

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
AGJENCIONI KOSOVAR PËR PRONA, KOLEGJI I APELIT TË AKP-së
KOSOVSKA AGENCIJA ZA IMOVINU, ŽALBENO VEĆE KAI**

GSK-KPA-A-044/15

**Prishtinë/Priština,
27 July 2017**

In the proceedings of:

T. P.

Appellant

Vs

**SOS “K. I.”
represented by
N. R.S.**

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anna Bednarek and Erdogan Haxhibeqiri, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 (case file registered at the KPA under the number KPA10621), dated 13 March 2014, after the deliberation held on 27 July 2017, issues the following:

JUDGMENT

1. The Appeal filed by T. P. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014, dated 13 March 2014, as far as it concerns the case registered with the Kosovo Property Agency under the number KPA10621, is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014, dated 13 March 2014, as far as it concerns the case registered under number KPA10261, is confirmed.

Procedural and factual background:

1. On 23 November 2006, T. P. (hereinafter: “the Appellant”) filed a Claim with the Kosovo Property Agency (hereinafter: “the KPA”), seeking the re-possession of the cadastral parcel No 2554/5, located in Velani, in Prishtinë/Priština, where without his permission and without any compensation there was constructed a the house for war orphans. Later on, the Appellant explained that he sought a counter-value damage compensation for the expropriated by the Municipality of Prishtinë/Priština property, in 2000.
2. Together with the Claim, the Appellant submitted, *inter alia*, the following documents:
 - Possession List No 10043, issued on 8 June 1975 by the Directorate of Geodesy in Prishtinë/Priština, where the claimed parcel is indicated as being registered under the name of the Appellant.
 - Copy of the Plan issued by the Directorate of Geodesy in Prishtinë/Priština, on 30 June 1995.
 - Minutes from the session of the Municipal Assembly of Prishtinë/Priština of 1 July 1994 containing an Agreement on Compensation, on the basis of which the Appellant obtains the claimed property from V.S.
 - Description of the Possession List No 10043, issued by the Directorate of Geodesy in Prishtinë/Priština, dislocated in the Republic of Serbia, on 10 April 2003, wherein as the owner of the claimed property the name of Appellant is indicated.
3. On 15 December 2010, the KPA notified the Claim, visited the property. The claimed property was found to be occupied by the Appellee and along with some other parcels was transferred into kinder garden.
4. The Executive Secretariat of the KPA delivered the Claim to N. R. S., on behalf of the SOS “K. I.” (hereinafter: “the Appellee”). She filed a Response to the Claim and alleged that the other party is seeking the ownership right over the claimed property acquired on the basis of expropriation and allocation of construction land, construction permission given by the authorities and construction of kinder garden. To support her allegations, the Appellee submitted the following:

- The Agreement between the Austrian Association SOS-K. I. with the Kosovo Government, on Construction of Kinder Gardens, concluded on 22 October 2004.
 - The Decision granting the on urbanistic permit 05 Nr.350-178 issued by the UNMIK Administration on 01.02.2001.
 - The Construction Permit issued by the UNMIK International Administration on 14 February 2001, wherewith the Appellee is allowed to construct the kinder garden on the claimed property.
 - The Decision on Amendments of Urban Plan at “Velanija” neighbourhood, where the claimed property is located.
 - The Decision of UNMIK on Allocation of construction land to the Appellee.
 - The Registration Certificate for the NGO, issued by the UNMIK Office for Business Registrations in Prishtinë/ Priština, on 5 January 2000.
5. According to the Consolidated Verification Report dated 11 July 2011, the documents submitted by the Appellant could not be found at the Municipality of Prishtinë/Priština, neither at the dislocated Cadastre. The documents submitted by the Appellee were found and verified positively.
 6. On 13 March 2014, the KPCC with its Decision KPCC/D/A/228/2014 (hereinafter: “KPCC’s Decision”, “Decision”) dismissed the Claim because of the fact that the Appellant claimed damage compensation. In the respective reasoning, in the paragraph 48, is stated that the Commission considered it had no jurisdiction over the compensation claims for the use of property without the consent or for the damage caused.
 7. The KPCC’s Decision was served on the Appellant on 18 August 2014. T. P. filed an Appeal on 10 September 2014. The Appellee received the Appeal on 10 February 2015, and through the authorized representative filed a response to it on 4 March 2015.

Allegations of the Appellant

8. The Appellant emphasizes that the Decision of the Commission involves misapplication of the substantive and procedural law and it rests on erroneous and incomplete determination of factual situation. He alleges that subject of his Claim was vacation of his land for which he submitted sufficient evidence that it has been his property.
9. The Appellant contests the ascertainment of the Commission due to the fact that the expropriation of his property was not performed in accordance with the law and that he was never compensated for losing it.
10. Finally, the Appellant requests the Supreme Court to confirm his ownership over the claimed property, to order to the Cadastre Office to register his ownership in cadastral records and to order the Municipality of Prishtinë/Priština to vacate his property or to compensate the same with another land of the same value and distance from the centre of city as the claimed property.

Allegations of Appellee

11. The Appellee stated that she undergone all legal procedures to acquire a work permit and construction permit for the kinder garden. In addition, she indicated that the property was expropriated also in 1980 by the Municipality of Prishtinë/Priština, and that the Appellant did not have any evidence on the alleged ownership, therefore his Claim should be rejected. In any eventual case or court dispute the Appellee considers that she acquired the ownership in bona fide and was not aware that this property could have an individual owner uncompensated for the expropriation.

Legal Reasoning

12. The Supreme Court, after having reviewed the allegations of the Appeal and the content of the case file, concludes that the Decision of the KPCC does not involve any fundamental error or serious misapplication of the applicable substantial law, nor it rests upon an erroneous or incomplete determination of the facts. Hence, the Appeal may not be granted, however with different reasoning than the one presented in the Decision.
13. According to Section 3.1 of Law No 03/L-079 the KPCC has the competence to resolve conflict related ownership claims and property right claims “directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.” That means that the scope of the examination of the KPA is to verify the following elements: who was in possession of the claimed property before 27 February 1998, who is in the possession of it now, when and for which reason the possession was lost during the period between 27 February 1998 and 20 June 1999. If the Commission verifies that the possession of the claimed property was lost before or after the dates indicated above, or that the loss of the possession was not related to the conflict, it shall dismiss the Claim on the basis of the Section 11.4(b) of the Law No 03/L-079.
14. As it appears from the case file, the Appellant did not prove that he was not in possession of the claimed property during the period between 27 February 1998 and 20 June 1999 and therefore the Supreme Court may not draw a conclusion that the Appellant lost a possession of it due to the conflict. In fact, the documents submitted by the Appellant, which – according to him – would prove his ownership right to the claimed property were the copies of the Agreement, Possession List and the Plan. However, the Supreme Court wishes to indicate that the law in force in the year 1994, when the agreement was signed did not foresee the possibility of acquiring property rights towards the immovable property on the basis of the agreement signed by other parties, including the municipal assembly. Moreover, the documents like Possession List and the Plan aimed at proving the title to the claimed property should be in all cases verified within the competent authorities. The Executive Secretariat of the KPA took all possible actions to verify the mentioned documents in Kosovo and in Krusevac, but nowhere could they be positively verified. For that reason, the Appellant was requested to submit other documents that he is in possession of, in order to prove his title and the possession of the claimed property before or during the conflict.
15. Consequently, the Supreme Court concludes that the Decision of the KPCC was correct and finds its legal basis in the law in force. The Appeal thus is unfounded and has to be rejected.

16. Moreover, since the KPCC did not have the jurisdiction over the compensation claim, the Appellant's request in that regard had to be dismissed as inadmissible pursuant to Section 3.1 of UNMIK Regulation No 2006/50, as amended with Law No 03/L-079.
17. The present Judgment does not prejudice the right of Appellant to claim his right before the competent court, if he deems it necessary.
18. From the foregoing and pursuant to Article 13.3 under (c) of UNMIK Regulation No 2006/50 as amended by Law No 03/L-079, is decided as in the enacting clause of this Judgment.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation No. 2006/50, as amended by Law 03/L-079, this judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Erdogan Haxhibeqiri , Judge

Sandra Gudaityte, EULEX Registrar