

**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-104/2014**

**Prishtinë/Priština,  
14 April 2016**

In the proceedings of

**M.Z.**

Str. Goričani, Golubovci bb

Podgorica

Montenegro

**Appellant**

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anders Cedhagen and Krassimir Mazgalov EULEX Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: the KPCC) KPCC/D/A/212/2013 (case file registered at the Kosovo Property Agency under the number KPA90865) dated 21 August 2013, after deliberation held on 14 April 2016, issues the following

**JUDGMENT**

- 1. The appeal of M.Z. against the decision of the Kosovo Property Claims Commission KPCC/D/A/212/2013 dated 21 August 2013, with regard to the claim registered with KPA under no. KPA90865 is rejected as unfounded.**

- 2. The decision of the Kosovo Property Claims Commission KPCC/D/A/212/2013 dated 21 August 2013, with regard to the claim registered with KPA under no. KPA90865 is confirmed.**

**Procedural and factual background:**

1. On 29 December 2006, M.Z. (henceforth: the Appellant) filed a claim with the Kosovo Property Agency (henceforth: the KPA), seeking confirmation of the ownership right and re-possession over a land parcel no. 105, with a surface of 2He 10Ar 0m<sup>2</sup>, Cadastral Zone Junik/Junik, Municipality of Deçan/Deçane (henceforth: the claimed property).
2. In the claim the Appellant stated that the claimed property was lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 12 June 1999 as the date of loss.
3. With the claim the Appellant submitted the following documents:
  - Minutes of the Council of the Municipality of Deçan/Deçane and Geodetic Institute of the Republic of Serbia on Additional Allocation of the Agricultural Land Parcels to the Future Owners, issued on 14 June 1996. This document shows that the Appellant was “informed that he is summoned as the representative of his household for the handover” of the claimed property.
  - Decision on Allocation no. 140-461-112/97-01 issued by the Ministry of Finance of the Republic of Serbia in Belgrade on 23 June 1997, through which cadastral land parcels no. 4131/2, with surface area of 0Ha 06Ar 14m<sup>2</sup> and no. 4132/2, with surface area of 2He 03Ar 83m<sup>2</sup> (subject matter of another claim no. KPA17714 and not to the claim at hand claim no. KPA90865) were allocated to the Appellant and members of his household (S., D., M., K., S.).
  - Certificate of Registration of the Appellant as a displaced person no. 28001457 issued by the Commissariat for Displaced Persons of the Republic of Montenegro.
4. On 28 May 2010, the KPA notified the claimed property through publication in the Gazette no. 1 and UNHCR Property Office Bulletin. The KPA Notification Team placed the publications in the entrance and exit of Junik/Junik town. The same publications were published in Junik/Junik Municipality, Cadastre, Court in Deçan/Deçane, KPA Regional Office in Pejë/Peç, and in other institutions (DRC, OSCE, UNHCR, Kosovo Privatization Agency, EULEX and Ombudsperson).
5. According to the verification reports of the KPA Executive Secretariat, none of the documents submitted by the Appellant have been verified as being genuine.

6. On 21 August 2013, the KPCC with its decision KPCC/D/A/212/2013 refused the claim. In paragraph 74-75 in the cover decision, which according to the certified decision applies specifically to the claim, it is stated that the Appellant submitted in addition the minutes from the session of the representatives of the Municipality of Dečan/Dečane and the Institute of Architecture and Urbanism of the Republic of Serbia from 1996, during which the Appellant was allocated the claimed property. The same decision reasons that the mentioned minutes and the decisions were based on a law that was repealed by UNMIK Regulation No. 1999/10 dated 13 October 1999 on grounds of being discriminatory. Further, the decisions notes that the Appellant was contacted on several occasions requesting him to submit additional documents in order to prove the alleged ownership right, but he did not submit further evidence. Finally, the KPCC concludes that the Appellant has failed to show ownership or any other property right over the claimed property.
7. On 25 February 2014, the decision was served on the Appellant and an appeal has been filed by him on 18 March 2014.

**Allegations of the Appellant:**

8. The Appellant alleges that the KPCC has erroneously and incompletely established the facts and also made a misapplication of substantive law and violation of the procedural law.
9. The Appellant alleges that the KPCC decision erroneously mentioned the parcel number no. 105 (the claimed property) since according to him the disputed land parcels are no. 4131/1 and 4132/2. The Supreme Court notes that these parcels are the subject matter of claim no. KPA17714, which was decided with the KPCC decision no. KPCC/D/A/188/2013, dated 13 February 2013, and not the subject matter of the claim at hand no. KPA90865 decided by the KPCC decision no. KPCC/D/A/212/2013 dated 21 August 2013, against which the Appellant filed an appeal. The Appellant added that the KPCC decision does not refer to his case in “any of its segments”.
10. The other allegations that the Appellant presented in his appeal are in regard to the parcels no. 4131/1 and no. 4132/2 and not to the claimed parcel (no. 105).
11. Finally, the Appellant requests the Supreme Court to annul the KPCC decision regarding the claim no. KPA90865 as unlawful due to the substantial violation of the procedure, or revising it in order to

complete establishment of the state of fact and reach the lawful decision and return the claimed property to him. The Appellant did not submit any other document which could be considered as new evidence supporting his property right allegation.

**Legal reasoning:**

*Admissibility of the appeal*

12. The appeal is admissible because it has been filed within 30 days 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 (hereinafter: UNMIK Regulation 2006/50).

*Merits of the appeal*

13. Following the review of the case file and the Appellant's allegations, pursuant to Sections 12 and 13 of UNMIK Regulation 2006/50 and Article 194 of the Law No. 03/L-006 on Contested Procedure, the Supreme Court found that the appeal is unfounded. The reasoning for this conclusion is the following.
14. The KPCC based its decision on the fact that the KPA Executive Secretariat made a negative verification of the documents on which the Appellant based his property claim. The KPA Executive Secretariat had not been able to obtain *ex officio* any evidence that supported the Appellant's claim (claim no. KPA90865). Based on this, the KPCC found that the Appellant had failed to establish any property right over the disputed property.
15. No new evidence has been submitted with the appeal.
16. The Supreme Court finds that the KPCC has made a correct decision, based on a thorough and correct procedure. Accordingly the Supreme Court finds that no violation of the substantial law or incompletely establishment of the facts has been made. Moreover, no new evidence has been submitted with the appeal. Therefore, the Supreme Court finds the appeal unfounded.
17. The Supreme Court does not support the Appellant's allegations that the KPCC decision erroneously mentioned the claimed property (parcel no. 105) and not the parcels nos. 4131/1 and 4132/2, which according to him are the disputed properties. This is because the parcels nos. 4131/1 and 4132/2

were the subject matter of the Appellant's claim no. KPA17744 (another claim submitted before the KPA) decided by the KPCC with its decision KPCC/D/A/188/2013, dated 13 February 2013, by which the said claim was rejected. Moreover, the Appellant (the same Appellant as in the case at hand – KPA90865) filed an appeal against such a decision, while the Supreme Court decided on it with its Judgment GSK-KPA-A-266/13 on 17 September 2014 [the KPCC Decision (KPCC/D/A/188/2013, dated 13 February 2013) was annulled and the Appellant's claim no. KPA17744 was dismissed as inadmissible].

18. In fact prior to these undertaken actions, the Appellant has submitted claim no. KPA17744 (the KPA called it original claim - see page 2 of the KPA90865 case file) before the KPA on 29 December 2006, claiming re-possession over the parcels nos. 105 (claimed parcel), 4131/1 and 4132/2. Further, because these parcels were not located next to each other the KPA separated claim no. KPA17744 into a new KPA claim no. KPA90865.
19. Therefore, the Appellant's allegation that the appealed KPCC decision contains an error as to regard the disputed parcel does not stand. This because of the fact that the parcels nos. 4131/1 and 4132/2, as well as the claimed property (parcel no.105) were handled and decided by the KPCC in two of its decisions [(KPCC/D/A/188/2013 (case files registered at the KPA under number KPA17744), dated 13 February 2013 and KPCC/D/A/212/2013 (case files registered at the KPA under number KPA90865), dated 21 August 2013)].
20. In the light of the foregoing and pursuant to Section 13.3 under (c) of UNMIK Regulation 2006/50, it is decided as in the enacting clause of this judgment.

**Legal Advice**

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

**Beshir Islami, Presiding Judge**

**Krassimir Mazgalov, EULEX Judge**

**Anders Cedhagen, EULEX Judge**

**Sandra Gudaityte, EULEX Registrar**