

**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-160/14**

**Prishtinë/Priština,  
28 July 2016**

In the proceedings of:

**Xh.K.**

Str. Ulpiana D 3/6  
Entry VI, basement  
Prishtinë/Priština

**Appellant**

vs.

**S.N.R.**

Str. Mladena Stojanovića 1  
23311 Nakovo  
Serbia

**Appellee**

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission No. KPCC/D/R/229/2014 (case file registered at the KPA under the number KPA46041), henceforth: the KPCC decision, dated 13 March 2014, after deliberation held on 28 July 2016, issues the following:

## JUDGMENT

1. **The appeal of Xh.K. is accepted as grounded.**
2. **The decision of Kosovo Property Claims Commission No. KPPC/D/R/229/2014, dated 13 March 2014, is annulled as far as it concerns claim no. KPA46041.**
3. **The claim no. KP46041 of S.R. is dismissed whereas the claim is not within the scope of jurisdiction of the Kosovo Property Claims Commission.**

### **Procedural and factual background:**

1. On 4 October 2007, S.R. as Claimant (hereafter: the Appellee) filed a claim with the Kosovo Property Agency (hereinafter: the KPA) seeking repossession of an apartment with a surface of 59.47 m<sup>2</sup>, located in street Ulpijana D3, entrance VI, basement, in Prishtinë/Priština (hereinafter: the claimed apartment).  
She alleged that her in 1995 deceased mother L.S. concluded in 1984 a contract on use of the claimed apartment and that her mother is the property right holder (hereinafter: the Alleged Property Right Holder, APRH). She further alleged that the claimed apartment was lost because of circumstances related to the armed conflict that occurred in Kosovo in 1998/1999, indicating 12 June 1999 as the date of loss.
2. To support her claim, the Appellee submitted the following documents:
  - a Birth Certificate no. 52 of the year 1968 issued by the Republic of Serbia, Municipality of Blace, on 23 June 1975; according to this certificate the Appellee was born on 20 April 1968 in Blace, nowadays Republic of Serbia, as daughter of N.S. and L.S. , born C.;
  - a Contract on Use of Apartment, no. 1193/11625 concluded between the Public Housing Enterprise (SIZ for housing and office space) in Prishtinë/Priština and APRH dated 27 February 1984 (henceforth: the Contract on Use); according to this contract the Public Housing Enterprise is 'selling and the APRH accepts for use' the claimed apartment 'based on the decision of the grantor of the apartment MA Prishtinë/Priština no. 08-360-232, dated 21.02.1984';
  - Appellee's ID no. 346389, issued by the the Federal Republic of Yugoslavia, Republic of Serbia on 26 February 1998;
  - a Death Certificate no. 203, issued by the Federal Republic of Yugoslavia, Republic of Serbia, Municipality of Prishtinë/Priština on 22 January 1999; according to this document the APRH

died on 20 May 1995 in Prishtinë/Priština;

and

- a Marriage Certificate no. 202-101/08-08/883, issued by the Municipality of Fushë Kosovë/Kosovo Polje, on 4 April 2008; according to this document the Appellee was married with Goran Rakocevic on 4 November 1990.

3. On 22 January 2008, the KPA located the claimed apartment. The claimed apartment was found occupied by Xh.K. (henceforth: the Appellant). KPA notified the claim to him. The Appellant signed the 'notification of claim' and the 'declaration from the responding party' and alleged a legal right to the claimed property.
4. According to the KPA verification report dated 11 February 2008 the Contract on Use was found at the Public Housing Enterprise. According to the KPA verification reports dated 20 February 2008 and 22 September 2011, the Death Certificate and the Marriage Certificate were found at the dislocated Civil Registration Office in Niš, Serbia.
5. On 1 February 2008 and 12 June 2012 the Appellant presented *inter alia* written responses by which he disputes the Appellee's claim.
6. On 13 March 2014, the Kosovo Property Claims Commission (KPCC) through the KPCC decision no. KPCC/D/R/229/2014 approved the claim by establishing that the APRH is the 1/1 owner of the claimed apartment and that the Appellee is entitled to possession of it. The same decision in its reasoning part, in paragraphs 42-44, states that the Contract on Use submitted by the Appellee was verified by the KPA, while a request dated 2002 to the Municipality "signed with nine signatures of residents living in the same building" for the permission to refurbish the basement of the building, submitted by the Appellant, is not relevant to the case. Further, the KPCC concludes that based on the evidences and in the absence of a valid defence by the Appellant the claim stands to be granted.
7. The KPCC decision was served on Appellee on 11 June 2014. On 20 June 2014 the KPCC decision was served upon the Appellant's wife.
8. On 24 June 2014 the Appellant filed an appeal to the Supreme Court.
9. On 5 September 2014, the appeal was received by the Appellee. She did not file a response.
10. On 30 March 2016 the Supreme Court sent a Court Order to the KPA. The Supreme Court asked the KPA whether it possesses information in regard to the type of property of the claimed apartment: was it private or public or socially owned when the Appellee allegedly gained the use right, and what was the status during the armed conflict in 1998/1999?
11. In answer to the Court Order the KPA stated on 13 April 2016 the following. As the Contract on Use is concluded with the Public Housing Enterprise, the claimed apartment was publicly owned. The claimed apartment had the same status also during the conflict. This was confirmed by an officer of the Public Housing Enterprise in a phone conversation on 19 December 2013. The claimed apartment was never privatised. The apartment is still listed in the name of the

APRH. The Public Housing Enterprise does not have information about her passing away. Nobody asked to transfer the claimed apartment in some else's name. There is no information that the apartment was used by some family member until the conflict started. The KPA does not possess any other evidence than the submitted Contract on Use and oral information of the officer of the Public Housing Enterprise.

12. On 22 July 2016 the KPA sent in addition to its answer to the Court Order *inter alia* the Allocation Decision, Nr.360-232, dated 21 February 1984; according to this Decision L.S. was allocated for use the claimed apartment.

**Allegations of the Appellant:**

13. The Appellant alleges in his appeal that the KPCC decision involves a fundamental error or serious misapplication of the applicable material or procedural law.
14. The Appellant states that there are no legal grounds to believe that Appellee is eligible to the claimed apartment, because the claimed apartment is a joint property shared by the bearers of the property right in all separate apartment-units. He further disputes that the basement is a unit that can be subject to enjoyment of any right.
15. The Appellant alleges also that the Contract on Use of the claimed apartment may be issued only if there is a decision rendered by the Municipality to transform the joint unit into an apartment unit.

**Legal reasoning:**

*Admissibility of the appeal*

16. The appeal is admissible because it has been filed within 30 days as foreseen by Section 12.1 of the 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.

*Jurisdiction*

17. According to Section 3.1 of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 the KPCC has the competence to resolve the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999: (a) ownership claims with respect to private immovable property, including agricultural and commercial property, and (b) claims involving property use rights in respect of private immovable property, where the claimant for both categories is not able to exercise such property rights.

18. With respect to this legal provision and article 194 in connection with article 182.2 sub (b) of the Law on Contested Procedure, Law No. 03/L-006, (henceforth: LCP) the Supreme Court has to assess *ex officio* whether the KPCC has jurisdiction in this case.
19. For this case, it is necessary to determine whether the alleged property (use) right to the claimed apartment refers to a right with respect to a private property or to a publicly (or socially) owned property. In principle the burden to prove that the claimed property (use) right refers to a private property rests on the Appellee as claimant in first instance.
20. The Appellee stated in the proceedings before the KPCC that the APRH was the user of a property right to the claimed apartment. In support of this allegation the Appellee submitted the Contract on Use.
21. From the information provided by the KPA in answer to the Court Order, it can undoubtedly be concluded that the claimed property is not of a privately owned but of a publicly owned nature. The Appellee did not provide any evidence that the claimed property ever was privatized or otherwise should be regarded to be private property. Due to these findings it follows that the alleged property use right on the claimed apartment does not relate to a private property as meant in Section 3.1 of UNMIK Regulation 2005/60 as amended by Law No. 03/L-079 but to a publicly or socially owned property. Therefore, it results that KPCC does not have jurisdiction to decide on the claim.
22. Based on the foregoing and irrespective of the fact whether the Appellee's alleged use right over the claimed apartment can still be valid, the Supreme Court concludes that the KPCC decision involves a serious misapplication of the applicable procedural legal provisions.
23. The other allegations of the Appellant cannot be examined in these proceedings, as he did not file a (counter) claim to the KPA.
24. In the light of foregoing, the Supreme Court decides as in the enacting clause of this judgment.

**Legal Advice:**

Pursuant to Section 13.6 of UNMIK Regulation 2005/60 as amended by Law No. 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

**Beshir Islami, Presiding Judge,**

**Rolandus Bruin, EULEX Judge**

**Krassimir Mazgalov, EULEX Judge**

**Sandra Gudaityte, EULEX Registrar**