

**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-114/14

**Prishtinë/Priština,
24 February 2016**

In the proceedings of

D. V.

Claimant/Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Beshir Islami Judge and Anders Cedhagen EULEX Judge, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: the KPCC), KPCC/D/R/223/2013, (case file registered at the Kosovo Property Agency (henceforth: the KPA) under the number KPA48210) dated 27 November 2013, after deliberation held on 24 February 2016.

JUDGMENT

- 1. The appeal of D.V. against the decision KPCC/D/R/223/2013 regarding case file registered at the KPA under the number KPA48210, is rejected as unfounded.**

2. The decision KPCC/D/R/223/2013 regarding case files registered at the KPA under the number KPA48210 is confirmed.

Procedural and factual background

1. On 21 November 2007, D.V. (henceforth: the Claimant) acting on behalf of his late mother, R.-R.V., filed a claim with the KPA, seeking confirmation of user right and repossession of an apartment with the surface of 40m², situated in Prishtinë/Pristina, “Partizanska 13” (henceforth: the claimed property). The Claimant stated that his mother has a tenancy right over the claimed property and that she lost the possession of the claimed property on 15 June 1999 as a result of circumstances of 1998/1999 in Kosovo.
2. To support his claim, the Claimant provided the KPA with:
 - Allocation Decision No.5452 issued by industry of textile “Kosovka” on 9 August 1960, through which Rada Cvetković was allocated for use an apartment, located on street “Partizanska br 13” and
 - Birth Certificate 06/29-3-1533 issued by Civil Registration Office of Pristina Municipality on 13 February 1989, showing family relation between D. and R. C.- V..
3. The KPA organized the notification of the claimed property. It visited the property three times: on 11 January, 13 March and 21 March 2008. A notification was done at the claimed property by placing a sign at the alleged location of the apartment, which turned out to be uncultivated land (the apartment was destroyed) and occupied by unknown person.
4. According to the KPA verification reports of 2008, allocation decision and birth certificate submitted by the Claimant were not found, thus, the verification of the documents was negative.
5. On 27 November 2013, the KPCC refused the claim through the decision KPCC/D/R/223/2013 in paragraphs 42 and 43 of the cover decision. The KPCC stated that in the claim the Claimant seek the resolution of a use right claim over the claimed property, namely socially-owned apartment. It is said in the decision that according to Section 2.1 of UNMIK Administrative Direction No. 2007/5, implementing UNMIK Regulation No. 2006/50 on the resolution of claims relating to private immovable property, including agricultural land and commercial property (henceforth: UNMIK Direction 2007/5), “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 a claim is not able to exercise his/her property right due to circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999 [...], is entitled to reinstatement as the property rights holder in of his/her property right.” The KPCC further noted that the present

claims are governed by article 31 of Law no 50/1992 on Housing of the Republic of Serbia. According to the Law on Housing, all former contracts relating to the use of the socially-owned apartments were by operation of the law converted into lease agreements unless the property in question was purchased by the use right holder before 31 December 1995. Accordingly, as of the date, such lease agreement must be considered to be governed by private law rather than administrative law, and any rights based on such agreements must therefore be considered private-law rights, even if they may relate to socially-owned property. Consequently the claim falls within the jurisdiction of the KPCC.

6. However, the Claimant alleged that his late mother was allocated use right over the claimed property based on submitted allocation decision. The KPCC noted that, according to the Law on Housing Relations 42/86 as amended by 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 an apartment by competent allocation right holder and subsequently the party concludes a contract on use and takes possession of the property. In the claim in question the Claimant did not provide evidence that all the relevant statutory requirements as set out in the Law on Housing Relations (42/86), as amended by Law on Housing 50/92, had been met. Accordingly, the claim stands to be refused.
7. The decision was served on the Claimant on 24 February 2014. The Claimant (hereinafter: the Appellant) filed an appeal on 11 March 2014.

Allegations of the appellant:

8. The Appellant states that the KPCC decision contains essential violations and wrongful application of the material and procedural law as well as erroneous determination of the facts.
9. The Appellant alleges that the KPCC stated that the apartment had to be purchased before 1995, which is not correct because the Law on Purchasing of Apartments with Tenancy Rights was passed in Kosovo only at the end of December 2012 and it came into force on 1 January 2013. Therefore, the statement claiming that unless the property was purchased by the holder of the tenancy right prior to 31 December 1995 it was automatically concluded that every contract on lease should be turned into private contract is not true, and this is still an issue of socially-owned property.
10. The Appellant points out that the facts are clear and well-known and that the documents were submitted with the claim referring to:
 - Decision on the allocation of apartment for use to Rada Cvetković as an employee of “Kosovka” textile industry dated on 9 August 1960.

11. According to the Appellant the KPCC stated that the loss of possession did not take place as a result of the conflict, that the Appellants first claimed that he had lost possession of the property as a result of the 1998-1999 conflict and that the claim should be returned because it does not fall within the competence of the KPCC.
12. The Appellant once more confirm that the possession over the claimed property was lost as result of the circumstances of 1998-1999 conflict, thus, seeks annulment of the KPCC Decision and to confirm the user right on his favour.

Legal reasoning

Admissibility of the appeal

13. 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:
14. The appeal is admissible because it was filed within the legal time limit according to Section 12.1 in UNMIK regulation No. 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property as amended by the Law no. 03/L-079 (henceforth: UNMIK Regulation 2006/50), 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

15. The appeal is unfounded.
16. The Appellant asserted that the KPCC refused his claim because the loss of possession did not take place as a result of the conflict 1998-1999. The KPCC has given a certified decision on 27 November 2013, the decision made a reference to “relevant paragraphs” in the Cover Decision. A special reference is made to paragraphs 42 and 43 of the decision. According to paragraph 42, the KPCC finds that the claim fall within the jurisdiction of the KPCC, hence, this means that there is no dispute that until 1999 the property was possessed either by the Property Right Holder (the mother of the Appellant) or members of her family after her death and that the property was abandoned in 1999 due to the armed conflict.
17. The Appellant maintains that based on the documents submitted by him the claimed property is an issue of socially–owned property.

18. The issue to consider in this case is whether the KPCC had jurisdiction to examine the claim of the Appellant filed with the KPA in 2007 seeking the confirmation of the rights of use over socially-owned property.
19. According to Section 3.1 of UNMIK Regulation 2006/50, the KPCC have the competence to resolve conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999. According to Section 2.1 of UNMIK Direction 2007/5 “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 a claim is not able to exercise his/her property right due to circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999 [...], is entitled to reinstatement as the property rights holder in of his/her property right.”. UNMIK Regulation 2006/50 does not apply to property rights or use rights towards publicly/socially owned property.
20. The apartment in question was not a private immovable property as it was also highlighted by the Appellant in his appeal. The apartment was in the ownership of the textile industry “Kosovka”, which means that it was a socially-owned property. As such the claim is outside the scope of application of proceedings before the KPA. However, all former contracts relating to the use of the socially-owned apartments were converted into lease agreements unless the property in question was purchased by the use right holder before 31 December 1995. Accordingly, as of the date, such lease agreement must be considered to be governed by private law rather than administrative law, and any rights based on such agreements must therefore be considered private-law rights, even if they may relate to socially-owned property. Consequently the claim falls within the jurisdiction of the KPCC and the Supreme Court finds that the KPCC has based its decision on correct and complete determination of factual situation and on correct application of material law.
21. Although the Appellants allegations were that his late mother obtained the right of use based on Allocation Decision No.5452 dated 9 august 1960, there is no evidence whether afterwards the Appellant’s mother concluded a contract on use in accordance with article 37 of the Law on Housing Law on Housing Relations (OG of the SAPK, No. 42/86). Moreover, there is no argument whether this apartment was given for use to the Appellant in 1998, because the documents he submitted before the KPA were not positively verified.
22. Based on the above and pursuant to Section 12.2 UNMIK Regulation 2006/50 and Article 198.1 of the LCP, the Court decided as in the enacting clause of this Judgment.

Legal advice:

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

Sylejman Nuredini, Presiding Judge

Anders Cedhagen, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar