

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-194/14

Prishtinë/Priština, 27 July 2016

In the proceedings of:

M. R.

Appellant

vs.

the **A.C. P.**

Representative: I. G.,

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Beshir Islami, Judges, on the appeal against the decision of the Kosovo Property Claims Commission No. KPCC/D/R/231/2014 dated 13 March 2014 (case file registered at the KPA under No. KPA11762), after deliberation held on 27 July 2016, issues the following:

JUDGMENT

1. **The appeal of M. R is accepted as grounded.**
2. **The Decision of the Kosovo Property Claims Commission No. KPCC/D/R/231/2014 dated 13 March 2014 is annulled as far as it concerns the claim No. KPA11762.**
3. **The claim No. KPA11762 of M. R. is dismissed whereas the claim is not within the scope of jurisdiction of the KPCC.**

Procedural and factual background:

1. On 14 November 2007, M.R. (hereinafter: the Appellant) filed a claim with the Kosovo Property Agency (KPA) seeking confirmation of a user right over and repossession of an apartment with a surface of 24 m², located in the Street Bajram Curri no. 222 in Prizren/Prizren (hereinafter: the claimed property). He states to have lost the possession of the claimed property in 1999 as a result of the circumstances of 1998/1999 in Kosovo.
2. To support his claim, he provided the KPA with the following documents:
 - A Decision no. 263 issued by Agricultural and Industrial Enterprise PROGRES-EXPORT on 19 April 1967 through which the Appellant was appointed to the position of the material bookkeeper within PROGRES-EXPORT.
 - A Request no. 8181 filed by the Appellant to PROGRES-EXPORT on 19 August 1968. The subject of the request was the improvement of a residential space.
 - A Decision no. 9821 issued by the Managing Committee of the Agricultural and Industrial Enterprise PROGRES-EXPORT on 21 September 1968; with this decision the Enterprise allocated the amount of 200,000 old dinars for the adaptation (renovation) of an apartment, owned by the Enterprise in Rasadnik in Prizren/Prizren, in which the Appellant was living.

- A Clarification no. 255 issued by the Socially Owned Enterprise Agricultural and Industrial Enterprise PROGRES-EXPORT on 10 October 2000 through which the director of Enterprise PROGRES-EXPORT declared that the decision No 9821 cannot be found, but that he confirmed that the decision is legal and valid.
3. On 1 February 2008, KPA notified the claim by placing a sign at the alleged location of the claimed property; the property was notified by the cadastre map and by the address; I.G. claimed a legal right to the claimed property and signed as director the notice of participation to the proceedings.
 4. As representative of the A. C. P. (henceforth: the Appellee) I. G. submitted on 28 August 2009 a reply to the claim. To support their allegations, the Appellee provided the KPA with the following documents:
 - The Judgment no. 168/93 issued by Municipal Court of Prizren/Prizren on 5 May 1993; in this judgement was refused as unfounded the claim on ownership from the Municipality of Prizren/Prizren as plaintiff for confirmation of ownership right over the apartment located in Street Bajram Curri no. 222 in Rasadni in Prizren/Prizren with the surface of 26.41 m²; respondent in that proceedings was Socially Owned Enterprise Agricultural Cooperative PROGRES-EXPORT - Prizren-Coop. The Court reasoned that the real estate in question used to be commercial buildings of the respondent in that case, PROGRES-EXPORT, and that the respondent PROGRES-EXPORT allocated the unit to its employee H.H. in 1975.
 - The Judgment No. 661/93 issued by District Court of Prizren on 5 January 1994; in this Judgment the appeal of the plaintiff Municipality of Prizren/Prizren against the Judgement of the Municipal Court was rejected as unfounded and the Judgment no 168/93 dated 5 May 1993, issued by Municipal Court of Prizren/Prizren, was confirmed.
 - The Possession List no. 104/3 issued on 14 February 2007 by the Municipal Assembly of Prizren/Prizren, Department for Geodesy and Cadastre; according to this possession list parcel no. 7120 (Building 8.74 are, yard and

field) are listed as property in the name of the Socially Owned Enterprise Prizrencoop in Prizren/Prizren.

In its Reply to the claim the Appellee declared that M. R. does not possess any contract on any residential right issued by the competent authority on the claimed property. The Appellee further alleged that in the apartment used to live a person named H. H. until 1990.

Moreover, according to the Claim Processing Report from KPA of 30 December 2013, the Appellee stated that the claimed property is located in the cadastral parcel no. 7120. The Appellee further stated that the Agricultural Enterprise PROGRES-EXPRES was privatised to the Appellee.

5. According to KPA verification reports the alleged Decision no. 9821, issued by Agricultural and Industrial Enterprise PROGRES-EXPORT on 21 September 1968, was not found in the archive of the former Enterprise PROGRES-EXPORT. The Judgment no. 168/93 issued by the Municipal Court of Prizren/Prizren on 5 May 1993 and the Judgment No. 661/93 issued by the District Court of Prizren/Prizren on 5 January 1994 were positively verified by KPA.

KPA also found the Possession List no. 104/3 issued on 14 February 2007 by the Municipal Assembly of Prizren/Prizren. KPA added *ex officio* to the file the Certificate-18-153332, issued by the Kosovo Cadastral Agency on 13 December 2013. According to this Certificate parcel no. 7120 was found to be socially owned property in the name of the Appellee.

6. On 11 November 2013 the KPA had telephone conversations with both the Appellant and the Appellee. In that conversation the Appellant repeated his allegations that he lived in the claimed property from 1968 till 1999 and that the apartment was occupied by H. H. after the war. He also alleged that the property was privatised in 2008 and that he acquired his property (use) right from the Agricultural Cooperative EXPORT-EXPRESS as employee.
7. On 13 March 2014, the Kosovo Property Claims Commission refused the claim through the decision KPCC/D/R/231/2014 (henceforth: the KPCC decision). In paragraph 47 of the cover decision, which applies specifically to the claim at hand, the KPCC reasons that the Appellant failed to submit any evidence at all, or any evidence that could be verified by the KPA that the alleged property right holder

enjoys any property right over the claimed property? The KPCC further reasons that the KPA did not obtain *ex officio* any such evidence.

8. The decision was served on the Appellant on 13 June 2014. He filed an appeal on 25 June 2013.
9. The same decision was served on the Appellee on 13 May 2014. The appeal was served on the Appellee on 17 October 2014. He did not respond to the appeal.

Allegations of the Appellant:

10. The Appellant states that the KPCC decision contains essential violations and a wrongful application of the material and procedural law and an erroneous and incomplete determination of the facts.
11. According to the Appellant, the reasoning in the KPCC Decision that he failed to submit documents proving his right over the property does not stand, because he considers that he submitted convincing sufficient and supportive evidences proving his right on use over the property.
12. The Appellant submitted again the same documents which were already considered by KPCC.

Legal reasoning:

Admissibility of the appeal

13. The appeal was filed within 30 days as foreseen by Section 12.1 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 No. 03/L-079) and is admissible.

Merits of the appeal

14. The claim concerns the alleged right on use of the claimed property: an apartment in a building.
15. As the jurisdiction of the KPCC is restricted, the Supreme Court has to assess whether the claim is within the scope of jurisdiction of the KPCC (Article 194 in conjunction with Article 184.2 sub b of the Law on Contested Procedure; these Articles are according to Section 12.2 of Law No. 03/L-079 *mutatis mutandis* applicable in this proceedings).
16. Pursuant to Section 3.1 of Law No. 03/L-079, the KPCC has the competence – as far as relevant here - to resolve conflict-related claims involving property use rights with respect of private immovable property. Therefore, for the Supreme Court it is necessary to determine whether the claimed property is private property.
17. From the evidences submitted by the parties and the facts found by the KPA *ex officio* and the statements of the parties, it follows that the claimed property was an apartment in a building located on parcel no. 7120. The parcel and the building on this parcel were owned by the Socially Owned Enterprise Agricultural Cooperative PROGRES-EXPORT. The Appellant further admitted to the KPA in the telephone conversation on 11 November 2013 that he acquired any use right as an employee from the Cooperative. According to the Certificate from the Cadastre this parcel and the building was – at least until the privatisation in 2008 – a socially owned property owned by the Socially Owned Enterprise Agricultural Cooperative “PROGRES-EXPORT”.
18. Therefor the claimed property was during the conflict not a private immovable property and thus the claim for repossession of that property is according to Section 3.1 of Law No. 03/L-079 outside the scope of jurisdiction of the KPCC.
19. As the claim is outside the jurisdiction of the KPCC, in this preceding the allegations of the Appellant about any use right to the claimed property cannot be assessed.
20. Based on the above and pursuant to Article 13.3 sub (a) and 11.4 sub b of Law No. 03/L-079 the Court decides as in the enacting clause of this Judgment.

Legal advice:

Pursuant to Section 13.6 of 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

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar