request for purchase but it was rejected.

Legal reasoning:

Admissibility of the appeal:

11. The appeal is admissible. It was filed within the time limit of 30 days as stipulated by Section 12.2 of UNMIK Regulation 2006/50 amended by the Law 03/L-079 on resolution of private immovable property claims, including agricultural and commercial property (hereinafter: the Law 03/L-079).

Merits:

12. The Appeal is ungrounded.
13. Pursuant to Article 3.1 of the Law 03/L-079, the Commission has the competence to resolve claims concerning the rights that cannot be exercised due to the circumstances that are related directly to or result from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

14. In this particular case, the possession of property was lost in 1993 (the appellant herself asserts this fact), which means that the claim is not related to the armed conflict of 1998/1999. Therefore, the Commission rightfully dismissed the claim because it is outside its jurisdiction.
15. Based on the presented reasons and pursuant to Article 13.3 (c) of the Law 03/L-079, the Court decided as in the enacting clause of this Judgment.

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.

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Urs Nufer, EULEX Registrar