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-156/2015 **Prishtinë/Priština**
23 May 2018

In the proceedings of:

V. C.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed Beshir Islami, Presiding Judge, Anna Bednarek and Ragip Namani, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission (hereinafter "the KPCC") No KPCC/D/C/256/2014 of 28 August 2014 (the case file registered at the Kosovo Property Agency under the number KPA47810) after the deliberation held on 23 May 2018 issues:

JUDGMENT

1. **The Appeal of V. C. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/256/2014 regarding the case file registered at the Kosovo Property Agency under the number KPA47810 is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/A/256/2014 regarding the case file registered at the Kosovo Property Agency under the number KPA47810 is confirmed.**

Procedural and factual background

1. On 28 September 2007, V. C. (hereinafter "the Appellant") filed a Claim with the Kosovo Property Agency (hereinafter: "the KPA"), seeking confirmation of the ownership right and repossession of business premises with a surface of 100 m2, located at cadastral parcel No 119/5 at the place called "Zahaq/Zahać", Municipality of Pejë/Peč (hereinafter "the claimed property").The Appellant alleges to be the owner of the business premises that he had constructed in 1998 at the mentioned cadastral parcel. He alleged that the cadastral parcel No 119/5, was bought from the Municipality of Pejë/Peč. According to the Appellant, the claimed property is being occupied by A. V. He requested compensation for his property being used without his consent.
2. To support the Claim, the Appellant submitted the following documents:
    - A copy of the Decision No 463-1244/98-I-4 issued by the Municipal Assembly of Pejë/Peč on 22 December 1998 whereby the Appellant was allocated for use, the part of the cadastral parcel No 119/5 the culture meadow, with the surface of 00.10.60 ha, described in the Possession List No 20 at Cadastral Municipality of Zahaq/Zahać for construction of the business premises. The Appellant was obliged to pay compensation for using the property, while the changes at the Cadastral Office were supposed to be performed by the Department for Cadastre and Geodesy of Pejë/Peč Municipality after the Decision became final.
    - A copy of the Contract No 50/99 on Use of the Construction Land concluded on 17 February 1999 between the Municipal Assembly of Pejë/Peč and the Appellant stipulating the conditions that the Appellant had to fulfil in order to use the cadastral parcel No 119/5. According to the Contract, the Appellant was obliged to pay the amount of 21.200.00 dinars (Serbian currency) as compensation for using the socially- owned property, to start the construction of the business premises at the allocated parcel within 1 year from the date of the conclusion of the Contract otherwise he would have lost the allocated land, the business premises should have been constructed in accordance with the Construction Permission issued by the Urban Planning Department of the Municipality of Pejë/Peč.

3. On 4 November 2010, the KPA attempted to notify the Claim and by found the property (the cadastral parcel No 119/5) not to be occupied. The Notification Team met the alleged occupant (A. V.) who declared not to be using the claimed property.
4. As no party filed a Response to the Claim within the legal deadline of 30 days, pursuant to Section 10.2 of the Law No. 03/L-079 the Claim was considered as uncontested.
5. According to the Verification Reports of the Executive Secretariat of the KPA, the Possession List No 20 describing the cadastral parcel No 119/5 was verified positively, but the land was found to be socially-owned property registered under the name of "the Municipal Assembly of Pejë/Peč". The Decision No 463-1244/98-I-4 issued by the Municipal Assembly of Pejë/Peč on 22 December 1998 and the Contract on Use of the Construction Land (No 50/99) were not found at the competent institutions of the Republic of Kosovo. To the Verification Report the following documents were attached *ex officio* :
   - A copy of the Ruling No 05-463-09 issued on 22 August 1983 by the Municipality of Pejë/Peč, Department for Urbanism, on the basis of which it was confirmed that A.V. was in factual possession of the cadastral parcel No 119/5 that is registered in the Possession List No 20 as a socially-owned property;
   - A copy of the judicial expertise of 7 March 2007 formulated upon request of the Municipal Court of Pejë/Peč related to the case C.Nr.1251/06 dated on establishing the location of the cadastral parcel No 119/5. According to the expertise the mentioned parcel was a socially- owned property described in Possession List No 20 under the name of the Municipal Assembly of Pejë/Peč;
   - A copy of the Certificate for Immovable Property Rights P-71611036 issued by the Municipal Cadastre of Pejë/Peč on 11 August 2010 listing the cadastral parcel No 119/5 as a socially-owned property of "the Municipal Assembly of Pejë/Peč.
6. The Appellant was informed about the verification results of the documents submitted by him. He was advised by the Executive Secretariat of the KPA orally as well as via official letter to support his Claim with additional documents through which he could prove his right over the claimed property as the documents already submitted were not sufficient to prove any right over the business premises (page 130 and 131 of the case file), nonetheless, the Appellant did not submit any additional document.
7. On 27 August 2014, the Kosovo Property Claims Commission (hereinafter "the KPCC") through its Decision KPCC/D/A/256/2014, refused the Appellant's Claim. In the reasoning of the Decision (paragraphs 36-37) it is stated that the documents submitted by the Appellant could not be verified by the Executive Secretariat of the KPA. Although invited by the Secretariat, the Appellant failed to submit any further evidence in support of his property rights. The Executive Secretariat had also been unable to locate *ex officio* any evidence that would support the Claim, however, the Executive Secretariat found *ex officio* the Certificate for Immovable Property Rights which listed the claimed parcel under the name of the Municipal Assembly of Pejë/Peč. As a consequence, the Commission concluded that the Appellant failed to show any property right over the claimed property immediately prior to or during the 1998-99 conflict.
8. The Decision was served upon the Appellant on 5 February 2015. The Appeal was filed on 20 February 2015.

Allegations of the Appellant

9. The Appellant alleges that the KPCC erroneously and incompletely established the facts and erroneously applied substantial law. He pointed out that it was unclear if his Claim has been refused or dismissed because at the enacting clause it was written that the Claim is refused, while in the reasoning part the Claim was dismissed.
10. The Appellant alleges that he filed a Claim to the Housing and Property Directorate (hereinafter "the HPD") for the same property by submitting the same documents. The Housing and Property Claims Commission (hereinafter "the HPCC") though its Decision No HPCC/D/145/2004/C dated 27 August 2004 confirmed the possession right over the claimed property in his favour by saying that the Appellant had submitted sufficient evidence to prove that he had been in the possession of the claimed property. According to him, by the confirmation of the possession right over the business premise confirms at the same time the use right over the cadastral parcel..

11. The Appellant clarified that he addressed the KPA to seek confirmation of the ownership right over the claimed property which was destroyed after it was given for administration to the HPD.

Legal reasoning

12. The Supreme Court, after the review of the submissions contained in the case file, the appealed Decision and the allegations of the Appellant, pursuant to Article 194 of the Law on Contested Procedure found that the Appeal is unfounded.
13. The Appellant pointed out that the KPCC's Decision is unclear as the content of the Decision of the KPCC dated 27 August 2014 states that the Appellant's Claim is refused. The Decision made a special reference to paragraphs 36 and 37 of the reasoning, which again in the conclusion says: "the claim stands to be refused" It is correct however, that at the Serbian version of the enacting clause of the Decision states that the claim is "refused" while in paragraph 37 of the legal reasoning part it is written that the claim is "dismissed". it needs to be clarified here that the Decision itself specifies that the English version is the official language of all Kosovo Property Claims Commission Decisions and in case of the conflict between the English version and Albanian or Serbian versions, the meaning in the English shall prevail. For that reason the allegation of the Appellant does not stand.
14. In the reasoning of the Appeal the Appellant refers to the previous HPD Decision with regard to the claimed property. As a matter of fact, the Appellant previously applied to the HPCC asking for re-possession of the business premises. The HPCC in its Decision of 27 August 2004 with the number HPCC/D/145/2004/C granted the re-possession right over the claimed property in favour of the Appellant.
15. The Appellant was clearly seeking to get repossession of the same property before HPCC. The ownership right over the claimed property was not examined by the HPD, thus allowing the Appellant to meet the requirements in procedure before the KPA whereas he claimed the ownership right and the repossession over the claimed property again. With that regard the Appellant alleges that the HPD decided in his favour considering the same evidence which is submitted to the KPA.
16. As to the above allegation, the KPA Appeals Panel of the Supreme Court cannot take a position. The KPCC and the KPA Appeals Panel of the Supreme Court do not have the jurisdiction over the cases of the HPCC or to review the reasoning of the HPCC decisions

and to examine their correctness. The above mentioned Decision was issued under the UNMIK Regulation 2000/60. The provisions of the latter Regulation do not provide for any legal remedy (appeal or extraordinary legal remedy) against the final decision of the Housing and Property Claims Commission

17. In the case at hand filed to the KPA, the KPCC based its Decision on the fact that the Appellant failed to provide any evidence that could be verified by the KPA, proving that he, as property right holder, enjoys any ownership right over the claimed property, as well as that the Executive Secretariat did not *ex officio* obtain such evidence.
18. The subject of the Claim is a business premise located at the cadastral parcel No 119/5. The Appellant (during the appellate stage) admitted that he had only the use right over the cadastral parcel No 119/5, while he seeks confirmation of the ownership right over the business preemies.

19. The Decision No 463-1244/98-I-4 issued by the Municipal Assembly of Pejë/Peč on 22 December 1998 shows that the Appellant obtained an allocation of the cadastral parcel No 119/5 for use, meaning the socially-owned construction land under the condition that he would build the business premises. According to Articles 2, 3, 5, 8 and 24 of the Law on Land for Construction (Official Gazette SAPK No. 14/80 and 42/86), the land for constructions serves as a good of the common interest, and is considered socially-owned property once the relevant municipality determines the borders of the construction land. Furthermore, it is clearly stated in the Law on Land for Construction that the owner of a building on the urban land for construction has the right to use the land under the building within the borders of the construction parcel. Consequently, the Supreme Court points out that the part the land parcel No 119/5 of the size of 100 m² is to be considered as a public property, and that there is no possibility to obtain ownership right to such a property.
20. Additionally, the Contract on Use of the Construction Land No 50/99 concluded on 17 February 1999 between the Municipal Assembly of Pejë/Peč and the Appellant specifies the conditions that the Appellant had to fulfil in order to use the cadastral parcel No 119/5. The conditions were set as below:
    - to pay the amount of 21.200.00 dinars (Serbian currency) as compensation for using the socially-owned property,
    - to start the construction of the business premises at the allocated parcel within 1 year from the date of the conclusion of the Contract, otherwise he would lose the allocated right,
    - the business premises shall be constructed in accordance with the construction permission issued by the Urban Planning Department of the Municipality of Pejë/Peč.
21. The Appellant submitted neither any document which would show that he had fulfilled any of the conditions specified in the Contract on Use of the Construction Land No 50/99 in order to gain the ownership right over the business preemies, nor any other document that relates to the business premises at all, despite the fact that he was advised to do so by the Executive Secretariat of the KPA. Indeed, none of the documents submitted by the Appellant shows his title to the business premises, nor shows that he has been using them before or during the conflict and that currently he is not able to use the immovable property due to the factual situation that took place during the conflict. Without showing those circumstances, the KPCC and consequently the KPA Appeals Panel cannot consider the Claim and the Appeal founded. Additionally, as it appears from the documents in the case file, contrary to what the Appellant stated in the Claim, the business premises subject to the

Appeal are not being used by unknown persons at all. For that reason the Claim and the Appeal could not lead to granting of the requests of the Appellant.

22. As far as the request for compensation is concerned, neither the Commission nor the KPA Appeals Panel of the Supreme Court has the jurisdiction to decide over the subject matter. The Law No. 03/L-079 itself does not provide for the compensatory mechanism for the destroyed property.
23. Based on what was mentioned above, the Supreme Court finds that the KPCC made a correct Decision, based on a thorough and correct analysis of the documentation gathered. Accordingly, the Supreme Court finds that no violation of the substantial law or incompletely establishment of the factual situation could be found. The Supreme Court concludes that the Appeal is unfounded.

24. In the light of foregoing, pursuant to Section 13.3 under (c) 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 the UNMIK Regulation 2006/50 as amended by 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