

**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-221/14

**Prishtinë/Priština,
3 August 2016**

In the proceedings of:

H. G.

Represented by Lawyer N.B.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anders Cedhagen and Beshir Islami, Judges, on the appeal against the decision of the Kosovo Property Claims Commission no. KPCC/D/R/231/2014 (case file registered at the Kosovo Property Agency under no. KPA11756), dated 13 March 2014, after deliberation held on 3 August 2016, issues the following:

JUDGMENT

1. **The appeal of H.G. against the Decision of the Kosovo Property Claims Commission no. KPCC/D/R/231/2014, dated 13 March 2014, is rejected as unfounded.**

2. **The Decision of the Kosovo Property Claims Commission no. KPCC/D/R/231/2014, dated 13 March 2014, with regards to the claim registered at the KPA under the number KPA11756 is confirmed.**

Procedural and factual background:

1. On 10 October 2007, B. G. on behalf of her husband H. G. (hereinafter: the Appellant), filed a claim at the Kosovo Property Agency (hereinafter: KPA), seeking repossession over the apartment with a surface of 62.38 square meters located at Fidanishte neighbourhood no. 11 in Suharekë/Suva Reka (hereinafter: the claimed property). The Appellant alleged that the claimed property had been acquired by allocation in 1982.
2. With her claim, the Appellant filed with the KPA the following documents:
 - A copy of the use contract no. 163, dated 9 April 1982, entered between the Self Managing Community of Interest in Suharekë/Suva Reka and user of the apartment, the Appellant.
 - A decision of the Housing and Property Claims Commission HPCC/D/230/2005/C, dated 21 October 2005, by which the Commission rejected the claim of Z. S. with regards to Claim DS303842.
 - A decision of the Housing and Property Claims Commission HPCC/REC/89/2007, dated 19 January 2007, in relation to a request for reconsideration by which the Decision HPCC/D/230/2005/C, dated 21 October 2005, regarding Claim DS303842 was quashed and possession was returned to “C” Category Claimant Z. S. where the responding party was the Appellant.
 - A copy of Ruling no.128, dated 11 April 1989, by which the Public Housing Enterprise imposed on the holder of the use right the Appellant a rent fee for the apartment.

3. On 25 February 2009 the claim was notified and the notification process was repeated again on 12 March 2009. According to the notification report the claimed property was found to be under the administration of the Kosovo Property Agency and included in the Rental Scheme as per HPCC/REC/89/2007, dated 19 January 2007, regarding Claim DS303842. The property was vacant and nobody responded to the claim.
4. On 13 March 2014, the Kosovo Property Claims Commission (hereinafter: KPCC), with its Decision KPCC/D/R/231/2014 (hereinafter: the KPCC Decision) had dismissed the claim and in paragraph 24 of its reasoning stated that the claimant, in this case the appellant, had not lost the possession as a result of the 1998/99 conflict.
5. The KPCC Decision was served on the Appellant on 13 May 2014 (in the case file there is no acknowledgment of receipt). On 23 May 2014, the Appellant filed an appeal against the KPCC Decision.

Allegations of the Appellant:

6. The Appellant seeks from the Supreme Court of Kosovo to quash the KPCC Decision because he alleges that it contains essential violations of procedural law and erroneous determination of the factual situation. He asserted that the decision needs to be quashed and the claim of him is approved and he alleged his lawful right for using the apartment.
7. The Appellant alleges that the HPCC/REC/89/2007, dated 19 January 2007, whereby the right of Z. S. is confirmed was issued without his participation and that the approval of “C” Category Claim and rejection of “A” Category Claim was unlawful.
8. The Appellant alleges that the apartment was allocated to him in 1982 and he lived in it until 1991 when, because of political repression and the economic situation, he had to leave Kosovo and moved to Holland together with his family, and left the apartment to the brother in law (wife’s brother) – N. P. to use it. In 1994 the authorities broke into the apartment and arbitrarily moved out the furniture of the apartment and allocated the apartment to a Serbian person – now “C” Category Claimant before the Housing and Property Directorate. After the end of the conflict he returned and moved back into the apartment which had been demolished and abandoned. The Municipal authorities confirmed for him that the apartment is still evidenced as a socially-owned property and is used by him.

Legal reasoning:

9. The appeal against the KPCC Decision has been filed within 30 days from the day the KPA serviced the decision to the Appellant, as provided by Section 12.1 of the UNMIK Regulation 2006/50 on the Resolution of Claims related to Private Immovable Property including Agricultural and Commercial Property, as amended by Law no.03/L-79 and is admissible.
10. The Supreme Court of Kosovo found that the appealed KPCC Decision is complete and that the factual condition was correctly established. On these grounds the substantive law and the procedural law have been correctly applied. Therefore, the appeal is rejected as unfounded.
11. The Appellant alleges that he used to have a property right and that the same was taken away from him by a discriminating and unlawful act in 1994. He asserts that at that time he was not using the apartment and the annulment of his occupancy right was done without his participation.
12. The KPA mandate is to review the cases “which are directly related to or result from the armed conflict that occurred during the period between 27 February 1998 and 20 June 1999”. This means that the scope of the KPA examination is the verification of the following elements: who was in possession of the claimed property before 27 February 1998, who is under its possession currently, when and for what reasons the possession was lost during the period between 27 February 1998 and 20 June 1999.
13. The formulation of Article 3.1 “*of conflict-related claims involving circumstances directly related to or resulting from the armed conflict*” suggests the direct relation between the loss of possession and the armed conflict or the close relation between the cause and the consequence which in the present case does not exist. The Appellant might have lost the possession as a consequence of not using the apartment contrary to Article 51 paragraph 3 of the Law on Housing Relations of the SAPK, Official Gazette of the SAPK no. 11/83, 29/86, 42/86 which provides that “*the use contract and the occupancy right shall be terminated should the occupancy right holder – Occupant does not use the apartment continuously*” *it shall be deemed that the apartment is not being used continuously if the occupancy right holder shall not use the apartment over a year or the apartment is used by persons who are not family members*”
14. According to the Supreme Court, in the case file there are sufficient elements suggesting that the apartment, as such, was not under the possession of the Appellant when the conflict occurred

and this is confirmed also by the Appellant and that the the apartment was given to the relatives who is not family household member

15. This obliges the Supreme Court to conclude that the claim falls outside the KPCC jurisdiction and therefore reject the appeal of the Appellant as unfounded and confirm the appealed KPCC Decision as just and grounded.

Conclusion:

16. In light of the above and pursuant to Article 13.3 (c) of the Law no. 03/L-079 on the amendment of the UNMIK/REG/2006/50, and Article 195 paragraph 1(d) of the Law on Contested Procedure (LCP), the Supreme Court 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 Law no. 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Anders Cedhagen, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar