

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-024/14

Prishtinë/Priština, 27 January 2016

In the proceedings of

1. B.O.M.

Appellant 1

and

2. J.M. , born R.

Appellant 2

Podgorica, Montenegro

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: the KPCC) no. KPCC/D/C/200/2013, dated 18 April 2013, case file registered at the Kosovo Property Agency (henceforth: the KPA) under the number KPA51018 (henceforth: the KPCC Decision), after deliberation held on 27 January 2016, issues the following

JUDGMENT

1. The appeal of J.M. is dismissed as inadmissible.
2. The appeal of B.M. against the decision of the KPCC no. KPCC/D/C/200/2013 dated 18 April 2013 is rejected as unfounded.
3. The decision of the KPCC no. KPCC/D/C/200/2013 is confirmed as far as it concerns claim no. KPA51018.

Procedural and factual background

1. On 28 September 2007, B.M. (henceforth: the Appellant 1) filed a claim with the KPA. His claim relates to a business premises (a lawyer's office) with a surface of 20 m², located in Peja/Peč, Street Kralja Petra (henceforth also: the claimed property). According to the claim form he claims repossession. He stated that he is the owner of the claimed property. He further stated that the premise is made of solid material but was removed by a neighbour. He alleged that the possession over the claimed property was lost on 12 June 1999 due to the armed conflict in 1998/1999.
2. The Appellant 1 submitted *inter alia* to KPA:
 - The Marriage Certificate, issued on 26 September 1979 by the Civil Registration Office of Peja/Peč Municipality, showing that the Appellant 1 is married to J.R. (henceforth: the Appellant 2);
 - The Decision of the Municipal Assembly of Peja/Peč, secretariat for urbanism, utilities and housing affairs, No. 05-353/38, dated 15 March 1977. By this decision, the Appellant 1 was given the permission to dislocate a temporary facility – a lawyer's office -, from the cadastral parcel no. 3442/2 to cadastral parcel 3385/2 in Cadastral Municipality Peja/Peč that is registered as socially owned property (henceforth also: the Permission);

- A Record dated 6 June 1977, containing a drawing of the cadastral parcel 3385/2 with the position of the lawyers office on that parcel (henceforth: the Record);
 - A photo of a business premises, a person and two vehicles and a photo with a person behind a desk.
3. According to the KPA verification report of 9 March 2010, the Permission and the Record were positively verified. KPA also found possession list no. 2606. According to this cadastral list the cadastral parcel 3385/2 in the Cadastral Zone of Peja/Peč, that is meant in the Permission, is socially owned property and registered in the name of the "P.SH. Rugët dhe Rrugica -Pejë."
 4. On 16 October 2012 KPA notified the claim by putting a poster on the Cadastral parcel 3385/2 in Street Kralja Petra in Peja/Peč. KPA determined that there is a public side walk at the place where the claimed property should be located.
 5. No other party participated in the proceedings before the KPCC.
 6. The KPCC decided in the KPCC Decision to dismiss the claim. In the reasoning of its decision, the KPCC indicated that according to the evidence the Appellant 1 had acquired only a temporary use right over the claimed property and was therefore only authorised to build a movable structure on the property. The KPCC states further that the claim relates to movable property and not to private immovable property. The KPCC concludes that it has no jurisdiction over the claim.
 7. The decision was served upon the Appellant 1 on 19 August 2013.
 8. The Appellant 1 and the Appellant 2 filed the appeal to the Supreme Court on 18 September 2013.
 9. The Supreme Court sent a Court Order to the KPA on 2 July 2015. The Supreme Court asked the KPA to check whether the case file sent to the Supreme Court is complete, as the Appellant 1 and the Appellant 2 refer in the letter of appeal to documents that are not in the case file. The KPA responded on 7 July 2015 and stated that the comprehensive evidence was submitted to the Supreme Court.
 10. The Supreme Court after that sent a Court Order, dated 16 September 2015, to the Appellant 1 and the Appellant 2. In that Order Appellant 1 is on the one hand given the opportunity to respond on the answer of KPA on the previous Court order. On the other hand the Supreme Court states that the Appellant 1 and the Appellant 2 refer in the appeal

not only to the claimed property but also to a claim on another property than the claimed property. That other property is related to the Appellant 2 and has been subject of proceedings before the Housing and Property Claims Commission (HPCC). That procedure resulted in a decision of that Commission dated 29 April 2005, no. HPCC/D/177/2005/23. The Supreme Court asked the Appellant 1 and the Appellant 2 to explain, when the appeal is also meant to be filed against any decision on that other property, on what grounds the Supreme Court can decide on such an appeal.

11. KPA confirmed to the Supreme Court that the Court Order was sent to the known address of the Appellant 1 and the Appellant 2 and also was sent on agreement with them by email to them. The Appellant 1 and the Appellant 2 did not respond to the Court Order.

Allegations of the Appellant 1 and the Appellant 2

12. The Appellant 1 and the Appellant 2 allege that the KPCC decision involves a fundamental error and violates seriously the material and procedural law and is based on an erroneous and incomplete determination of the facts.
13. The appeal consists of two grounds.
14. The first ground of the appeal relates to a (destroyed) property of the Appellant 2 in Street Uroševačka 8 in Peja/Peč, that was subject of the HPD claim no. DS502212 and the HPCC Decision meant here fore in paragraph 10.
15. In the second ground of the appeal is alleged as follows. The lawyer's office was built on state owned, previous socially owned, land, pursuant to the Approval and the Decision of the competent body of the Municipality of Pejë/Peć of 6 June 1956. The lawyer's office was built of hard material, also pursuant to approval of the Municipality of Peja/Peć. The Appellant 1 alleges further that he provided the KPA with a decision on the right to use, an aerial photo, a drawing of the delineated foundation of the office and an approval for construction of hard material. Appellant 1 states that KPCC did not evaluate properly and completely these evidences. He further states that these proofs confirm that through his claim he seeks compensation for the commercial property on the basis of a use right and not on the basis of occupying some else's property. His claim is not based on an ownership right over the land but exclusively on a use right on the cadastral parcel.

Legal reasoning

Admissibility of the appeal

16. The first ground of the appeal consists of complaints in relation to a claim on a (destroyed) property (a house) of the Appellant 2. A claim related to that house was not included in the claim in the proceedings before the KPCC, as mentioned here fore in paragraph 1. The HPCC decided on a claim about that house in its Decision dated 29 April 2005, no. HPCC/D/177/2005/23. Against that decision appeal to the Supreme Court is not possible. Section 14.1 of UNMIK Regulation 2000/60 only provided as follows: "*Any party to a claim may submit to the Housing and Property Directorate a request to the Commission for the reconsideration of a Commission decision within thirty (30) days of being notified of the decision*". The provisions of that Regulation do not preview any legal remedies (appeals or extraordinary legal remedies) against the final decisions of the Housing and Property Claims Commission (HPCC) at the Supreme Court. The Supreme Court there for has no jurisdiction over the decisions of the HPCC. This means that as far as the appeal is related to any claim of Appellant 2 on the house of the Appellant 2 - including a request for any compensation for that house -, the appeal is inadmissible.
17. The appeal of Appellant 1 against the KPCC Decision was filed within 30 days after receiving that decision 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 (henceforth: UNMIK Regulation 2006/50). As far as Appellant 1 filed the appeal against that decision it is admissible.

Merits of the Appeal

18. The Supreme Court, after the review of the submissions in the case file, the appealed decision and the allegations of the Appellant 1, finds that the appeal against the KPCC Decision is ungrounded.
19. According to Section 3.1 of the UNMIK Regulation 2006/50 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 now able to exercise such property rights. In view of this provision, the jurisdiction of the KPCC is limited exclusively to resolution, adjudication and settlement of property right claims for **private immovable property**, including private agricultural and commercial immovable property.

20. As far as the Appellant 1 alleges in appeal that his claim is based on a use right on the cadastral parcel 3385/2 in Cadastral Zone Peja/Peč, his appeal cannot succeed for two reasons. Firstly his claim before KPCC as mentioned here fore in paragraph 1 was only related to the building (the lawyer's office) on that parcel and not on any use right to that parcel. But even if he meant to claim any use right to the parcel his claim in this procedure should not be successful, because that claim is filed with respect to a socially owned property. The KPCC does not have jurisdiction to decide on claims involving property use rights in respect of non-private immovable property. This follows from Section 3.1 of the UNMIK Regulation 2006/50.
21. As far as the Appellant 1 claims that he had a property right on the lawyer's office built or installed in that parcel his appeal can also not be successful.
22. The Appellant 1 provided no convincing evidence that the lawyer's office that was installed or built on the parcel 3385/2 was an immovable property. As the lawyer's office was removed when KPA notified the claim, KPA could not establish that the lawyer's office was an immovable property as meant in article 10 of the Law on property and other real rights (Law No. 03/L-154). The Approval and the Decision of the competent body of the Municipality of Pejë/Peć of 6 June 1956, as quoted by the Appellant 1 in his letter of appeal but not submitted, and the Permission to which the Appellant 1 refers, granted him only permissions to install and dislocate a temporary facility. These decisions indicate that the lawyer's office was not firmly connected to the ground and there for was a movable instead of an immovable property. The evidences the Appellant 1 is referring to in the appeal, as far as they are found in the case file, do not prove that the lawyer's office was in discrepancy with these decisions immovable. The photo of the lawyer's office is not convincing for another conclusion. Other documents he refers to in his appeal where not found in the case file as the KPA confirmed in reaction to the Court Order and the Appellant 1 did not challenge this information given by the KPA. This means that KPCC rightfully decided that

the claim of the Appellant is not related to an immovable property and KPCC does not have jurisdiction to decide on that claim.

Conclusion

23. Consequently, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 the Supreme Court decided as in the enacting clause of the Judgment.

Legal Advice

Pursuant to Section 13.6 UNMIK Regulation 2006/50 this judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar