

**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-237/14

**Prishtinë/Priština,
9 June 2016**

In the proceedings of:

Z. Đ.

On behalf of his grandfather

V. Đ.

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami Presiding Judge, Anna Bednarek and Sylejman Nuredini Judges, on the appeal against the Decision of the Kosovo Property Claims Commission KKPK/D/A/228/2014, case file registered at the Kosovo Property Agency (hereinafter: the KPA) under the number KPA13587, dated 13 March 2014, after the main deliberation held on 9 June 2016, issued the following:

JUDGMENT

1. The appeal of Z. Đ. filed against the decision KPCC /D/A /228/2014 with regard to the claim registered with the KPA under the number KPA13587, dated 30 March 2014, is rejected as unfounded.
2. The decision KPCC /D/A /228/2014 with regard to the claim registered with the KPA under the number KPA13587, dated 30 March 2014, is hereby confirmed.

Procedural and factual background:

1. On 2 October 2006, Z. Đ. filed a claim with the Kosovo Property Agency (hereinafter: the KPA) registered under the number KPA13587, in the capacity of the family household member of the property right holder. The property is located on the parcels No 111/1; 112; 115/1; 117 and 118 , Cadastral Zone Zaku, Municipality of Podujevë/Podujevo, with a surface of 2 hectares , 37 are and 11 square meters (hereinafter: the claimed property). He alleged that his grandfather V. Đ. as a property right holder, now deceased, was the owner of the immovable property which he had bought from the Agricultural Cooperative Kërpimeh/Krpimej in the 1960s.
2. The Secretariat of the Kosovo Property Agency formed two claims by keeping the existing one under the No KPA13587 related to the parcels 111/1; 112; 115/1; 117 and 118 and by forming a new case under the No KPA90451 for the land parcels 130; 131; 132 and 133. The KPA Secretariat has informed the Claimant about the creation of a new case on 5 May 2008.
3. In support of his claim Z. Đ. presented to the KPA the following documents:
 - The description of the Possession List No 79, dated 20 February 1992, issued by the Municipal Geodesy Department in Podujevë/Podujevo.
 - The Sales Contract No 475, dated 28 October 1967, concluded between the Agricultural Cooperative of Kërpimeh/Krpimej as the seller and the grandfather of the Claimant V. D., which was not certified before the Court.
 - The description of the Possession List No 79 issued by the Service for Cadaster and Immovable Property of Podujevë/Podujevo, on 5 May 1999.

- The description of the Possession List No 34 issued by the Municipal Geodesy Department of Podujevë/Podujevo on 24 December 1987, proving that the claimed property was evidenced as a socially-owned property of Agricultural Cooperative Kërpimeh/Krpimej.
 - The Default Judgment of the Municipal Court in Podujevë/Podujevo P.br. (C. No) 89/79, dated 15 January 1979, confirming that V. Đ. through a public auction on 28 April 1967 purchased the claimed property.
 - The Request for the execution of the judgment sent to the Court and the authorization bearing the number 1159/79 dated 3 October 1979.
 - The Ruling No 192/82 on the determination of the boundaries between the land parcels 113/2; 111/2 and 114, dated 23 June 1983.
 - The Annex to the Contract No 990, dated 5 June 1968, stating that because of the disputes regarding the part of the land, there was difficulty in registering the property in public records.
4. The KPA's Verification Team, according to the Verification Report dated 09.02.2007 established that in the Possession List, the claimed property was registered as a socially-owned property in the name of Agricultural Cooperative of Kërpimeh/Krpimej. With the report dated 1 June 2006, after the verification done at the Cadastral records relocated to Serbia, the Possession List filed by the Claimant was verified and it was confirmed that the claimed property was registered under the name of the Claimant's grandfather.
5. On 16 December 2008, the KPA made the identification of the property by posting a notification at the place where the parcel was located stating that the property was subject to the claim and that the interested parties may submit their responses within 30 days. No one filed a response to this notification. On 22 July 2010, the KPA again made a notification of the claim by publishing it on the Notification Gazette No 5 and on the UNHCR Property Office's Bulletin. The Gazette and the List were also left with the village leader Fadil Thaqi who agreed to make them available to interested parties and at the entrance of the village Zaku. The same publications were left with the Municipal Court, Municipal Assembly and with several offices of the municipal competent authorities of Podujevë/Podujevo.

6. On 18 December 2013 the Kosovo Property Agency notified the Kosovo Trust Agency (now the Privatization Agency of Kosovo) that the Claimant Z. Đi. had filed a claim with regard to the property located in the village Zaku of Podujevë/Podujevo and that according to the public records mentioned property was evidenced as the socially-owned property of the former Agricultural Cooperative of Kërpimeh/Krpimejt and therefore it was under the administration of the latter Agency.
7. On 23 December 2013 the Privatization Agency of Kosovo informed the Kosovo Property Agency that the cadastral parcels 111/2; 12; 115/1; 117; 118; 130; 131; 132 and 133 were administered by the former socially-owned enterprise, former Agricultural Cooperative of Kërpimeh/Krpimej and that since 1999 they were under the administration of the Privatization Agency of Kosovo, formerly known as Kosovo Trust Agency. In this submission it was also stated that in Round 57 of the Privatization, the cadastral parcels 117; 118; 130; 131; 132 and 133 were sold/privatized, further stating that the Kosovo Property Agency had no jurisdiction over the properties belonging to the socially-owned enterprises which were under the administration of the Privatization Agency of Kosovo and thus the Special Chamber of the Supreme Court of Kosovo on privatization matters.
8. The Kosovo Property Claims Commission (KPCC) in relation to the claimed properties, in its decision KPCC/228/2014 which referred to the case file registered with the KPA under number KPA13587, on 30 March 2014, decided to dismiss the claim with the reasoning that the Claimant initially had stated that he had lost the possession as a consequence of the armed conflict but based on the submitted documents and the document obtained “ex officio” by the Secretariat it resulted that the property was under the administration by the Privatization Agency of Kosovo and it was subject of the privatization process.

Appellate allegations:

9. Z. Đ. in the capacity of the Appellant, on behalf of his deceased grandfather, received the Commission’s decision on 30 July 2014 and filed an appeal on 13 August 2014.

Legal reasoning

Admissibility of the appeals

10. After reviewing the case file and appeal's allegation pursuant to Article 194 of the Law No 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No 38/2008) (hereinafter: the LCP), in relation to reviewing the Judgment as per its official duty and for the reasons mentioned and not mentioned in the appeal, the Court found that the appeal is admissible because it was filed within the time frame foreseen by the law.
11. The Supreme Court of Kosovo considered the appeal of the Appellant as timely filed, pursuant to Article 186 par. 1 as read in conjunction with Article 196 of the LCP, because the Appellant received the Commission's decision on 30 July 2014, and filed an appeal on 13 August 2014. Therefore, it may be concluded that the Appellant filed his appeal within 30 days as foreseen with Article 12 par. 1 of the UNMIK Regulation 2006/50 as amended by Law No 03/L-79. This legal provision provides that an appeal against the KPCC's decision may be filed within the timeframe of 30 days from the day of the receipt of the decision.

Appellate allegations:

12. The Appellant alleges that the owner of the claimed property was his grandfather based on the Sales Contracts and the Judgment of the competent Court. Additionally, he states that he was not aware that his property has been under the administration by the Privatization Agency of Kosovo and that it underwent the privatization /sales process. The appeal relates to the land parcels 117 and 118 and Appellant rejects the Commission's decision because the conclusion in paragraph 19 of the Decision KPCC/228/2014, which refers to the case file registered at the KPA under the number KPA13587, dated 30 March 2014, is incorrect given that the property was lost as a result of the armed conflict and the circumstances related to it. He alleges that his property did not have the status of the socially-owned property and he proved this fact with the documents he submitted with his claim. Regardless of the fact that the claimed property underwent the privatization process, he and his family have lost the possession in June 1999 and therefore he requests that the Decision of the Commission be annulled and the Court establishes the ownership right over the claimed property and orders return of the possession.

Merits of the appeal:

13. The Court found that the appeal filed against the decision of the Commission is ungrounded because of the fact that the Privatization Agency of Kosovo has taken the claimed property under its administration based on Article 5 of the Law No 04/L-034 on the Privatization Agency of Kosovo, formerly UNMIK Regulation 2002/12, which provides as follows:
- “The Privatization Agency of Kosovo, formerly Kosovo Trust Agency, has exclusive competences to administer: 1.1. socially-owned Enterprises, regardless of whether they underwent a Transformation;
 - Any assets located in the territory of Kosovo, whether organized into an entity or not, which comprised socially-owned property on or after 22 March 1989, except cases provided for in paragraph 2 of this Article;
14. The jurisdiction of the Special Chamber of the Supreme Court with regard to the case is based on the Law No 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, Article 4. 1 which reads “The Special Chamber shall have exclusive jurisdiction over all cases and proceedings involving any of the following:
- A challenge to a decision or other action of the KTA or the Agency taken pursuant to, respectively, the KTA Regulation or the Law on the Privatization Agency of Kosovo.
 - A claim against an Enterprise or Corporation that is alleged to have arisen during or prior to the time that such Enterprise or Corporation is or was subject to the administrative authority of the KTA, or the Agency;
15. Further, the Special Chamber’s jurisdiction is expressed by Article 4, item 1.5 which reads that “a claim alleging a right, title or interest with respect to any asset or property over which the Agency or the KTA has asserted administrative authority; the ownership of an Enterprise or Corporation; if such right, title or interest is alleged to have arisen during or prior to the time that such Enterprise or Corporation is or was subject to the administrative authority of the KTA or the Agency.

The appeal is ungrounded.

16. Finally, the Court found that the Commission's Decision is correct and the merits of the claim initially and later of the appeal, have not been reviewed and to the fact that the property has been expropriated by a decision of the Body established by the Law and therefore the loss may not be deemed as a consequence of the armed conflict, but rather as a result of the privatization process of the respective Authority.
17. The Court notes that the Appellant, respectively the Claimant has at his disposal the legal remedies provided by Law no. 04/l-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters and that he should address his request to the competent authority.
18. In light of the abovementioned, pursuant to Article 13.3 under (c) of the UNMIK Regulation 2006/50 as amended by Law 03/L-079, it was 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 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Sylejman Nuredini, Judge

Sandra Gudaityte, EULEX Registrar