

**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-141/2013

Prishtinë/Priština 20 July 2015

In the proceedings of:

**V K
S B 19
P**

Appellant/Claimant

Vs.

**M G
D F
Sh S**

**R A 38
20...P**

and

Municipality of P

P

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/192/2013 (case files registered at the KPA under number KPA11526 and KPA11587), dated 13 February 2013, after deliberation held on 20 July 2015, and issues the following:

JUDGMENT

1. The appeals filed by V K dated 5 July 2013, registered under the numbers GSK-KPA-A-141/2013 and GSK-KPA-A-142/2013, are joined in a single case under the number GSK-KPA-A-141/2013.
2. The appeals of V K against the Decision of the Kosovo Property Claims Commission KPCC/D/C/192/2013 of 13 February 2013 as far as it regards the claims registered at the KPA under No. KPA11526 and No.KPA11587 are rejected as ungrounded.
3. The decision of the Kosovo Property Claims Commission KPCC/D/C/192/2013 (regarding case files registered at the KPA under numbers KPA11526 and KPA11587), dated 13 February 2013, is confirmed.

Procedural and factual background:

1. On 23 May 2006, the claimant V K , filed a claim with the Kosovo Property Agency (KPA), seeking specifically confirmation of ownership right and repossession of parcel 2360 with surface 3ha 62ar(KPA11526), located, in Prizren and confirmation of ownership right and legalization of a commercial shop with surface 37.22m2(KPA11587) located on the same parcel no.2360. He states that this property belonged to his father until 1959, but it was illegally taken by Municipality of Prizren, indicating 1 May 1959 as the date of loss.
2. To support his claims, he provided the KPA with the following documents:
 - A lawsuit dated 27 June 2001 filed before Municipal Court of Prizren;
 - The Possession List no. 8414, dated 11 August 2006 issued by the Department for Cadaster, Geodesy and Property, which shows the Municipal Assembly of Prizren as the owner of the claimed property;
 - And some other documents which seems not relevant for the case.
3. The claims were registered with the KPA under case no.KPA11526 and KPA11587.
4. According to the Consolidated Verification Report of KPA dated 23 November 2012, except the lawsuit all the other above mentioned documents were negatively verified by Executive Secretariat.

5. On 13 May 2009 the KPA notification team, based on cadaster map and by address notified the claim by putting a sign where the claimed property was located. The property was found a commercial with buildings consisting on 4 apartments and 2 shops. The property was occupied respectively by, M G , Sh S and D F, who claimed a legal right over the property and signed the Notice of Participation on 13 May 2009. The property under the claim KPA11587 was notified on 11 January 2008 and is found a shop occupied by the claimant himself.
6. The occupants contested the claim and asserted they were using the property for residential purpose. They approached KPA in the capacity of a responding party, submitting several documents to substantiate their allegations, which were verified by KPA.
7. After the notification of the property a municipal official, B M approached KPA as a responding party, stating that the claimed property belongs to Municipality of Prizren. To support his statement he submitted the documents as follows:
 - A certificate for the immovable property no.18-848, dated 23 August 2012, issued by Municipal Cadastral Office of Prizren;
 - An official document dated 30 August 2012, which testifies that M G , S S (mother of the respondent Sh S), D F and some others are the legal owners of the claimed property.
8. Upon verification the KPA verification team found that the claimed property, parcel no. 2360, is registered under the name of Municipal Assembly of Prizren.
9. With the Decision KPCC/D/C/192/2013, dated 13 February 2013, the Kosovo Property Claims Commission (KPCC) decided to dismiss the claims with the reasoning that claimant failed to show that his claims are related to the armed conflict 1998-1999 so the claims are outside jurisdiction of KPCC.
10. The decision was served on the claimant on 7 June 2013.
11. On 5 July 2013, the claimant (henceforth: the appellant) filed an appeal with the Supreme Court, challenging the KPCC's decision.

Allegations of the appellant:

12. The appellant with his appeal invokes essential violations of the substantive rights, procedural rights and erroneous determination of the facts. He challenges the KPCC's decision stating that it is based in a piece of paper which deprived the owner of the property from his legal rights. He claims also that he had not the opportunity to describe the history of the said property and in addition he said that he used the property, the shop for 12-13 years without interruption, until KPA interfered.

Therefore, the appellant requests to accept his claims and to reach a rational decision.

Legal reasoning:*Joining of the appeals:*

13. The Court refers to art. 408.1 of the Law on Contested Procedure (hereinafter the LCP), applicable *mutatis mutandis* (as appropriate) in the procedure in front of the Supreme Court (section 12.2 of Law 03/L-079). It provides for the possibility the Court to join proceedings if such joining contributes to the efficiency of those proceedings.
14. In the text of the appeals filed by the appellant, the Supreme Court finds that the whole factual and legal grounds, as well as the evidentiary issues are completely the same in these two cases. Only the classification of the properties is different.
15. The cases registered under the numbers GSK-KPA-A-141/2013 and GSK-KPA-A-142/2013 are joined in a single case registered under the number GSK-KPA-A-141/2013.

Admissibility of the appeal

16. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the Law No. 03/L-079.

Jurisdiction

17. The Supreme Court has jurisdiction to examine the appeal.
18. According to Section 3.1 of the Law No. 03/L-079 the KPCC has the competence to resolve claims related to the armed conflict of 1998/1999, claims related to rights that cannot be

exercised because of circumstances directly related or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

19. The established facts bring in the conclusion that the dispute regarding the property in question is not related to the armed conflict of 1998/99. It refers back to 1959, when the property of the family of appellant was confiscated and taken by the Municipality of Prizren. This fact is confirmed by the appellant in his claims and his appeals. The appellant's family lost the possession of the land long time before the armed conflict.
20. From the verifications by the Executive Secretariat of KPA of the Certificate for the Immovable Property Rights no. P-71813068-02360-0, dated 8 November 2009 issued by Municipal Cadastral office in Prizren, results that the claimed property is a socially owned property, registered under the name of P.SH.KK.Prizren (Socially Property of Municipal Assembly of Prizren). In accordance with Art. 3.1 of Law No. 03/L-079 the KPCC has the competence to resolve ownership to *private property* claims and claims involving property use rights in respect of *private immovable property*. Since the property in dispute was not a private property but a socially owned property, this another to conclude that the case does not fall within the jurisdiction of the KPCC.
21. As a result the Supreme Court finds that the KPCC's decision was correct and based in factual and procedural grounds. Therefore the appealed decision is correct and it must be confirmed.
22. On the basis of the reasoning and according to the provision of section 13.3 under (c) of the Law No. 03/L-079, it has been decided as in the enacting clause of this judgment.

Legal Advice

Pursuant to Section 13.6 of the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Willem Brouwer, EULEX Judge

Rolandus Bruin, Eulex Judge

Urs Nufer, EULEX Registrar