

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-062/14

Prishtinë/Priština
25 November 2015

In the proceedings of:

Z. S.

Appellant

representative: B.J., lawyer

vs.

S.K.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Anna Bednarek, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/215/2013 (case file registered at the KPA under No. KPA38570), dated 21 August 2013, after deliberation held on 25 November 2015, issues the following

JUDGMENT

- 1- **The Appeal of Z. S. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/215/2013 dated 21 August 2013 regarding the case file registered with KPA under number KPA38570 is rejected as ungrounded;**

- 2- **The Decision of the Kosovo Property Claims Commission KPCC/D/R/215/2013, dated 21 August 2013, as far as it regards the case registered under No. KPA38570 is confirmed.**

Procedural and factual background:

1. On 21 May 2007 Z. S. (henceforth: the Appellant) filed a claim with the Kosovo Property Agency (KPA), seeking the repossession of an apartment with the surface of 55.34 m², situated in Prishtinë/Priština, street “Lenjinova 3/14” (henceforth: the claimed property). He explained that the property right over the claimed property was lost on 20 June 1999, as a result of the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
2. To support his claim, the Appellant provided the KPA with the following documents:
 - Decision No.04-360-547/94, dated 3 March 1996, based on which, the Republic of Serbia, Autonomous Province of Kosovo and Metohija, Committee for Housing Issues of Provincial Bodies allocated to Z. S. an apartment for use, located in street “Lenjinova No.3 , Entrance 1, No. 14 with surface 55.34 m2.
 - Contract on lease of the Apartment No.1193/1223 concluded on 8 May 1996 between the Public Housing Enterprise of Prishtinë/Priština as lessor and Z.S.as lessee, based on which Z. S. received the claimed apartment for permanent use.
 - Purchase Contract 04. No.360-386/96 concluded on 5 July 1996 between the Republic of Serbia, Autonomous Province of Kosovo and Metohija, in a capacity of the seller and Z.S. in a capacity of the buyer. The subject of the contract was the

claimed property. The contract was certified Vr.Nr.4697/96 on 2 August 1996 by the Municipal Court of Prishtinë/Priština.

- Invoices indicating Z. S. to have performed the payments for the purchase of the apartment.
 - Power of Attorney certified by the Municipal Court of Prishtinë/Priština, branch of Gračanica, Vr. Nr. 249/09 on 22 January 2009, through which Z. S. authorized E. K. to represent him before the Kosovo Property Agency in regard to his apartment located at street “Lenjinova 3/14”.
 - Power of Attorney certified by the Municipal Court of Prishtinë/Priština, branch of Gračanica, Vr.Nr. 3148/10 on 5 May 2010, through which Z. S. authorized G.V. to receive the KPA’s Decision.
 - Power of Attorney certified by the Municipal Court of Prishtina/Priština, branch of Gračanica No. 6243/2012 dated 27 December 2012, through which Z. S. has authorized the lawyer B. J. to represent him before all competent institutions regarding his apartment located at street “Lenjinova 3/14” Prishtinë/Priština.
3. On 1 October 2008, the KPA performed the notification of the claim. The apartment was found occupied by S. K. (henceforth: the Appellant) who claimed to have a legal right over the claimed property and signed the notice of participations in the proceedings before the KPA.
4. In support of his allegations the Appellant submitted:
- Decision 05.No. 360-28/86 issued by the Housing Affairs Commission of the Executive Council of the Social Autonomous Province of Kosovo on 12 June 1986, through which the apartment located at street “Lenjinova 3/14 was allocated to him as the employee of the Provincial Social Planning Institute for use”.
 - Contract on Lease No.1193/1223 concluded on 13 June 1986 between the Public Housing Enterprise of Prishtinë/Priština as lessor and S. K. as lessee, based on which the Appellee received the claimed property for permanent use.
 - Decision 360.01.No.360-624/95 issued by the Ministry of Urbanism, Department for Housing Affairs and Construction on 8 January 1996, on the basis of which the Conclusion No. 02-360-3555 dated 20 August 1995 was annulled. By the Conclusion No. 02-360-3555 S. K. was requested to vacate the apartment.

- The copy of the claim submitted by the Appellee to the Supreme Court of the Republic of Serbia requesting the annulment or the modification of the Decision 360-624/95 of the Ministry of Urbanism, Public Utilities and Construction dated 8 January 1996.
 - Judgment No. 947/96 rendered by the Supreme Court of the Republic of Serbia on 30 October 1997, on the basis of which the claim of S. K. was approved and the Decision 360-1 no. 360-624/95 dated 8 January 1996 was annulled. As a consequence the order issued to S. K. to vacate the premise did not have any legal effect.
 - Decision No. 010-413/455-3482 issued by the Municipality of Prishtinë/Priština of 18 February 2010, based on which to S. K. was ordered to pay taxes for the property transaction in amount from 150 Euro.
5. According to the Executive Secretariat's Verification Reports the documents which are positively verified are as below:
- Decision No.04-360-547/94, dated 3 March 1996.
 - Purchase Contract 04. No.360-386/96 concluded on 5 July 1996.
 - Judgment No. 947/96 rendered by the Supreme Court of the Republic of Serbia on 30 October 1997.
 - Contract on Lease No.1193/1223 concluded on 13 June 1986.
6. The KPA established that the apartment was previously subject to the adjudication of the HPCC upon the application of the Appellee. The claim was granted by the HPCC in the Decision HPCC/D/196/2005/A&C, dated 18 June 2005. According to paragraphs 7, 9 and 16 of the Cover Decision which apply especially to the claim, S. K. had a valid occupancy right and his right was revoked as a result of the discrimination.
7. With its Decision KPCC/D/R/215/2013 dated 21 August 2013, the KPCC refused the claim. In paragraph 47-50 of the Cover Decision, which according to the Certified Decision dated 21 August 2013 apply specifically to the claim, it is stated that the "Self –Governing Community of Interests" concluded the Contract on Use with the Appellee on 1986 on the basis of the allocation decision from the same year and the Appellee acquired the use right over the claimed property at that time. Consequently, the allocation right holder, "Housing Commission of the Provincial Body" could not have validly granted a use right to the Appellee after the Appellee had already acquired a use right over the claimed property. As a

result, the allocation decision issued in favour of the Appellant in 1996 and lease contract concluded in the same year could not validly transfer a use right over the claimed property to him. Based on the evidence gathered before it, the Commission concluded that the Appellant had failed to show the ownership or any other property right over the claimed property.

8. The Decision was served to the Appellant on 13 November 2013. On 13 December 2013, B. J. the lawyer representing the Appellant filed an Appeal.
9. S. K. was served the Decision on 13 November 2013. He replied to the Appeal on 14 April 2014.

The allegations of the Appellant

10. The Appellant states that the Decision made by the KPCC is based on an erroneous and incomplete determination of the facts.
11. The Appellant alleges that the Supreme Court of the Republic of Serbia decided in case which relates to the third party, D. K. and not him. He was in possession of the claimed property during all the time while the procedure before the Supreme Court of the Republic of Serbia was ongoing. That fact was not taken into consideration by the HPD
12. According to the Appellant the HPD did not assess the evidence submitted by him.

Legal reasoning:

Admissibility of the appeal:

13. The Appeal was filed within 30 days as foreseen by Section 12.1 of the Law No. 03/L-079. The Supreme Court has the jurisdiction over the Appeal against the Decision of the KPCC. The Appeal is admissible.

Merits of the appeal:

14. Following the review of the case file and Appellant's allegations, pursuant to the provisions of Article 194 of the Law 03/L-006 on Contested Procedure, the Supreme Court found that the Appeal is ungrounded. The Decision of the KPCC is correct; the Court finds neither erroneous nor incomplete determination of the facts.
15. First of all, the Appellee in his Reply to the Appeal refers to the previous decision issued by the HPCC with regard to the claimed property. As a matter of fact, S. K. previously applied to the HPCC asking to restore the occupancy right over the apartment. The HPCC in its Decision of 18 June 2005, HPCC/D/196/2005/A&C, granted S. K. claim by restoring the occupancy right in his favor.
16. However, the above mentioned decision was issued under UNMIK Regulation 2000/60 (full name). Article 14.2 of UNMIK Regulation 2006/60 provides that any interested person who was not a party to the claim, and who can show good cause why s/he did not participate as a party to the claim, may request reconsideration of a Commission decision within 30 days of learning of the Commission's decision but not later than one (1) year from the date of the Commission's decision. From the evidences gathered in the current case, the Supreme Court established that the Appellant did not take part in the proceedings before the HPD.
17. The KPCC and the KPA Appeals Panel of the Supreme Court do not have the jurisdiction over the decisions issued in the cases of the HPCC: to review the reasoning of the HPCC decisions or to examine their correctness. That means that the Decision HPCC/D/196/2005/A&C is final and cannot be appealed. The provisions of the Regulation do not provide for any legal remedies (appeals or extraordinary legal remedies) against the final decisions of the Housing and Property Claims Commission.
18. Regarding the case at hand, the Supreme Court is of the opinion that the KPCC has taken correct and grounded decision in complete and fair proceedings.
18. The KPCC indicated that the Appellant has submitted various documents in support of his claim, including the Allocation Decision dated 3 March 1996, Contract on Use dated 8 May 1996 and Purchase Contract dated 5 July 1996, confirming the purchase of the claimed property on the basis of the Allocation Decision.

19. The Appellee on the other has submitted the Judgment No. 947/96 rendered by the Supreme Court of the Republic of Serbia on 30 October 1997 on the basis of which the Appellee's permanent use right over the claimed property granted on 1986 was confirmed.
20. Pursuant to the principle: *Primus in Tempore Potior Est In Jure/First in time, first is right*, the Appellee's property right would be prevailing.
21. However, the questions to consider in this case are two apparently contradictory Decisions issued by the same institution and giving the Appellee and the Appellant rights over the same apartment.
22. The Purchase Contract signed by the Appellant in 1996 cannot produce any legal effect as the right of use established to the Appellee already in 1986 by the same institution is still in force and was never revoked. The Executive Secretariat of the KPA, nor the Supreme Court have found any evidence of the permanent use right in favor of the Appellee having been lawfully annulled in accordance with the Law on Housing (50/92). Moreover, the Supreme Court of the Republic of Serbia in 1997 underlined that the termination of contract, if that was the intention of the Public Housing Enterprise, should have been requested in accordance with the law (court proceedings).
23. Regarding the Appellant's allegation that the KPCC Decision is based on erroneous or incomplete determination of the facts, the Supreme Court indicates that according to Article 183 paragraph 1 of the Law on Contested Procedure, which is *mutatis mutandis* applicable to the appeals procedure in front of the Supreme Court and under Section 12.2 of the Law No. 03/L-079, there is an erroneous and incomplete determination of the factual situation when the court establishes a material fact incorrectly or if the court fails to establish that material fact. This allegation is not grounded, as the KPCC, as the organ of the first instance in current case, did not determine or assessed any relevant material fact incorrectly and did not fail to establish a relevant fact either. The KPCC has rendered its Decision after considering all the facts relevant for the case: who was the owner before the armed conflict, who possessed the claimed property before the conflict, when was the possession lost. The legal assessment is a different issue and not a matter of proper or erroneous establishment of the facts.
24. Consequently the Appeal according to Section 13.3 (c) of the Law No. 03/L-079 has to be rejected as unfounded and the Decision of the KPCC confirmed as far as it is related to the case which had to be decided upon in this Judgment (KPA 00153).

Legal Advice

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

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Anna Bednarek, EULEX Judge

Urs Nufer, EULEX Registrar