

**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-075/15

**Prishtinë/Priština,
1 February 2017**

In the proceedings of:

R. R.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 dated on 13 March 2014 (case file registered at the Kosovo Property Agency under the number KPA42194 after deliberation held on 1 February 2017 issues the following

JUDGMENT

1. The Appeal of R. R. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 dated 13 March 2014 with regard to the claim registered under the number KPA42194 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 dated 13 March 2014 with regard to the claim registered with the number KPA42194 is confirmed.

Procedural and factual background:

1. On 29 August 2007, R. R. (henceforth: the Appellant) acting on behalf of his late father R. R. filed a claim at the Kosovo Property Agency (henceforth: KPA) seeking Confirmation of the Ownership Right over three Cadastral Parcels with nos 132, 133 and 138 with the culture, meadows and with the total surface of 01.46.12 ha which are located at the place called "Ravnice", village "Vragovac" at the Municipality of Peja/Peč (henceforth: the claimed properties).
2. To support the claim, the Appellant provided KPA with the following documents:
 - The Decision No 318/54 issued by Secretariat for Economy of Peoples Council for the District of Peja/Peč dated on 3 June 1954. According to this Decision, to the previous owner Radoje Radulovć was allocated for unpaid and temporary use the cadastral parcels no 133/1 and 138/1.
 - The Decision No 1891/55 issued by Council of People, Secretariat for Economy of the District of Peja/Peč on 26 February 1955. The subject of the Decision was the handover of the properties for permanent use for the Agricultural Cooperative on Pocesce. The property (the number of the cadastral parcel was not specified) of the former owner R. R. with the surface of 2.18.71 ha was

expropriated and handed over for the permanent use on Agricultural Cooperative on Pocesce.

- The Birth Certificate No 141/1934 issued by Civil Registration Office of Peja/Peč Municipality on 22 August 1976 showing family relation between the Appellant and R. R.
- The Decision No 08-463/28 of Commission for Deliberation of the Claims for Repossession of the Property issued by the Municipal Assembly of Peja/Peč, on 24 February 1992. According to the Decision, Radoje Radulavić has been confirmed the ownership right over the cadastral parcels no 132, 133 and 138 that previously had been expropriated, thus, the possessor of the properties was obliged to hand over to R.R. the above mentioned properties within the 8 days deadline after the Decision became final.
- The Death Certificate No 203-7-24/07-03 issued by Civil Registration Office of the Municipality of Arandjelovac on 21 March 2007 showing that R.R. passed away on 12 Jul 1994 at the place called Banja, Municipality of Arandjelovac.
- The Power of Attorney No 31844/2011 certified before First Basic Court of the Municipality of Beograd on 11 March 2011. Based on the Power Attorney R.R. authorizes Z. R. to represent him before Cadastral Agency of R. Kosovo for registering of the property that was confiscated on 1953 due to Agrar Reform and returned back to R. R. according to the Decision No08-463/28. The documents that relate the property can be found at the claim KPA42194.
- The Conclusion No 15-463-6520 rendered by Municipality of Peja/Peč, the Directorate for Cadastre and Property Issues, dated on 26 October 2011, through which the Request No 15-463-6520/11 dated on 16 September 2011 for Registration of the Decision No 08-463/28 dated on 24 February 1992 for performing the correction on Directorate for Cadastre of the Municipality of Peja/Peč in the name of R. R. was rejected due to the lack of the legal basis for such request.
- The Appeal filed against the Conclusion No 15-463-6520 rendered by Municipality of Peja/Peč, the Directorate for the Property Issues due to serious violation of the Provisions of Law on Administrative Procedure and erroneous

and incompletely determination of factual situation. The Appeal was filed by Z. R. before the Municipal Assembly of Peja/Peč, Directorate for Property Issues on 28 February 2012.

3. In 28 May 2010, the KPA notified the claimed properties by publishing the claim in the KPA Notification Gazette No 1 and the UNHCR Property Office Bulletin. The Gazette was left in entrance and exit of the village “Vragoc”, the Cadastral Office of the Municipality of Peja/Peč. The correctness of the notification was confirmed on 21 June 2010.
4. The Claim remains uncontested because no one expressed any interest to take part in the proceedings regarding the claimed property, within 30 days legal time frame, pursuant to provision of Section 10.2 of the Law No. 03/L-079.
5. The Executive Secretariat of the KPA verified positively **only** the Decision No 08-463/28 issued by the Commission for Deliberation of the Claims for Repossession of the Property dated on 24 February 1992, while the Department for Cadastre of the Municipality of Peja/Peč confirmed that the claimed properties were found to be subdivided into new numbers (132/2, 133/1 and 138/2) and registered as Socially Owned Property listed on the name of “Koperativa Bujqësore/Agricultural Cooperative”.
6. From the evidences on the case file it is noted that the Appellant was contacted by KPA through the telephone and he confirmed that the loss of possession over the claimed property occurred in 1955 (page 091 of the case file).
7. The Kosovo Property Claims Commission through its Decision KPCC/D/A/228/2014 dated on 13 March 2014 decided that the claim is to be dismissed as being outside the jurisdiction of the KPCC due to that the Claimant has failed to show that his claim involves circumstances directly related to or resulting from the 1998-1999 conflict.
8. The Decision was served to the Appellant on 17 October 2014. He filed an appeal on 13 November 2014.

Allegations of the Appellant

9. The Appellant alleges that the KPCC has incompletely established material facts and has made wrongful implementation of substantial law.
10. The Appellant alleged that the assertion of the KPCC that based on the Appellant's statement the loss of the possession over the claimed property happened on 1954 is not true. He declared that he never gave any statement to anyone or submits any document regarding the issue mentioned on the KPCC Decision. The Appellant asked to provide him with the document on which he declared as such if the same document exists
11. The Appellant notes that the claim submitted before the KPA was not contested, which means it was not disputed by anyone; hence, there is no counter evidence to challenge his claim.
12. In the Appel, she gives a detailed presentation of the documents that she has submitted in order to confirm her Property Right and seeks Supreme Court to accept the Appeal and make a new decision though which it would be established her Property Right.

Legal reasoning:

Admissibility of the appeal

13. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of Law on Contested Procedure No. 03/L-006 (henceforth: LCP), and after evaluating the appeal statements found that:
The Appeal is admissible because it was filed within the legal time limit pursuant to the Law no. 03/L-079, which stipulates that a party may file an appeal against a Commission decision within thirty (30) days from the day parties were informed about the decision.

Merits of the appeal

14. The Supreme Court of Kosovo reviewed the Appeal pursuant to provisions of Article 194 of LCP and after the assessment of allegations in the Appeal it found that the Appeal is unfounded.
15. The KPCC based its Decision on the fact that Appellant has failed to show that his claim involves circumstances directly related to or resulting from the 1998-1999 conflict.
16. Pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079, a Claimant is entitled to an order from the Commission for repossession of the property if the Claimant not only proves ownership of a private immovable property, but also that he is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
17. As it can be seen in the case file, the Appellant was allegedly contacted by the KPA via telephone and apparently he had confirmed that the loss of possession over the claimed property took place in 1955. Article 99 paragraph 1 of the Law on Contested Procedure stipulates that the claim, reply to the claim, appeals and other statements, requests and motions addressed to the court are to be submitted in writing. The requirement of the written form is also met in case of submissions sent through telegraph, fax or electronic mail in case the sender is indicated.
18. There is no evidence in the case file proving that the Appellant submitted a written statement declaring that the loss of possession took place in 1954. A telephone conversation cannot be considered as the submission which content affects the outcome of the proceedings.
19. Nevertheless, the Executive Secretariat of the KPA had made a negative verification in the documents, on which the Appellant bases his claim of ownership.
20. Even though the Decision No 08-463/28 issued by the Commission for Deliberation of the Claims for Repossession of the Property of the Municipal Assembly of Peja/Peč, on 24 February 1992 was found at the archives of the competent institution, the Directorate for Cadastre and the Property Issues of the Municipality of Peja/Peč, through its Conclusion No 15-463-6520 dated on 26

- October 2011 rejected the Request for registration of the property on the name of Radoje Radulović due to the lack of the legal basis for such Request.
21. According to the Article 20 of the Law on Basic Property Relations (OG SFRY, No 6/1980), applicable at the time when the Decision was issued (year 1992) , the right of property can be acquired by law itself, based on legal affair or inheritance....on the basis of the legal affair (which is the Decision at this case) the property right over the real estate shall be acquired by registration into the "public notary book" (cadastral book) or in some other appropriate way that is prescribed by law Article 33 of the Law on Basic Property Relations (OG SFRY, No 6/1980)
 22. Also the Law on Property and other real rights No 03/L-154, Article 115 paragraph 1 (applicable at the time when the Request for registration of the property was made-year 2011) states as follow:

*Acquisition, variation, transfer and termination of ownership, a right of pre-emption or a limited right relating to immovable property require a legally valid contract and **registration of the relevant transaction in the immovable property rights register.***
 23. The Possession List No 37 obtained ex officio by the Executive Secretariat of the KPA, shows the property as subdivided into new cadastral parcels under the numbers 132/2, 133/1 and 138/2 and registered as a Socially Owned Property on the name of “Koperativa Bujčesore/Agricultural Cooperative” meaning that the Decision No 08-463/28 issued by the Commission for Deliberation of the Claims for Repossession of the Property was not executed. This means that Appellant has not gained the property right since the conditions of Article 33 of the Law on Basic Property Relations (SFRY, No 6/1980) as well as the conditions of the Article 115 of the Law on Property and other real rights (No 03/L-154) were not fulfilled.
 24. Based on the above, the Supreme Court finds that the KPCC instead of dismissing the Appellant’s claim as outside the scope of its jurisdiction should have rejected the claim due to lack of evidence proving the right of ownership.
 25. Since only the Appellant filled an appeal and the court may not worsen the situation of the Appellant compared with the contested decision (*reformatio in pejus*), the Decision of the KPCC has to be confirmed.
 26. In the light of foregoing, pursuant to Section 13.3 under (a) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment

Legal Advice

Pursuant to Section 13.6 of 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

Sandra Gudaityte, EULEX Registrar