

**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- 073/13

**Prishtinë/Priština,
24 April 2014**

In the proceedings of:

I.B

Claimant/Appellant

vs.

N/A

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Esmā Erterzi, Presiding Judge, Willem Brouwer and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) KPPC/D/R/167/2012 (case file registered at the KPA under the number KPA 11794), dated 5 September 2012, after deliberation held on 24 April 2014, issues the following:

JUDGMENT

- 1. The appeal of I.B against the decision of the Kosovo Property Claims Commission KPPC/D/R/167/2012, dated 5 September 2012, is rejected as unfounded.**

2. **The decision of Kosovo Property Claims Commission KPPC/D/R/167/2012, dated 5 September 2012 regarding the claim registered at the KPA under the number KPA11794, is confirmed.**

Procedural and factual background:

1. On 3 December 2007, the I.B filed a claim asking for the repossession of an apartment located at the address of “Bekim Berisha 7/2 28 Prizren”, on the 4th floor, with the surface of 57 m² in Prizren (hereafter referred to as: the apartment). Together with the claim, he submitted, *inter alia*: a copy of the decision of the Coordinating Bodies in the Firefighting Brigade of Prizren, nr 30/228, dated 6 December 1999, a statement, dated 30 June 2003, explaining the details of the allocation of the said apartment, his dismissal from his job in 1992, and how he acquired the apartment on 2 January 2000, this, along with many other documents.
2. The notification of the claim was carried out on 17 July 2008. The person, Mr. A/E, occupying the flat was personally visited the KPA Office on 4 February 2008, where he claimed the property right over the flat. He however, did not file a notice of participation in the proceedings nor presented any document.
3. The KPCC found out that the claimant previously filed a claim for the same apartment with the Housing and the Property Department (HPD) which was registered under DS201239. At the same time, he was a respondent in a different claim, filed by G.M, for the same apartment in case registered under DS305343.
4. The Housing and Property Claims Commission (HPCC), in its Decision HPCC/D/117/2004/A&C, dated 6 April 2004, refused the claim of the claimant Islam Berisha (DS201239) based on the reasoning that he was unable to prove that he had a property right that could be restored, while granting the claim submitted by the G.M (DS305343).
5. The request of I.B for reconsideration of the said HPCC Decision was also refused with the Decision of the HPCC, dated 24 February 2005, numbered HPCC/REC/43/2005. The claimant was subsequently evicted from the apartment by the HPD in 2005 based on the HPCC Decision.
6. As for the second claim of the claimant filed for the same apartment with the KPA in 2007, the KPCC decided on 5 September 2012 that the claim is to be dismissed being outside the jurisdiction of the KPCC.

7. The Decision of the KPCC was served on the appellant on 15 February 2013. He filed an appeal on 11 March 2013.

Allegations of the interested parties

Claimant/Appellant

8. The Claimant alleges that the apartment was allocated to the professional unit through the Decision issued by the Council for common flats on 20 June 1985. As for the history of the allocation and the possession of the apartment, he maintains that:
- the service representative was invited after the decision to receive the keys of the apartment;
 - the minutes were kept for handover of the keys received by the deputy commander M.T;
 - the keys were kept in the office until the final decision from S-I-U Housing was issued on 17 June 1986;
 - once the final decision is taken, a competition for allocation of flats in question was open for which workers applied;
 - M.G was elected as the member of the Commission for the allocation of the flats;
 - M.G, prior to the final meeting to decide on allocation of the flats, went and broke into the flat illegally;
 - the service commander Z.A filed a request to the Municipality for the eviction of the occupier from the flat;
 - a decision was issued on 2 August 1987. (illegible) so the person had to release the flat on 7 September 1987; however, there were intervention and this person could not be released from the flat;
 - on 11 November 1988, another document was issued upon the request of by the former director of Hotel PUTBIK, V.L, issued on 24 June 1987;
 - due to the interventions from Belgrade the person should not be evicted from the flat;
 - then, on 23 January 1992, together with his Albanian colleagues he was dismissed from the work and forced to leave the country which is a big discrimination;
 - upon his return from Albania, he requested the user of the flat to evict it but he could not manage;
 - on 2 November 1999, another announcement for allocation of this flat was made to which he applied and subsequently the apartment was allocated to him;
 - he asked for law enforcement bodies to remove the person from the flat which occurred immediately;
 - he started to use the apartment on 2 January 2000;

9. In his appeal, he alleged that the KPCC made a wrong decision which did not provide legal grounds as to whom this apartment belongs to and why it does not belong to him and which evidence is admissible, which is not.

The current possessor

10. During the notification of the property, the current user of the apartment A.E alleged that he purchased the property on 11 January 2008 from a third party, G.M, to whom the claimed apartment was allocated in 1988. However, no notice of participation to the proceedings was filed.

Legal reasoning:

Admissibility of the appeal

11. The appeal was filed within 30 days as foreseen by law (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079- hereinafter Law 03/L-079). The Supreme Court has jurisdiction over the appeal against the decision of the KPCC. The appeal is admissible.

Merits of the appeal

12. The issue to consider in this case is whether the KPCC had jurisdiction to examine the claim of the claimant filed with the KPA in 2007.
13. According to Article 3.1 of the Law 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, a claimant 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. KPCC decided it did not have jurisdiction to decide on the merits of the claim since the claimant did not have the possession of the said apartment until 2000; accordingly, he did not lose it due to the conditions of the armed conflict.
14. In this regard, first of all, the Supreme Court takes a note of that the claimant had never held the possession of the apartment prior to the armed conflict, regardless of the reasons and their correctness and fairness. He simply admits the fact that he only started to use the flat in 2000 after many steps as summarized in the allegations of the parties above. (see para.8)
15. Furthermore, the claimant's arguments on his alleged property right over the apartment related to the conditions and legal framework before the conflict had already been presented to the HPCC. The claims of both I.B and G.M as to the property rights over this apartment had been

adjudicated and examined with the decision of the HPCC. That Decision was decided on the merits of the claim of I.B and that of G.M based on the alleged facts and arguments presented as well as the evidence produced by the parties during those proceedings.

16. The claimant asked for reconsideration of that decision. This request however has also been rejected by the HPCC on 24 February 2005. Refusal of the request for reconsideration means that all legal remedies available against that Decision were exhausted. The decision of the HPCC became final for and binding on those two. The arguments of the same claimant, for the same subject matter challenging the property right of the same person, G.M, cannot be heard once again by any court because the matter became *res judicata* between I.B and G.M and any successor of G.M relying on the property right of the latter.
17. The jurisdiction of the HPCC was slightly different than the KPCC. Whatever arguments the claimant relied on as to supporting his alleged right over the apartment grounded on the matters occurred before the armed conflict had already been considered by the HPCC as well as those of G.M. When that decision became final, it was executed. The claimant was evicted from the apartment in 2005 by the HPD. His loss of possession of the apartment does not derive from situation related to the armed conflict but emerges as a result of an eviction order based on the final decision of the HPCC acknowledging the right of another person, G.M, over the apartment.
18. The allegations of the claimant that the KPCC in its decision did not make a statement on the name of the property right or decide to whom it belongs reflects the reality; however, this is the legal result to be achieved. A court can only decide on the merits of any claim, that is to say whether the claim is granted or not, if it has jurisdiction to adjudicate such a claim. KPCC, under these conditions, rightly pointed out that it does not have jurisdiction to adjudicate any claim for a property the loss of possession of which was not due to the armed conflict. Since the new claim filed in 2007 with the KPA by the Claimant after his eviction from the flat in 2005 does not derive from the armed conflict conditions, the conclusion of the KPCC is correct that it does not have jurisdiction to examine this claim. The decision of the KPCC as such is a procedural decision which does not prejudice any person to claim such rights before the competent court, if any.
19. The appeal of the claimant is, therefore, is rejected as unfounded. Accordingly, the decision of the KPCC is to be confirmed pursuant to Section 13.3 (c) of the UNMIK Regulation No 2006/50, as amended by Law No 03/L-079.

20. This judgment is without prejudice of the appellant to pursue his right, if exists, before the competent courts against any person, currently occupying the apartment, apart from G.M, for whom the matter became *res judicata*.

Legal Advice

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

Esma Erterzi, EULEX Presiding Judge

Willem Brouwer, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar