

**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-229/2015

**Prishtinë/Priština
30 May 2018**

In the proceedings of:

D. Š.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/223/2013 (case file registered at the KPA under the number KPA28440), dated 27 November 2013, after deliberation held on 30 May 2018, issues the following:

JUDGMENT

1. The Appeal of D. Š. against the Decision of the Kosovo Property Claims Commission No KPCC/D/R/223/2013 of 7 November 2013, regarding the case file registered at the Kosovo Property Agency under the number KPA28440 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/223/2013, dated 27 November 2013, as far as it regards the case registered under number KPA28440 is annulled.
3. The claim of D. Š. regarding use right over a socially owned apartment of 72.84 m², situated in Municipality of Peja/Peć, street “Konaci Petra Prlje, Rasadnik” is dismissed, as falling outside the jurisdiction of the KPCC.

Procedural and factual background:

1. On 12 March 2007, D. Š. (hereinafter: the Appellant) filed a Claim with the Kosovo Property Agency (hereinafter: the KPA), pretending to be an Occupancy Right Holder over the apartment with the surface of 72.84 m², situated in Peja/Peć Municipality, street “Konaci Petra Prlje” (hereinafter: the claimed property). He seeks confirmation of Use Right and Repossession over the claimed property.
2. To support his claim, the Appellant provided the KPA with the following documents:
 - Conclusion No 360/1122 issued on 16 November 1998 by Executive Committee of Municipal Assembly of Peja/Peć, whereby, the Appellant was allocated the claimed property,
 - Decision on Allocation No 02-360/1122/98 issued by Municipal Assembly of Peja/Peć, Commission for Allocation of the Apartments on 17 December 1998 through which the Appellant was allocated the claimed property for the permanent lease,
 - Decision of the Housing and Property Claims Commission (hereinafter: the HPCC), HPCC/D/126/2004/C issued on 8 June 2004 by Housing and Property Directorate (hereinafter: the HPD), whereby, R. B.(in capacity of the Claimant at HPD) was granted the possession over the Apartment located at street “Rasadnik”, floor 1, No 4,
 - The HPCC Decision, HPCC /D/189/2005/C issued on 30 April 2005, whereby, the HPD dismissed the Claim filed by the Appellant (in capacity of the Claimant before HPD) regarding the claimed property,
 - The HPCC Decision, HPCC/REC/58/2006 issued by HPD on 18 February 2006, whereby, Sh. K. (in capacity of the requesting party) was rejected the request for reconsideration of the HPCC Decision, HPCC/D/126/2004/C,
 - HPCC Decision, HPCC/REC/66/2006 issued on 15 July 2006 whereby the HPCC rejected the request for reconsideration of the Claim HPCC/D/189/2005/C filed by the Appellant,
3. On 25 April 2013, the Executive Secretariat of KPA performed the Notification of the claimed property by publishing the claim in the KPA Notification Gazette No. 11. The Gazette and the list were left in the entrance and in the exit of Municipality of Peja/Peć. The the Cadastral Office of the Municipality of Peja/Peć, the Municipal Court of Peja/Peć, KPA Regional Office of Peja/Peć. In addition, the List and

- Gazette were distributed to the Head Office of the UNHCR, the Ombudsperson, OSCE and Kosovo Privatization Agency.
4. According to the Verification Reports of the Executive Secretariat of KPA the documents submitted by the Appellant were not found, thus, the verification of the documents resulted to be negative.
 5. On 27 November 2013, the KPCC in its Decision KPCC/D/R/223/2013 refused the claim due to the Appellant failed to submit the evidence showing that all relevant statutory requirements as set out in the Law on Housing Relations (42/86) as amended the Law on Housing (50/92) had been met.
 6. The KPCC Decision was served to the Appellant on 26 February 2015. On 24 March 2015 the Appellant filed an appeal with the Supreme Court.

Allegations of the Appellant:

7. The Appellant alleges that the KPCC Decision contains essential violations and wrongful application of the material and procedural law as well as erroneous determination of the facts.
8. Firstly, the Appellant stated that from the KPCC Decision it is not clear whether his claim is dismissed or refused. This is because according to the Appellant, the enacting clause of the KPCC Decision reads that the claim is dismissed whereas the legal reasoning stated that he claim is refused.
9. Further, the Appellant stated that the KPCC Decision stated that the condition for acquiring an Occupancy Right is the conclusion of the Contract on Sale which is totally non sense because the Contract on Sale is the condition to acquire the ownership right and not for establishing the Occupancy Right.
10. The Appellant alleges being the legal possessor of the claimed property during 1998-1999 and again he gives a detailed presentation of the documents that he has submitted in order to confirm his Occupancy Right over the claimed property.
11. By the end of the appeal, the Appellant noted that the KPCC issued completely different Decision by confirming the right on repossession for another apartment which is at the same building as the claimed property. Finally, he seeks Supreme Court approved his Appeal and confirm his right for repossession of the claimed property.

Legal reasoning:

Admissibility of the appeal

12. The Supreme Court of Kosovo examined the appeal pursuant to provisions of Article 194 of the Law No. 03/L-006 on Contested Procedure (henceforth: the LCP), and after evaluation of the Appellants allegations found that:
13. The appeal is admissible because it was filed within the legal time limit according to Section 12.1 in UNMIK regulation No. 2006/50 as amended by the Law no. 03/L-079 which foresees that a party may file an appeal against a Commission Decision within thirty (30) days from the day parties are notified of the Decision.

Merits of the appeal

14. Regarding the allegation of the Appellant that the KPCC Decision is unclear, the Court gives further explanation.
15. The KPCC Decision contains the special note that reads as follow:
**The English version is the official of all Property Claims Commission Decision. In case of the conflict between the English language version and the Albanian or Serbian language version, then the meaning in English language shall prevail.*
16. According to the special reference which is made to the paragraphs 42 and 43 at the English version of the Cover Decision KPCC/D/R/223/2013 the claim was refused with the following reasoning: *the Appellant alleges being allocated use right over the claimed property based on submitted Allocation Decision. The Commission notes that according to the Law on Housing Relations (42/86) amended by the Law on Housing (50/92), a use right in the form of the occupancy right arises only if the party is allocated a use right over the claimed property by the competent allocation right holder and subsequently the party concludes a **Contract on Lease** and takes the possession of the property. In the Clam at hand the Appellant failed to provide the evidence that all relevant requirements as set out in the Law on Housing (50/92) had been meet, accordingly the claim stand to be **refused**.* This version is correct one.
17. As far as concern the allegation that the KPCC issued completely different Decision by confirming the right on repossession for another apartment which is at the same building as the claimed property, the Court notes that the Appellant referred at the HPCC Decision and not KPCC Decision.
18. The KPCC and KPA Appeals Panel of the Supreme Court do not have the jurisdiction over the cases of HPCC or to review the reasoning of HPCC Decisions or examine their correctness. The above mentioned Decisions were issued under UNMIK Regulation 2000/60 (hereafter the Regulation). The provisions of the Regulation do not preview any legal remedies (appeals or extraordinary legal remedies) against the final Decisions of the Housing and Property Claims Commission (HPCC) – argument ex. Sections 22 and 25 *ibid*. In this respect is also the jurisprudence of the Constitutional Court of Kosovo – see Case No. KI104/10, para 64 and 74.
19. Nevertheless, the issue to consider in this case is whether the KPCC had jurisdiction to examine the claim of the Appellant seeking the confirmation of the Occupancy Right over the socially-owned property.
20. As the Appellant maintains, the claimed property is a socially-owned property.
21. This means that the claim does not fall within the jurisdiction of the KPCC.
22. According to section 2.1 of UNMIK Administrative direction 2007/5, implementing UNMIK/REG/2006/50 on the resolution of claims relating to private immovable property, including agricultural land and commercial property as amended by Law No. 03/L-079, hereinafter the Administrative direction (AD) “any person who had an ownership right, lawful possession of **or any lawful right of use of or to private immovable property**, who at the time of filing the claim is not able to exercise his/her rights due to circumstances directly related to or resulting from the armed conflict of 1998/1999 is entitled to reinstatement as the property right holder in his/her property right”.

23. The apartment in question has never been private immovable property and in this respect is outside the scope of application of the proceedings in front of the KPA.
24. Although the KPCC as a quasi-judicial body by deciding on the merits of the claim already has accepted its jurisdiction, the Court *ex officio* assesses whether the case falls within the scope of its jurisdiction (Art. 195.1 (b) of the Law on Contested Procedure).
25. Therefore the Decision of the KPCC insofar as it has been appealed had to be annulled and the claim dismissed (Section 11.4 (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079), not rejected/refused, as determined in the Cover Decision KPCC/D/R/223/2013.

Legal Advice:

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

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Bjorn Olof Brautigam, EULEX Registrar