

**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-150/2014

Prishtinë/Priština, 3 August 2016

In the proceedings of:

M.R.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Beshir Islami and Anders Cedhagen, Judges, on the appeal against the decision of the Kosovo Property Claims Commission no. KPCC/D/A/212/2013 (case file registered at the KPA under the number KPA08113) dated 21 August 2013, after deliberation held on 3 August 2016, issues the following:

JUDGMENT

1. The appeal of M. R. against the decision of the Kosovo Property Claims Commission no. KPCC/D/A/212/2013, dated 21 August 2013, is rejected as unfounded.
2. The decision of the Kosovo Property Claims no. KPCC/D/A/212/2013, dated 21 August 2013, is confirmed as far as it concerns claim KPA08113.

Procedural and factual background:

1. On 18 December 2006, M. R. (hereinafter: the Appellant) filed a claim with the Kosovo Property Agency (hereinafter: KPA), seeking repossession of parcels nos. 7006/1 and 7009/1 with the surface of 01.44.61 ha, located in Ortakol street, in Prizren/Prizren, Municipality of Prizren/Prizren (hereinafter: the claimed property). The claim was registered at the KPA under KPA08113.
2. The Appellant alleged that he obtained a part of parcels nos. 7006/1 and 7009/1 of a size of 193.25 m² from the Municipality of Prizren/Prizren to construct a residential object. The construction was not finalized due to circumstances related to the armed conflict that occurred in Kosovo in 1998/1999.
3. To support his claim, the Appellant submitted the following documents:
 - Decision of Department for Property-Legal Matter of the Municipal Assembly of Prizren/Prizren no. 03/3-463-117, dated 29 March 1994, granting the Appellant the right of use of socially-owned municipal construction land on construction parcel no. 8, measuring 193.25 m², on parts of cadastral parcels nos. 7006/1 and 7009/1, for the purpose of constructing residential building within three years from the date of obtaining possession rights;
 - Minutes of Possession no. 03/3-463-117, dated 5 July 1995, indicating that the Appellant obtained the possession of the construction land;
 - Act on conditions for spatial planning no. 04/4-353-668 (hereinafter: the Act), dated 12 August 1994, presenting basis for production of technical documentation for construction of residential building on condition that the investor submits request for construction permit within two years from the date the Act is issued;
 - Conditions for spatial planning no. 04/4-353-668, dated 12 August 1994, detailing the requirements for the construction of a residential object;

- Approval issued by Public Unity Company “Cvilen” no. 59/II, dated 16 September 1997, allowing the object to be connected to water/sewage system. This approval can be used solely for the purpose of obtaining construction permit;
 - Confirmation no. 04/4-353-669, dated 15 December 1994, confirming that technical documents has been prepared by Project Bureau “Lela” and indicating that the confirmation is valid until 15 December 1996;
 - Work Order no. 59/II, dated 16 September 1997;
 - Invoice, dated 16 September 1997, based on work order no. 59/II.
4. On 29 August 2008, the KPA notified the claim by putting a poster on the claimed property. During the notification, it was noted that the property is occupied by unknown person(s). On 28 December 2010, the notification and confirmation of the claim was done through publication in the KPA Notification Gazette no. 10 and UNHCR Property Office Bulletin. Both publications were placed on the entrance door of the Municipality of Prizren/Prizren and Municipal Court of Prizren/Prizren. No responding party approached the KPA’s Executive Secretariat within the deadline of 30 days as determined by Section 10.2 UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (hereinafter: Law No. 03/L-079).
 5. On 28 May 2007 and 14 October 2008, the KPA positively verified decision no. 03/3-463-117, dated 29 March 1994, Approval issued by Public Unity Company “Cvilen” no. 59/II, dated 16 September 1997, and Confirmation no. 04/4-353-669, dated 15 December 1994, submitted by the Appellant. Decision no. 03/3-463-117 and confirmation no. 04/4-353-669 were verified in the Municipal Assembly of Prizren/Prizren. Approval no. 59/II was verified by water supply company “Southern Hidroregion”. Additionally, on 14 October 2008, the KPA *ex officio* confirmed that parcels nos. 7006/1 and 7009/1 are registered in the cadastral records as property of the Municipality of Prizren/Prizren, and added to the file two Certificates for the Immovable Property Rights, dated 13 October 2008.
 6. On 21 August 2013, the Kosovo Property Claims Commission (hereinafter: KPCC) in its certified decision KPCC/D/A/212/2013 refused the claim. In the reasoning of the decision (paragraphs 12, and 62 to 63), the KPCC indicated that the user rights to the Appellant were granted under condition that he builds a structure on the property within the set time limit.

The KPCC further noted that during the telephone communication between the Appellant and the KPA's Executive Secretariat, the Appellant admitted that he had never finalised the construction of the residential structure within given time limits. For this reason, the KPCC concluded that the Appellant failed to show ownership or any other property right over the claimed property, and refused the claim.

7. On 28 February 2014, the KPCC decision was served to the Appellant. The Appellant filed the appeal against the KPCC decision on 26 March 2014.

Allegations of the Appellant:

8. The Appellant alleges that the KPCC decision is illegal and inaccurate because it contains serious violations of due process, misapplication of the material law, and that his repossession request was not completely determined. The Appellant states that the reasoning of the contested decision is ambiguous and unclear, and it does not contain relevant reasons, criteria and evidence.
9. To this end, the Appellant claims that the KPCC decision did not take into account that he was objectively prevented from building the residential object on the property allocated to him. Firstly, the Appellant alleges that the property at the time of allocation was used by the third person to build a road. He filed a complaint about the illegal construction to the Municipality of Prizren/Prizren and Construction Inspection. The complaint was granted, and an order for demolition was issued. Further, the Appellant claims that he had to flee with his family in June 1999, and, as such, could not conduct the construction. The Appellant claims that the user rights deriving from the Yugoslavian legislation has the same level of protection as the property rights in accordance with Article 1 of Protocol 1 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR) and Article 64(1) and (3) of the Constitution of Kosovo. Additionally, the Appellant claims that his right to trial within a reasonable timeframe set in Article 6 of the ECHR was violated because he received the decision rejecting his claim only after 6 years.

Legal reasoning:

Admissibility of the appeal

10. The appeal was filed within 30 days as foreseen by Section 12.1 of Law No. 03/L-079. The appeal is admissible.

Merits of the Appeal

11. Following the review of the case file and the Appellant's allegations, pursuant to Sections 12 and 13 of Law No. 03/L-079 and Article 194 of the Law No. 03/L-006 on Contested Procedure, the Supreme Court found that the appeal is unfounded. The reasoning for this conclusion is the following.
12. According to Section 3.1 of Law No. 03/L-079, the Appellant is entitled the order on repossession of property if he proves two elements: (1) the ownership or property user right over the claimed property, and (2) that he was not able to exercise the rights over the property due to circumstances directly related or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. In view of this provision, it follows that the jurisdiction of the KPCC is limited exclusively to resolution, adjudication and settlement of property right claims related to private immovable property.
13. The Supreme Court notes that according to the Decision no. 03/3-463-117, dated 29 March 1994, the Appellant was allocated the socially-owned construction land for use with the condition that he would build a facility or perform main works within the period of three years from entry into the possession and handover. The Appellant admitted in his appeal that he has never fulfilled the conditions set out in the Decision no. 03/3-463-117, dated 29 March 1994. Therefore, the Supreme Court considers that the KPCC correctly determined that the Appellant did not provide enough evidence to prove his ownership rights over the claimed property.
14. Further, the Supreme Court considers that the Appellant's claim that the KPCC failed to evaluate the circumstances related to the loss of his user rights over parts of the claimed property of the size of 193.25 m² is not grounded. According to the Decision No. 03/3-463-117, dated 29 March 1994, the Appellant was allocated the socially-owned construction land for the purpose of construction of a residential building. 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 the good of the common interest, and is considered as socially-owned property once the relevant municipality determines the borders of the construction land. Further, 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.

15. As such, the Supreme Court considers that the part the claimed property of the size of 193.25 m² shall be considered as a public property, and that there is no possibility to obtain ownership right to such property. As the claim relates to the right of use of the socially-owned property and not privately owned property, the Supreme Court finds that the claim does not fall within the jurisdiction of the KPCC, and consequently of the Supreme Court. It is clearly and explicitly defined in Section 3.1 of Law No. 03/L-079 that only ownership right, or lawful possession of or any lawful right of use of private immovable property could be subject to the proceedings in the KPA.
16. In the light of the foregoing and pursuant to Section 13.3 under (c) of Law No. 03/L-079, it is decided as in the enacting clause of this judgment.

Legal Advice:

Pursuant to Section 13.6 of Law No. 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Beshir Islami, Judge

Anders Cedhagen, EULEX Judge

Sandra Gudaityte, EULEX Registrar