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-006/15

Prishtinë/Priština, 3 August 2016

In the proceedings of:

G. T.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, as Presiding Judge, Beshir Islami and Anders Cedhagen, judges deciding on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: the KPCC) KPCC/D/R/239/2014 dated 30 April 2014 (case file registered at the KPA under no. KPA40623), hereinafter as "KPCC Decision", after deliberation held on 3 August 2016, issues the following:

JUDGMENT

1. **The appeal of G. T. filed against the Decision of the KPCC, KPCC/D/R/239/2014 dated 30 April 2014, is rejected as unfounded.**
2. **Decision of the KPCC, KPCC/D/R/239/2014 dated 30 April 2014, is confirmed with regards to the Claim KPA40623.**

Procedural and Factual background:

1. On 29 May 2007, G. T. as Claimant (hereinafter as: the Appellant) filed a claim before the Kosovo Property Agency (hereinafter as: KPA), as a household member of his father Š. T, deceased on 13 November 1998, seeking confirmation of the use right over the apartment located in Ulpiana U-1, entrance 8, floor III, number 14, in surface of 62.50 m² (hereinafter as: the claimed property).
2. The Appellant among others submitted the following documents to the KPA:

   - Decision on allocation of the claimed property from the Garrison Command of the Yugoslav Army in Prishtinë/Pristina, no. 49-26/27, dated 5 February 1987 (hereinafter as: Decision on allocation); this decision was issued allocating the claimed property to use to the military officer Š. T. and his family composed by the Appellant, his spouse and his two children; In the decision it is stated that the apartment is the property of the National Defense Federal Secretariat (NDFS);
   - Death certificate issued by the parallel authorities from Prishtinë/Pristina civil registry books displaced in Serbia indicating that Š.T. died on 13 November 1998;
   - ID card issued by authorities in Prishtinë/Pristina on 21 December 1995 indicating that the name of the Appellant's parent is Š. (holder of the housing rights over the claimed property);
   - Certificate from the Ministry of Defense of the Republic of Serbia No. 1579-2 dated 27 February 2014 confirming that Š.T. has served in the military of that time;

- Order No.5-117 issued by the Military Command on 6 June 1994 indicating that Š.T. military active service has been terminated.
- Some documents (invoices) indicating that the Appellant was using the property before and during the conflict.
- Personal documents of the neighbors which may prove that the Appellant was using the property before and during the conflict.
- Later on, the Appellant submitted to the KPA additional proof from the authority allocating the apartment No. 3014-2 dated 26 March 2014 showing that in the registry of the allocating authority, the claimed property appears as not privatized and in use by Š.T. at that time.
- The contract on use concluded between the Military Fund and Š. T. without protocol number submitted to the KPA on 9 July 2014.

3. Notification of the Claim was done on 8 January 2008 and the property was found occupied by P.N. who signed the notification and stated that he does not claim property rights over the claimed property.
4. The KPA has verified the Decision on allocation in the military archives and found proof that the Appellant had paid the utilities in the address of the claimed property. The contract on use was submitted later after the Decision of the Commission even though during the contacts with the KPA the Appellant stated that they had not concluded a contract with the Housing Enterprise.
5. The KPCC by its Decision rejected the Claim. In its reasoning (paragraphs 36 and 37 of the Cover Decision) the KPCC stated that the Appellant has proved that he had a decision on allocation, whereas he did not have a contract on use, which he admitted himself.
6. The Decision was served on the Appellant on 15 July 2014, and on 6 August 2014 the Appellant filed an appeal against the Decision of the KPCC.

<u>Allegations of the parties:</u>

7. The Appellant states that the KPCC Decision is based on erroneous and incomplete determination of the factual situation. Decision of the Commission is biased because

even despite the fact that decision on allocation was confirmed to be the original, KPCC's conclusion that the contract on use does not exist, is absurd. He alleges that he has stated that the documents are in the apartment and that the same can be verified in the files of the allocating authority.

8. The Appellant claims that he has sufficient evidence which prove that he had the right to use and that the current occupant has no legal rights over the property.

Legal reasoning

9. The Appellant proved that he is the son of the alleged property right holder and that pursuant to article 1 of the Administrative Direction 2007/05 he had file a claim In the capacity of the member of the family household and the Court finds that the party has active legitimacy to act as the child of the late alleged property right holder. The appeal is admissible.

Merits of the appeal:

10. Pursuant to article 2.1 of the UNMIK Administrative Direction implementing UNMIK Regulation 2006/50 on resolution of the claims relating to private immovable property, including agricultural and commercial property, as amended by the Law no. 03/L-079, in Annex 1 of the law (hereinafter as: Annex 1 of the UNMIK Law 2006/50), as far as it is relevant, anyone who had any legal right from the *private immovable property,* where the claimant could not exercise his/her property rights due to the circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999, has the right of restitution of his/her property rights.
11. Pursuant to the Law on Housing Relations (Official Gazette SAPK, no. 11/83, 29/86, 42/86) in order to acquire a housing right over an apartment it is required to have a decision on allocation from the holder of the allocation right (article 3) *Contract on use of the apartment in written form,* conducted between the person to whom the apartment was allocated for use and Community Housing Union based on the decision on apartment allocation (article 37) and moving into the apartment (article 11).

12. Based on the Law on Housing (Official Gazette of the RS no. 50/92 and 46/98). The contract on the rent of the apartment is concluded in writing and among others contains the amount of the rent (article 7).
13. The KPA has verified the decision on allocation but the Appellant did not present the Contract on use and moreover stated that it does not exist. Only after rendering the appealed decision he presented a contract concluded not with the Public Housing Enterprise but with the allocating authority, however the reason for not presenting this contract at the time the claim is filed, were not specified. Submission of the contract on use at a later stage without protocol number, even if it were a valid document, is in contradiction with article 12.11 of the Law no. 03/L-079, amending UNMIK Regulation UNMIK 2006/50).
14. KPCC Decision is based on the finding that the Appellant did not prove that his father acquired the right over the claimed apartment. The Appellant alleges that proper verification would result in a different decision. Regarding this, the court gives the following reasoning.
15. It is clear that the Appellant is seeking housing right over the apartment or rent rights, but in both cases written documents are required in order to establish the existence of the rights: for the housing right a written Decision on allocation and the Contract on use in writing, whereas regarding the rent rights the Contract on rent in writing.
16. Therefore, KPCC's conclusion that the Appellant failed to prove that his late father has acquired the housing rights over the claimed property is correct, therefore the party has no right to restitution of the alleged right over the apartment.

Conclusion:

17. Based on article 13.3 of the Law UNMIK 2006/50, the Supreme Court decided as in the enacting clause of this judgment.

Legal advice

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

Sylejman Nuredini, Presiding Judge

Beshir Islami, Judge

Anders Cedhagen, EULEX Judge

Sandra Gudaityte, EULEX Registrar