

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

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-150/15

**Prishtinë/Priština,
7 March 2018**

In the proceedings of:

M. A.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anna Bednarek, EULEX Judge and Ragip Namani Judge, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission (henceforth “the KPCC”), KPCC/D/R/247/2014 (the case file registered at the Kosovo Property Agency under the number KPA29582) dated 18 June 2014, after deliberation held on 7 March 2018.

JUDGMENT

1. **The Appeal of M. A. against the Decision KPCC/D/R/247/2014 of 18 June 2014 regarding the Claim registered at the Kosovo Property Agency under the number KPA29582 is rejected as unfounded.**
2. **The Decision KPCC/D/R/247/2014 of 18 June 2014 regarding the Claim registered at the Kosovo Property Agency under the number KPA29582 is quashed.**
3. **The Claim of M. A. registered at the Kosovo Property Agency under the number KPA29582, regarding the right of use over the socially-owned property is dismissed due to lack of jurisdiction of the KPCC.**

Procedural and factual background

1. On 27 February 2007, M. A. (henceforth “the Appellant”) filed a Claim to the KPA, seeking the use right and repossession over an apartment with the surface of 55.23 m², situated in Ferizaj/Uroševac, Kralja Petra I, Street, lamella A (henceforth: the claimed property). He stated he had a tenancy right over the claimed property and that the loss of possession of it took place on 16 June 1999 as a result of circumstances of 1998/1999 in Kosovo.
2. To support the Claim, the Appellant provided the KPA with:
 - A copy of the Allocation Decision No.1278 issued by the Socially Owned Enterprise “Industria metalike e Kosovës” on 30 December 1982, on the basis of which the Appellant was allocated the claimed property for use;
 - A copy of the Contract on Use of the Apartment No 173, concluded on 9 February 1983 between the Public Housing Enterprise of Ferizaj/Uroševac as lessor and the Appellant as lessee, based on which the Appellant received the claimed property for permanent use.
3. On 16 November 2007, the KPA notified the Claim and found it occupied by I. Z. (henceforth “the Appellee”). He signed a Notice of Participation clarifying he has been using the claimed property only for residential purposes and that he did not claim any legal rights to it.
4. On 6 December 2007, the Appellee submitted a Response to the Claim where he declared that he has been using the claimed property as he did not have another choice, because his property was burned during the conflict. The Appellee showed his interest to contact the Appellant in order to reach any agreement regarding the claimed property.
5. According to the verification reports of the Executive Secretariat of the KPA, the documents presented by the Appellant were not found at the competent institutions, thus the verification resulted to be negative.
6. The Executive Secretariat of the KPA contacted the Appellant and informed him about the findings, further he was advised to submit additional documents in order to prove his right.
7. Moreover, on 12 May 2014, the Appellant was provided with the official information letter advising that if he fails to submit the requested documents within given deadline his Claim might be refused by the Commission (page No 124 of the case file).

8. On 18 June 2014, the KPCC refused the Claim through its Decision KPCC/D/R/247/2014. In its reasoning the KPCC stated that the Claimant had failed to submit any evidence at all or any evidence that could be verified by the Executive Secretariat of the KPA that the Claimant enjoys any property right over the claimed property.
9. The Decision was served on the Appellant on 22 October 2014. The Appeal was filed on 4 November 2014. The KPA hasn't served the Decision on the Appellee.

Allegations of the Appellant

10. The Appellant states that the KPCC's Decision contains essential violation of the application of the substantive law, as well as it rests upon incomplete and erroneous determination of the factual situation.
11. The Appellant alleges that the reasoning of the KPCC's Decision does not stand at all, because he had submitted sufficient evidence to prove that he had the user right over the claimed property, while the Executive Secretariat of the KPA did not give any concrete explanation why the documents were not verified.

Legal reasoning

12. The Appellant requested to confirm his ownership rights over the claimed property and to order its repossession.
13. After having reviewed the evidence gathered during the proceedings before the KPA and the content of the Appeal, the Supreme Court contends that the allegations of the Appellant are not grounded.
14. The question that requires a consideration at the first place in the case at hand is whether the KPCC had jurisdiction to examine the Claim of the Appellant filed to the KPA in 2007, seeking the use right over a socially-owned property.
15. According to Section 3.1 of UNMIK/REG/2006/50 as amended by the Law No. 03/L-079, a Claimant is entitled to an order from the Commission for repossession of private immovable property towards which he/she 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. According to Section 2, point 2.1 of UNMIK/DIR/2007/5 as amended by the Law No. 03/L-079 "any person who had an ownership right, lawful possession of or any lawful right of use of or to private immovable property, who at the time of filing the claim is not able to exercise his/her rights due to circumstances directly related to or resulting from the armed conflict of 1998/1999 is entitled to reinstatement as the property right holder in his/her property right". The Regulation however, does not apply to property rights or use rights towards publicly/socially - owned property
16. The apartment in question was not a private immovable property, as it was highlighted as well by the Appellant himself, also in his Appeal. The apartment was in the ownership of the socially - Owned Enterprise "Industria Metalike e Kosovkës", which means that it was a socially-owned property. For that reason, the Claim, which has a socially-owned immovable property as a subject matter, falls outside the scope of the proceedings before the KPA.

17. Thus, the Decision of the KPCC has to be quashed *ex officio* as the case does not fall within its jurisdiction. The KPCC should not have decided on the merits of the case, but rather should have dismissed it according to Section 11.4 (a) of the Law No. 03/L-079. As this has not been done, the appealed Decision *ex officio* has to be quashed and the Claim dismissed (argument after art. 198.1 of the Law on Contested Procedure [henceforth “the LCP”] which is applicable *mutatis mutandis* for the procedure in front of the Appeals Panel of the Supreme Court under Section 12.2 of Law No. 03/L-079). According to the mentioned Article if the court of the first instance has taken a Decision over a claim which does not fall within its jurisdiction, the court of second instance has to annul the Decision and dismiss the claim
18. Firstly the Appellant asserted that the KPCC refused his Claim because the Appellant failed to submit any evidence proving his right, the Decision made a reference to “relevant paragraphs” of the Cover Decision. A special reference is made to the paragraph 25 of the Decision and according to it the Commission found that the Claim fell within the jurisdiction of the Commission. Subsequently, the Appellant maintained that the claimed property was allocated to him by the Socially - Owned Enterprise “InduatRIA Metalike e Kosovës”.
19. However, the question whether the Appellant indeed enjoyed an occupancy right towards the claimed property remains irrelevant in these proceedings as the establishment of such a right over a socially- owned properties is not covered by the substantive jurisdiction of the KPCC (Section 3.1 (b) of the Law No. 03/L-079), and respectfully of the KPA Appeals Panel.
20. Based on the above and pursuant to Article 12.2 of the Law No. 03/L-079 and Article 198.1 of the Law on Contested Procedure, the Court decided as in the enacting clause of this Judgment

Legal advice:

Pursuant to Section 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

Anna Bednarek, EULEX Judge

Ragip Namani, Judge

Timo Eljas Torkko, acting EULEX Registrar