

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-028/14

Prishtinë/Priština,
18 November 2015

In the proceedings of:

R. Xh.

Village Kryshevc/Kruševac

Municipality of Obiliq/ Obilić

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Rolandus Bruin and Anders Cedhagen Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: the KPCC) no. KPCC/D/R/215/2013 dated 21 August 2013 (case file registered at the Kosovo Property Agency (henceforth: the KPA) under no. KPA01363), after deliberation held on 18 November 2015, issues the following:

JUDGMENT

1. **The appeal of R. Xh. against the decision of the KPCC no. KPCC/D/R/215/2013 dated 21 August 2013 is rejected as unfounded.**
2. **The Decision of the KPCC no. KPCC/D/R/215/2013 dated 21 August 2013 as far as it concerns claim no. KPA01363 is confirmed.**

Procedural and factual background:

1. On 4 December 2007, R. Xh. (henceforth: the Claimant) filed a claim with the Kosovo Property Agency (KPA) seeking confirmation of the use right and repossession over an apartment with a surface of 77.14 m², located in the Street UÇK, Entrance 1, floor 11, number 46, in Prishtinë/Priština (hereinafter: the claimed apartment).
2. The Claimant submitted *inter alia* to KPA :
 - Allocation Decision no. 526/85 issued by the Director of Public Enterprise “COAL ‘Elektroekonomia e Kosovës’”, Department for coal production, “BOAL ‘MS Kosova BellaQevc’”, on 22 October 1985. The Public Enterprise allocated to the Claimant for use a social apartment;
 - Contract on Use of the Apartment, No. 1193/14051, concluded between the Claimant in a capacity of the Occupancy Right Holder and the Public Housing Enterprise (‘SGCO for Residence and Business Premises Prishtinë/Priština’) on 5 October 1989. Based on the Allocation Decision the Public Housing Enterprise hands over to the Claimant for unlimited use the claimed apartment then described as located in Prishtinë/Priština, Street APJ, obj. B, no. 46, floor 11, entrance I, surface 77.14 m²;

- A Record dated 26 June 1989 and issued by COAL Electric Power System of Kosovo, WU for Coal Production Kosovo, BOAL Kosovo Belacevac. The Claimant confirmed in this record that he received the keys for the apartment from the authorized person.
3. The claim was notified by putting a poster on the apartment. No one participated in the proceedings before the KPA. Thus the Executive Secretariat of the KPA considered the claim as uncontested.
 4. KPA found *ex officio* that the Claimant had previously filed a category “A” claim with the Housing and Property Directorate (HPD) for the same property (claim number DS001179) by alleging that he was fired from his work during 1990 and then evicted from the claimed apartment. Simultaneously V.L. filed a category “C” claim with the HPD (number DS301694) for the same property. The HPD found out that the “A” category claimant was allocated another apartment where he lived since 1990 and then purchased it in 1998. With its decision HPCC/D/242/2005/A&C, the Housing and Property Claim Commission (HPCC) granted the category “C” category claim of V.L. with restoration of the property right and refused the category “A” claim as the Claimant failed to provide any evidence that he lost his property right as a result of discrimination.
 5. A request for reconsideration filed by the Claimant was rejected by the HPCC in its decision HPCC/REC/71/2006, dated 6 September 2006. In paragraph 5 in the cover decision, which, according to the certified decision, applies specially to the claim, the HPCC stated that the Claimant had not presented any new legally relevant evidence, which was not considered by the HPCC in deciding the claim. Hence, the reasoning for the refusal of the category A claim remained as set out in the first instance decision.
 6. In the claim processing report the KPA advised the KPCC that the Claimant confirmed the HPD findings and that the loss of the possession over the claimed apartment was not conflict related (see page 43 of the case file) but the Claimant still considered that he has property right over the claimed apartment. There is no document on this contact between the KPA and the Claimant in the case file.
 7. The KPCC decided in the KPCC Decision no. KPCC/D/R/215/2013 dated 21 August 2013 to dismiss the claim. In its reasoning (paragraph 10 of the Cover

- decision as referred to in the Certified Decision) the KPCC established (only) that the claim is uncontested.
8. The decision was served upon the Claimant (henceforth: the Appellant) on 18 November 2013.
 9. The Appellant filed an appeal against the KPCC Decision on 4 December 2013.

Allegations of the appellant:

10. The Appellant states that the KPCC decision contains essential violations and a wrongful application of the material and procedural law as well as an erroneous and incomplete determination of the factual situation. He refers to the documents he submitted with the KPA.

Legal reasoning:

11. Following the review of the case file and the Appellant's allegations, pursuant to Sections 12 and 13 of 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: Law UNMIK 2006/50) and Article 194 of the Law 03/L-006 on Contested Procedure (LCP), the Supreme Court found that the appeal is ungrounded. The reasoning for this conclusion is the following.
12. As the KPCC dismissed the claim but did not give detailed justification of its decision, the Supreme Court has to examine whether the KPCC acted rightfully by dismissing the claim on procedural grounds. The Supreme Court concludes that the KPCC acted rightfully as there are more reasons to dismiss the claim.
13. Firstly, the Supreme Court finds that the Appellant's claim was considered and decided by the (administrative) decision (HPCC/D/242/2005/A&C), meant here fore in paragraph 4. This decision was affirmed and became final by the HPCC/REC/71/2006 decision, dated 6 September 2006, meant here fore in paragraph 5, whereby the Appellant's petition for review was rejected. Pursuant to Section 11.4 (c) of Law UNMIK 2006/50, the KPCC has to dismiss the claim where

- the claim has previously been considered and decided in a final administrative or judicial decision. With the decision of the HPCC, the property right over the claimed apartment was awarded to V.L. whilst the Appellant's claim for repossession based on the use right meant here fore in paragraph 2, was refused. Under the principle of *res judicata* a case shall not be examined again by a court when the same matter, with the same parties participating in the proceedings, has already been decided by another court. This is the matter in the present case; the same claim was filed before the HPCC and the KPCC by the same claimant and also the facts, the legal grounds as well as the evidentiary issues are the same in both claims filed by the Appellant before the HPCC, respectively the KPCC.
14. Furthermore, from the facts follows that the Appellant is claiming a use right on a socially owned apartment. According to Section 3.1 of Law UNMIK 2006/50 the KPCC does not have jurisdiction on claims related to property (use) rights on immovable property that is not privately owned. This is also a ground for dismissal of the claim.
 15. Thirdly, from the facts and the statements of the Appellant follows that he lost possession of the claimed apartment when he was fired in 1990. As the KPCC has according to Section 3.1 of Law UNMIK 2006/50 only jurisdiction on claims involving circumstances directly related to or resulting from the armed conflict that occurred in 1998/1999, and the Appellant lost possession already many years before that, the KPCC has also for this reason no jurisdiction to decide on the claim.
 16. The fact that the KPCC did not submit a convincing reasoning for its decision is not in itself a reason to accept the appeal as grounded in this case, as the Supreme Court can give the convincing reasoning in its judgment. In the light of the foregoing, pursuant to Section 13.3. (c) of Law UNMIK 2006/50 and Articles 17 and 166 paragraph 2 of the LCP the Supreme Court decides as in the enacting clause of this judgment.

Legal advice:

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

Beshir Islami, Presiding Judge

Rolandus Bruin, EULEX Judge

Anders Cedhagen, EULEX Judge

Urs Nufer, EULEX Registrar