

**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- 203/15

**Prishtinë/Priština,
10 May 2018**

In the proceedings of:

Z. A.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/175/2012 (case file registered at the KPA under the number KPA 16285), dated 22 October 2012, after deliberation held on 3 May 2018, issues the following:

JUDGMENT

1. The appeal of Z. A. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/175/2012, dated 22 October 2012, is rejected as unfounded.
2. The Decision of Kosovo Property Claims Commission KPCC/D/R/175/2012, dated 22 October 2012 as far as it is regarding the claim registered at the KPA under the number KP16285, is confirmed.

Procedural and factual background

1. On 16 October 2006, Z. A. (henceforth: the Appellant) filed a claim asking for repossession of the apartment with the surface of 90.83 m², located on place called "Beogradsko-Kragujevacka C-2", Municipality of Prishtinë/Priština (henceforth: the claimed property).
2. In the claim, the Appellant stated that the possession of the claimed property was lost on 28 June 1999 due to the circumstances related to the 1998-1999. Additionally, the Appellant stated that the construction of the claimed property was finalized on 2005 and it was occupied by unknown person.
3. To support his claim, the Appellant presented at the KPA the following evidences:
 - Contract on Sale of the Apartment No. 953 concluded on 21 February 1992 between Credit Bank Prishtinë/Priština (represented by director- I.M.) in a capacity of the seller and Fond for Development of Kosovo and Metohija in capacity of the buyer of the claimed property,
 - Allocation Decision No. 58 issued by Fond for Development of Kosovo and Metohija, on 21 February 1992, whereby, the Appellant was allocated for use the claimed property,
 - Contract on Sale of the Apartment No. 2546 concluded on 2 August 2004 between Fond for Development of Republic of Serbia in a capacity of the seller and the Appellant in capacity of the buyer of claimed property. The Contract was legalized before Second Municipal Court of Beograd under the number 8645/04,
 - Confirmation issued by Fond for Development of Republic of Serbia on 2 August 2004 through which the fond confirms that the Appellant has fulfilled financial obligations as described at the Contract on Sale, hence, he became the owner of the claimed property,
4. The notification of the claim carried out on 14 August 2007 and reflects the claimed property to be occupied by H. M. (hereinafter: the Appellee) who has claimed legal right and signed the Notice of Participation with the KPA proceedings.

5. The Appellee supports his allegation with the following evidences:

- Contract on Joint Means No 697 concluded on 21 February 1991 between Public Housing Enterprise and Credit Bank Prishtinë/Priština. The aim of the contract was construction of the apartments,
- Contract No 1111/1 concluded on 6 May 1991 between Public Housing Enterprise, the Enterprise Ramiz Sadiku and Credit Bank Prishtinë/Priština through which were set the conditions for the construction of the apartments,
- Ruling on Allocation No 04 issued by Credit Bank Prishtinë/Priština on 15 December 1999 hereby the Appellee was given the claimed property for temporary use,
- Judgment C.Nr.815/03 issued by Municipal Court of Prishtinë/Priština on 15 May 2003, whereby the Lawsuit of the Appellant was approved as grounded and the Respondent was obliged to release the claimed property,
- Lawsuit for release of the claimed property, filed before Municipal Court of Prishtinë/Priština on 21 May 2003 by the Appellee (in a capacity of the Claimant) who seeks the claimed property being released by Arben Shabani in capacity the Respondent,
- Lawsuit for verification of the Purchase Contract No 697 (dated on 15 May 1999) filed before Municipal Court of Prishtinë/Priština on 16 November 2004 by Appellate against Public Housing Enterprise,
- Judgment C.nr. 3004/2004 issued by Municipal Court of Prishtinë/Priština on 11 April 2005 whereby the Lawsuit of the plaintiffs (S. B., N. H., H. M. and Sh. K.) was approved and defendant (Public Housing Enterprise) was obliged to release and returns back the possession among others the claimed property to the plaintiff,
- Judgment Ac.No.670/2005 issued by District Court of Prishtinë/Priština on 31 October 2005 refusing the Appeal of Public Housing Enterprise and in meantime confirming the Judgment C. No. 3004/2004,
- Judgment Ac. No. 245 issued by District Court of Prishtinë/Priština on 25 January 2007 through which the Court refused as ungrounded the Appeal of the Respondent and confirmed the Judgment C. No. 815/2003 dated on 24 March 2004,
- Confirmation letter issued by Public Housing Enterprise on 24 November 2008 confirming that Credit Bank of Prishtinë/Priština joint its means for buying the claimed properties,

6. The Verification Department of the Executive Secretariat of KPA manage to positively verify the Judgment C.nr. 3004/2004 issued by Municipal Court of Prishtinë/Priština on 11 April 2005, the Judgment Ac.nr.670/2005 issued by District Court of Prishtinë/Priština on 31 October 2005 and the Judgment Ac. No. 245 issued by District Court of Prishtinë/Priština on 25 January 2007.

The Allocation Decision No 58 issued by Fond for Development of Kosovo and Metohija, on 21 February 1992 as well as Contract on Sale of the Apartment No 2546 concluded on 2 August 2004 were also positively verified before the Serbian intuitions.

7. On 22 October 2012 the Kosovo Property Claims Commission (KPCC) through its decision KPCC/D/R/175/2012 dismissed the claim. In paragraph 21 of the Decision, which applies specifically to the claim, it is stated that on the basis of the various types of the verified documents submitted by Appellant or obtained by the Executive Secretariat *ex officio*, or based on the Appellant's own statement, the Appellant failed to show that his claim involves circumstances directly related or resulting from the 1998-1999 conflict. The Claimant never had possession over the property, accordingly the claim fall outside the mandate of the Commission and stands to be dismissed.
8. The Decision of the KPCC was served on the Appellant on 20 November 2014 while he filed the Appeal on 20 December 2014.

Allegations of the Appellant

9. The Appellant alleges that the KPCC Decision is inaccurate because the factual state was not completely determined.
10. In the appeal, A. gives a detailed presentation of the documents that he has submitted in order to confirm his ownership over the claimed property.

Legal reasoning:

Admissibility of the appeal

11. The appeal was filed within 30 days as foreseen by Section 12.1 of the Law No. 03/L-079. The Supreme Court has jurisdiction over the appeal against the Decision of the KPCC. The appeal is admissible.
12. Following the review of the case file and the Appellant's allegations, pursuant to Sections 12 and 13 of Law No. 03/L-079 and Article 194 of the Law No. 03/L-006 on Contested Procedure, the Supreme Court found that the appeal is unfounded.

Merits of the appeal

13. The issue to consider in this case is whether the KPCC had jurisdiction to examine the claim of Appellant filed with the KPA in 2006.
14. According to Article 3.1 of Law No. 03/L-079, the KPCC has the competence to resolve conflict related claims involving circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Thus, the Appellant is not only to provide an ownership title over a private immovable property but also to show that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict. Both conditions are to be met.

15. On 21 February 1992 the Appellant was allocated the claimed property for use. This was done based on the Allocation Decision No 58 issued by Fond for Development of Kosovo.
16. The Appellant himself states that the construction of the claimed property was finalized on 2005. Moreover he has submitted the Contract on Sale of the Apartment No 2546 concluded on 2 August 2004 between Fond for Development of Republic of Serbia in a capacity of the seller and himself in capacity of the buyer of claimed property.
17. From the Appellant's own statement and supporting documents it is clear enough that the Appellant never had possession over the claimed property neither before the conflict (because on 1992 the claimed property was under the construction) nor after the armed conflict (because the Appellant became the owner of the same on 2004).
18. The KPCC dismissed the claim on the grounds of that it did not have jurisdiction to decide on the merits of the claim since the Appellant failed to show that his claim involves circumstances directly related to or resulting from the 1998-1999 conflict.
19. The Supreme Court finds that the KPCC has made a correct Decision, based on a thorough and correct procedure. Consequently, the Appeal according to Section 13.3 (c) of the Law No. 03/L-079 is to be rejected as unfounded and the Decision of the KPCC is to be confirmed.
20. Because of the fact that the KPCC and the KPA Appeals Panel of the Supreme Court do not have jurisdiction in the case they did not examine the merits of the case.
21. This Judgment is without prejudice of the right of the Appellant to file a claim before the competent court, if he has any.

Legal Advice

Pursuant to Section 13.6 of Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Timo Eljas Torkko, EULEX Registrar