

**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-211/15

Prishtinë/Priština,

21 Febauray2018

In the proceedings of:

M. Š.

Appellant

Vs.

M. Rr.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Anna Bednarek and Ragip Namani Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014 dated 18 June 2014 (the case file registered at the Kosovo Property Agency under the number KPA48961), after the deliberation held on 21 February 2018, issues the following:

JUDGMENT

1. The Appeal of M. Š. filed against the Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014 dated 18 June 2014 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014, dated 18 June 2014, with regard to the Claim registered with Kosovo Property Agency under No KPA48961, is confirmed.

Procedural and factual background

1. On 23 November 2007, M. Š. (henceforth: the Appellant) filed a Claim with the Kosovo Property Agency (henceforth: the KPA) seeking repossession of an apartment with a surface of 63.31m² located in *address ...*, Municipality of Prishtinë/Pristina (hereinafter: the claimed property). The Appellant stated that he was the owner of the apartment and that the property was occupied by M. Rr. claiming repossession and compensation of the damage for unauthorized use of it. He indicated June 1999 as a date of loss of the possession of it.
2. Together with the Claim, the Appellant provided the KPA with the following documents:
 - Contract on Sale dated 18 March 1997, indicating that the claimed property was purchased from the Allocation Right Holder, the Enterprise “EXIMKOS”. The contract was legalized before the Municipal Court of Prishtinë/Priština under the number Ov. No. 1483/97,
 - Judgment of the Municipal Court of Prishtinë/Pristina rendered in the case P.Br. 1350/93 on 4 December 1995, terminating the Contract on Use of M. Rr. and obliging him to vacate the claimed property,
 - Certificate No 0201/13 issued by the Enterprise “EXIMKOS” on 20 December 1996, confirming that the Appellant has paid the amount of 2.212,11 Dinars on behalf of the purchasing price,

- Ruling on Allocation No 522 dated 28 December 1995, by which the Enterprise “EXIMKOS” allocated the claimed property for use to the Appellant,
 - The Contract on Use No 1193/13544 concluded between the Public Housing Enterprise and the Appellant on 6 February 1996,
 - An Agreement No 423 between the Appellant and the Enterprise “EXIMKOS” by which the Appellant voluntarily waived his rights to the apartment with a surface of 40 m² located in “Bregu i Diellit” neighborhood and left it for use to “EXIMKOS” Enterprise, whereas he took the claimed property in use,
 - The Contract on Sale dated 17 June 1993, indicating that the claimed property was purchased from the Allocation Right Holder, the Enterprise “EXIMKOS”. The Contract was legalized under the number Ov. No 940/94,
 - The Contract on Use No 1193/12014 concluded between the Public Housing Enterprise in Prishtinë/Pristina and the Appellant on 11 August 1986. The subject of the Contract was the apartment of 40 m² located in “Bregu i Diellit” neighborhood”;
 - Various receipts of payments of municipal taxes,
3. Notification of the Claim was done on 7 February 2008 and at the time of the visit the claimed property was found being used as an apartment, however the current occupant was not present.
 4. On 7 October 2008, M. Rr. (henceforth: the Appellee) appeared before the KPA and claimed that the apartment be allocated to him.
 5. To support his Claim, the Appellee provided the KPA with the following documents:
 - Ruling on Allocation No 02-4-4 dated 29 December 1983 by which the Enterprise “EXIMKOS” allocated the claimed property,
 - The Contract on Use No 1193/13544 concluded between the Public Housing Enterprise in Prishtinë/Pristina and the Appellee on 31 August 1987,
 - Decision of the Housing and Property Claims Commission (HPCC), HPCC/REC/94/2007 dated 26 March 2007 by which the HPCC orders that the Appellee’s claim DS00262 under the category A was granted, and his ownership right had been lost as a result of discrimination be restored, whereas the Appellant’s right to compensation was recognized by Directorate;
 6. According to the Verification Report dated 1 April 2011, the documents presented by the parties were found and positively verified. The Contract on Sale was not found physically, but the Court Officer confirmed the authenticity of the signature.

7. On 18 June 2014, the Kosovo Property Claims Commission (henceforth: the KPCC), by its Decision KPCC/D/A/247/2014 (henceforth: the Decision of the KPCC) dismissed the Claim. In its reasoning (paragraphs 20 and 47), the KPCC stated that the evidence submitted by the parties, verified by the Executive Secretariat have shown that the case was decided by a final decision and based on the provisions of the section 11.4 of the UNMIK Regulation 2006/50, as amended by the Law No 03/L-079, the KPCC had to dismiss the Claims that have been previously decided.
8. The Decision of the KPCC was served on the Appellant on 13 October 2014. On 23 October 2014 the Appellant filed an Appeal against the Decision of the KPCC. On 17 June 2015, the Appeal was left at the Appellee's door; however he has not filed a response.

Allegations of the Appellant

9. The Appellant stated that the Decision of the KPCC was unlawful and requested the Supreme Court of Kosovo to grant the Appeal and to “restitute the state that existed prior to conflict”, since the loss of possession over the claimed property occurred as a result of the armed conflict and that at the time of the conflict he was the owner of the apartment that was subject of the present Claim.
10. The Appellant also does not agree with the findings that the KPCC has no jurisdiction over the cases that have been decided by a final administrative or judicial decision and that based on the evidence presented the Appellant it appears to be uncontested owner of the claimed property. He alleges that he filed a Claim for recognition of the property rights over the claimed property and that this Claim is not the same as the first one.
11. The Appellant's allegations are that he entered into an agreement with the apartment holder whereby he exchanged the previous apartment for which he had ownership rights and took the claimed property in use which he purchased by the Social Enterprise pursuant to the laws in force.

Admissibility of the Appeal

12. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of Law on Contested Procedure No 03/L-006 (henceforth: the LCP) and after evaluating the allegations of the Appellant it found that the Appeal is filed within the deadline prescribed by Article 12.1 of the Law No 03/L-079 which foresees that a party may file an Appeal against the Decision of the Commission within thirty (30) days of the notification to the parties of a decision.

Legal reasoning

13. The Supreme Court of Kosovo found that the challenged Decision of the KPCC was rendered following a complete and proper determination of the factual situation and on this ground, both substantive and procedural law were properly applied. Therefore, the Appeal is rejected as unfounded.

14. The Supreme Court found that the challenged Decision of the KPCC is based on Section 8.6.c of the Administrative Direction No 2007/5 Implementing UNMIK Regulation No 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by the Law No 03/L-079, which prescribes that: The Commission by a decision may *“reject or dismiss a claim based on any reason, including those listed under Section 11.4 of the UNMIK Regulation No 2006/50”*. Consequently, the provision of the mentioned Article should be understood that the KPCC’ jurisdiction is excluded if *“The Claim has previously been considered and decided in a final administrative or judicial decision”*.

15. This Decision was rendered by the Housing and Property Claims Commission (henceforth: the HPCC) based on Article 1.2(a) of the UNMIK Regulation No 1999/23 and Article 2.2 of the UNMIK Regulation No 2000/60, which prescribes for an exclusive jurisdiction to receive and decide these Claims *“A Claimant of category A claiming property loss as a result of discrimination and seeking the property on grounds of discrimination must prove the right to immovable property and that the ownership, possession or right of residence in the immovable housing property was revoked after 23 March 1989 on the basis of legislation which is discriminatory both in its application and in its purpose”*. Therefore, the property was returned to the competing party which had been lost on the grounds of discrimination whereas the Appellant

in the concrete case was entitled to adequate compensation under Section 4 of UNMIK Regulation 2000/60.

16. Based on Article 2.7 of UNMIK/REG/1999/23 it is prescribed that: Final decisions of the Kosovo Property Claims Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo. Therefore, the KPCC's Decision to consider the case as decided by a final decision is based in the Law and well-reasoned.

17. The KPCC rightfully indicated moreover, that according to the Article 47 the Claim for compensation of material damage and lost for it and the inability the claimed property shall be dismissed as out of jurisdiction.

18. In the light of foregoing and pursuant to Article 13.3 under (c) of the Law 03/L-079, and Article 195 paragraph 1 (d) of the Law on Contested Procedure, it was decided as in the enacting clause of this Judgment.

Legal Advice

Pursuant to article 13.6 of the Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Ragip Namani, Judge

Anna Bednarek, EULEX Judge

Bjorn Olof Brautigam, EULEX Registrar