

**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-63/14

Pristina,

14 July 2016

In the proceedings of:

M.R.

Bulevari JNA 120/4

Belgrade

Serbia

Claimant/ Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of judges: Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krasimir Mazgalov, members, deciding on the appeal against the Decision of the Kosovo Property Claims Commission no. KPCC/D/A/204/2013 (case files registered at the KPA under the number KPA90647), dated 11 June 2013, after deliberation held on 14 July 2016, issues the following:

JUDGMENT

1. **The Appeal of M.R. filed against the Decision of the Kosovo Property Claims Commission no. KPCC/D/A/204/2013, (case files registered at the KPA under the number KPA90647), dated 11 June 2013, is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission no. KPCC/D/A/204/2013 (case files registered at the KPA under the number KPA90647), dated 11 June 2013, is confirmed.**

3. **Procedural and factual background:**

1. On 21 November 2006 M.R. (henceforth: Appellant) filed a Claim with the Kosovo Property Agency in Pristina, on behalf of his father claiming recognition of his property rights by alleging he is the immovable property right holder of the properties subject of the claim, seeking their repossession. The Claim is registered in the Kosovo Property Agency under claim no. KPA 90647. The Claim refers to cadastral parcel 333 and 334 of Cadastral Zone Çikatove e Re/Novo Cikatovo, Municipality of Glllogoc/Glllogovac.
2. With the Claim he alleges that his property right over those immovable properties cannot be exercised due to circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
3. To support his claim the claimant provided the KPA with the following document:
 - A Certificate of the Archives of Serbia 05 nr. 3/230 dated 29.12.1997 which states that this archive is in possession of all relevant documents for the agrarian reform and colonization of the years 1918-1941 and 1945-1948, in which the Appellant's father was involved.
 - A Birth Certificate no. 647/200 dated 12 May 1995 issued by the competent authority of Municipality of Glllogoc/Glllogovac indicating that the Appellant was born on 03.03.1937.
 - The ID card of the Appellant issued by the competent authority on 17 September 2001.
4. The KPA Secretariat *ex officio* obtained the Extract from the Possession List no.168 dated 10 March 2009 issued by the Directorate for Cadastre Geodesy and Property of the Municipality of Glllogoc/Glllogovac, which established that the cadastral parcels subject of the Claim (henceforth: the claimed properties) are registered as socially owned property in the name of the Labour Organisation "Agroprodukt" from Glllogoc/Glllogovac.

5. In 2010, the Notification Team visited the place where the claimed properties were alleged to be located and placed respective notifications of the claim on the cadastral parcels. A re-notification was published in the KPA notification gazette.
6. The Kosovo Property Claims Commission (KPCC) with the cover decision KPCC/D/A/204/2013 dated 11 June 2013 dismissed the Claim due to lack of jurisdiction.
7. In the reasoning of this decision referring to the Claim registered as no. KPA90647 (paragraph 18) KPCC reasons that the Claimant failed to show that his claim involves circumstances directly related to or resulting from the armed conflict. according to the extract of the Possession List no.168 dated 10 mars 2009 issued by the Directorate for Cadastre Geodesy and Property of Municipality of Glllogoc/Glllogovac it is found that the cadastral parcels subject of the Claim are registered as socially owned property of the Labour Organisation "Agroprodukt" from Glllogoc/Glllogovac.
8. Having into consideration that the claimant lost these properties in 1941, then based on the Article 3.1 of UNMIK Regulation no. 2006/50 as amended by the Law L-03-079 (hereinafter: the Law) his Claim is dismissed due to lack of jurisdiction.
9. The decision was served to the claimant on 15 November 2013, whereas the claimant has filed an Appeal on 16 December 2013.

Allegations of the parties

10. The Appellant challenges the appealed decision alleging on erroneously applied substantive law, erroneously and incompletely established facts and procedural errors contained within this Decision. In his Appeal he claims that the surface of the usurped land is bigger than the claimed claimed, that the usurpation occurred in 1941 and that the court is obliged to compensate his damage from the year 1941 onwards. He states that even the president of the United States, Barak Obama, has been informed about this Claim.

Legal reasoning

The admissibility of the Appeals:

11. Pursuant to Section 12.1 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, a party may file an Appeal against the decision of the Commission within (30) days from notification of the Decision to the parties.

12. In the concrete case, the KPCC Decision was delivered to the Appellant on 15 November 2013, whereas he has filed an Appeal on 16 December 2013. 15 December 2013 was a Sunday, so the 30 days term was extended to the next day.
13. The Appeal is admissible as it was filed within the legal deadline.

Merits:

14. The Supreme Court of Kosovo after the review and assessment of the submissions filed by the Appellant, the appeal allegations and the evidence obtained from the case file, found that the appealed decision was rendered with complete and correct establishment of the factual state and correct application of the substantive and procedural law, when KPCC decided in the appealed decision that the Claim registered as no. KPA90647, had to be dismissed because the Appellant had failed to present legally valid facts and to provide legally valid evidence that that the loss of the claimed property did not occur due to circumstances related directly or resulting from the armed conflict.
15. The Appellant confirms that he, nor his father, had possession of the properties since 1941 and that in 1970 they left Kosovo. He states that the loss of the claimed properties is not related to the armed conflict, nor that the loss of the possession of the claimed properties is a result of the armed conflict. For these reasons, the KPCC Decision was correct when KPCC decided that such Claims are not under the mandate of the KPCC and consequently it was correctly dismissed.
16. Apart from this, the claimant himself confirms that he had no possession of the properties since 1941 and in 1970 they left Kosovo. He confirms the fact that the loss of the cadastral parcels is not related to the armed conflict, and that the loss of the possession of the property is not a result of the armed conflict.
17. Consequently, based on the aforementioned, the administered evidence and established facts, it can be undoubtedly concluded that the provision of Article 3.1 of the Law was applied correctly when the Appellant's Claim was dismissed due to lack of jurisdiction. With this legal provision it is foreseen that the KPCC has the jurisdiction in cases when the property rights cannot be exercised due to circumstances directly related or resulting from the conflict that took place in Kosovo between 27 February and June 1999. In the case at hand, undoubtedly and certainly it results that the Appellant, or his father, had not lost the possession of the claimed property due to the circumstances directly related or resulting from the conflict that took place in Kosovo between 1998 and 1999, therefore the Claim was dismissed due to lack of jurisdiction.
18. Based on the aforementioned and in pursuant to Section 13 par 3 subpar (c) of the UNMIK Regulation No 2006/50, as amended by law No 03/L-079, the Appeal is rejected and it is decided as in the enacting clause of this Judgment.

Legal advice

19. Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge,

Rolandus Bruin, EULEX Judge

Krasimir Mazgalov EULEX Judge

Sandra Gudaityte, EULEX Registrar