

**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-175/15

**Prishtinë/Priština,
14 March 2018**

In the proceedings of:

R. R. and B. R.

Appellant

Vs.

H. H.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani Judge, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/221/2013 (case file registered at the KPA under the number KPA01041), dated 27 November 2013, after deliberation held on 14 March 2018, issues the following:

JUDGMENT

1. The appeal of R. R.&B. R., against the Decision of the Kosovo Property Claims Commission No KPCC/D/R/221/2013, dated 27 November 2013, as far as it regards case file registered at the Kosovo Property Agency under the number KPA01041, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/221/2013, dated 27 November 2013, with regard to the claim registered at the KPA with number KPA01041, is annulled.
3. The Claim of H. H. with number KPA01041, regarding the right to use the socially owned apartment, based on article 198.1 of the Law No 03/L-006 on Contested Procedure, is dismissed due to lack of jurisdiction of the KPCC.

Procedural and factual background:

1. On 31 July 2007, H. H.(henceforth: the Appellee), filed a claim with the Kosovo Property Agency (henceforth: KPA), seeking repossession and recognition of ownership over the property-apartment, with a surface of 25, 78 m², located in the street “Energoinvest” S-P+ 45/3 No 55, in Prishtinë/Pristina (henceforth: the claimed property). According to the Appellee, the loss of possession over the claimed property took place on 01 June 1999, as a result of the circumstances that occurred in Kosovo on 1998/1999.
2. In order to support her claim, the Appellee submitted the following documents to the KPA:
 - Decision on allocation of the apartment on use No 3227/2, issued on 14 July 1975, based on which the Electrical Equipment Factory in Prishtinë/Pristina-Obiliq had allocated to the Appellee and her husband (an employee of this factory) an apartment, located in Soliteri No 3, no 55, in Prishtinë/Pristina, on use.
 - Contract on use of the apartment No 1193/4222, dated 29 July 1976, concluded between the SMCI for housing and commercial premises in one side and F. H. H. on the other side, based on the Ruling of the allocating authority “Energoinvest”, Obliq/c, No 3227 dated 14 July 1975, based on which the Appellee acquired the right to indefinitely use the apartment located in Prishtinë/ Pristina, str. “Energoinvest”, P+ 45/3. No 55, floor 02, with the surface 25, 78 m².

- Minutes of the handover of the keys to the apartment No 3532 dated 01 August 1975 conducted between the former employee of this factory M. S. and the receiver of the apartment H. H..
 - The Contract on rent of the apartment No 239 dated 12.03.1999 concluded between the contracting parties the Public Housing Enterprise in Prishtinë/Pristina in one side as a Lessor and H. H. from Prishtinë/Pristina as a Lessee, by which the latter received the claimed property on use and is obliged to pay a monthly rent in amount of 57. 50 Dinars, starting from 01.01.1999.
3. On 13. 08. 2013, the Executive Secretariat of the KPA notified the Claim. The apartment was found to be occupied by B. R. (henceforth: the Appellant), who stated that he lives in this apartment since 2001, that the same was released to him by another person, whereas he does not claim any legal right over the claimed property. The Appellant signed the notice of participation to the proceeding on the same date he was served with the notification of the Claim.
 4. The Executive Secretariat of the KPA positively verified all the documents by which the Claimant-Appellee substantiated her claim.
 5. On 27 November 2013, the Kosovo Property Claims Commission by its Decision KPCC/D/R/221/2013 found that the Appellee has proven her right of use over the claimed property, and decided to return possession of the claimed property to the Claimant H. D. According to the specific reasons given under paragraphs 52-57 of the KPCC's Cover decision, where it is stated that the Claimant has proven the right of use, whereas she was unable to exercise her right due to the circumstances resulting from the armed conflict of the 1998-99.
 6. On 19 November 2014, the KPCC Decision was served on the Appellant. On 19 December 2014, R. and B. R. filed the Appeal which arrived at the Supreme Court on 31 August 2015.

Allegations of the Appellant

7. The Appellant alleges that the KPCC's Decision contains substantial violations of the substantive law and also erroneous and incomplete determination of the factual situation.
8. According to the Appellant, the findings and the way it was decided in the Decision of the KPCC do not stand, and the way it was decided is in contradiction with the provisions of the Section 2.1 of the Administrative Direction implementing UNMIK Regulation 2006/50.
9. He also stated that the right of use is not a private property right and that the right of use may be lost if not used, after a period of time has elapsed.

10. Finally, the Appellant considers that the request to release the apartment by the Claimant-Appellee should not be approved as the Commission lacks jurisdiction in this matter.
11. On 10 August 2015, the Appellee received a copy of the Appeal and within the legal deadline of 30 days (on 1 September 2015), responded to the Appeal challenging the Appellant's Appeal as unfair, stating that the other party is unlawfully using her property since after the war. She proposed that the Appeal be rejected whereas the challenged decision is confirmed as fair and lawful.

Legal reasoning:

Admissibility of the Appeal

12. Following review of the case files and allegations of the Appeal, pursuant to Article 194 of the Law No 03/L-006 on Contested Procedure (henceforth: LCP), the Court upon found that the Appeal is admissible and timely filed pursuant to Article 186 par. 1 in conjunction with Article 196 of the LCP.
13. Even though in the follow-up letter of the KPA to the Supreme Court it is stated that the Appellant received the Decision on 14 November 2014, whereas the Appeal was files on 19 December 2014 (page 170 there is an envelope) the Appeal was submitted to the Supreme Court on 19 December 2015 and for this reason the Court considered the date it was submitted to the post office as date of filing, which is the thirtieth day from the date the decision was received.
14. The Appeal submitted on 19 December 2015 is timely filed pursuant to Article 127.2 of the Law No 03/L-006 on Contested Procedure which prescribed that: "*When a submission (in the present case Appeal) is sent by post, registered mail or telegram, the date of submitting it to the post office for delivery shall be considered as the date of the filing with the court to which it is addressed*".
15. The Supreme Court reviewed the challenged Decision pursuant to legal provisions and after having evaluated allegations of the Appellant, found that: the Appeal is admissible because it was filed within the legal deadline in compliance with Article 12.1 of the Law No 03/L-079 amending UNMIK Regulation 2006/50, on resolution of the claims relating to private immovable property, including agricultural and commercial property (henceforth: Law No 03/L-079) which prescribes that "*Within thirty (30) days of the notification to the parties of a decision of the Commission, a party may submit an appeal against such decision*".

Merits of the Appeal

16. After having reviewed the case files, the challenged decision, allegations of the Appellant and Appellee's response to the Appeal, pursuant to Article 194 of the

LCP, the Supreme Court found that the Decision of the KPCC should be annulled not for the merits of the Appellant's Appeal but *ex officio* as the Claim does not fall within its jurisdiction.

17. The KPCC in its Decision KPCC/D/R/221/2013 confirmed that H. H. provided a Contract of Use of 1975 and 1976, by which she was granted a right for permanent use of the claimed property. She also presented a Contract on rent of 1999, concluded with the Public Housing Enterprise. These documents were verified as authentic by the Executive Secretariat.
18. Pursuant to Article 3.1 of the Law No 03/L-079, the KPCC shall have the competence to resolve claims relating to ownership right in respect of private property and claims relating to property use rights in respect of private immovable property.
19. Pursuant to Section 2.1 of the UNMIK Administrative Direction 2007/5, 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, (henceforth: AD) **“Any person who had an ownership right, lawful possession of or any lawful right of use of or to private immovable property, including agricultural and commercial property, who at the time of filing a claim is not able to exercise his/her property right due to circumstances directly related to or resulting from the armed conflict that occurred in 1998/1999, is entitled to reinstatement as the property rights holder in of his/her property right”**.
20. From the evidence presented at the first instance, the claimed property - the apartment in question is a socially owned property, not a private immovable property and therefore it falls outside the scope of the proceedings before the KPA, as it not related to a claim in respect of private property, (argument as foreseen in Article 3.1 of the Law No 03/L-079).
21. The apartment was owned by the Electrical Equipment Factory, which was allocated for use, meaning that it was a socially owned property. Pursuant to Article 321, paragraph 1 of the Law on Contested Procedure No 03-L-006, there shall be no need to prove facts that are common knowledge or facts that have already been established in previous court decisions.
22. Confirmation and protection of use rights over socially owned property and/or public property does not fall within the jurisdiction of the KPCC, respectively the KPA Appeals Panel.
23. The KPCC should not have decided on the merits of the case, but should have dismissed it pursuant to Article 11.4 (a) of Law No 03/L-079. Since this was not done, the appealed decision should be annulled *ex officio* and the Claim be dismissed pursuant to Article 198 paragraph 1 of the LCP that applies *mutatis mutandis* to the proceedings before the Appeals Panel of the Supreme Court under Article 12.2 of the Law No 03 / L-079.

24. This Judgment is without prejudice to any property right over the claimed property, and therefore does not constitute an obstacle to the initiation of a legal proceeding before the competent authority or court, should the parties deem necessary.

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

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Timo Eljas Torkko, EULEX Registrar