

**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-100/2015

**Prishtinë/Priština,
22 February 2017**

In the proceedings of:

S.Č.

Appellant

vs.

SOE “Bujqësia” (in Liquidation)

Represented by

Privatization Agency of Kosovo

Str. Rexhep Mala Nr. 2

Prishtinë/Priština

Represented by

A. B. (Manager of the Regional Office of Prishtinë/Priština)

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the appeals against the Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 dated 18 June 2014 (case files registered at the KPA under numbers KPA21920, KPA21921, KPA46121 and KPA46122), after deliberation held on 22 February 2017, issues the following

JUDGMENT

1. The appeals of S. Č., registered under the numbers GSK-KPA-A-100/2015, GSK-KPA-A-101/2015, GSK-KPA-A-102/2015 and GSK-KPA-A-103/2015, are joined in a single case under the number GSK-KPA-A-100/2015.
2. The appeals of S. Č. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 regarding case files registered at the KPA under the numbers KPA21920, KPA21921, KPA46121 and KPA46122 are rejected as unfounded.
3. The Decision of the KPCC/D/A/244/2014 regarding case file registered at the KPA under the number KPA21920, KPA21921, KPA46121 and KPA46122 is confirmed.

Procedural and factual background

1. On 9 November 2007, S. Č. (hereinafter: the Appellant) filed four (4) Claims with the Kosovo Property Agency (hereinafter: the KPA) on behalf of his father P. Č., seeking repossession over the cadastral parcel no 848, cultivated land with the surface of 01.01.99 ha, cadastral parcel no 896, pasture with the surface of 01.00.43 ha, cadastral parcel no 167, cultivated land with the surface 00.90.35 ha and cadastral parcel no 790 cultivated land with the surface 01.65.56 ha, all cadastral parcels located at village “Miloshevë/Miloševo, Municipality of Obiliq/Obilić, (hereinafter: the claimed properties). He declared that his family gained the claimed properties through the Judgment for denationalization. The loss of possession was as the result of the circumstances of 1998/1999 in Kosovo.
2. To support his claims, the Appellant provided the KPA with the following documents:
 - The Lawsuit No 112/90 filed by Municipal Public Prosecutor of Prishtinë/Priština on 3 April 1990 for annulling the Contract on Sale No 3035/63 dated 21 November 1963 and Contract on Sale No 291/64 dated 21 February 1964.
 - Power of Attorney No 44 certified before Municipal Court of Obiliq/Obilić on 13 May 1992 whereby B. Č. authorized his son P. Č. to represent him concerning the case No 723/90.
 - Judgment No 723/90 issued by Municipal Court of Prishtinë/Priština on 17 September 1993 whereby it was confirmed that the Contract on Sale No 3035/63 dated 21 November 1963 and Contract on Sale No 291/64 dated 21 February 1964 concluded between B. Č. and the Enterprise “PIK Kosmet-Export” were annulled. The Enterprise “PIK Kosovo-Export, DPP “Poljoprivreda” (NSH “Bujqësia”) from Fushë Kosovë/Kosovo Polje was obliged to

return back the claimed properties into possession of P. Č. among other respondents while the respondents were obliged to pay the Enterprise “PIK Kosovo-Export”, DPP “Poljoprivreda” (NSH “Bujqësia”) from Fushë Kosovo/Kosovo Polje the amount of 146.356.500 dinars (Serbian currency) as compensation. The Judgment became final on 27 December 1993.

- Birth Certificate No 200-10581/04-08-7889 of S. Č., issued by dislocated Civil Registration Office of Prishtinë/Priština on 22 July 2004.
3. The Notification of the Claim no. KPA21920 occurred on 1 July 2010 by publishing the claim in the KPA Notification Gazette No 3 dated 25 June 2010 and the UNHCR Property Office Bulletin. The Gazette and the list were left with the Head of village who accepted to make it available for interested parties. The same publications were left in the entrance and exit of the village Miloshevë/Miloševo, Municipality of Obiliq/Obilić, the Cadastral Office of Obiliq/Obilić, Municipal Court of Prishtinë/Priština and Prishtinë/Priština Regional Office of the KPA. In addition, the List and Gazette were distributed to the Head Office of the UNHCR, the Ombudsperson, the Kosovo Cadastral Agency (KCA), the Danish Refugee Council (DCR) and the UNMIK Office in Graçanicë/Gračanica.
 4. The Physical Notification of the Claims KPA21921, KPA46121 and KPA46122 occurred on 5 and 17 March of 2010 by founding the claimed properties occupied by unknown persons.
 5. On 23 December 2013, Kosovo Privatization Agency (hereinafter: the Appellee) through A.B. (Manager of the Regional Office of Prishtinë/Priština) approached the KPA by showing the legal interest to become at the KPA proceedings.

In support of the Claims the Appellee submitted the following evidences:

- Contract on Sale No 3035/63 certified before Municipal Court of Prishtinë/Priština on 21 November 1963 concluded between B. Č. as the seller and SOE “Kosmet-Export” as buyer of the claimed properties.
- The Claim No SCC-08-0046 filed on 10 October 2007 before Special Chamber of the Supreme Court of Kosovo by Đ. Č. whereby he seeks the annulment of the Contract on Sale No 3035/63 dated 21 November 1963 and Contract on Sale No 291/64 dated 21 February 1964.
- Power of Attorney No 3736/07 certified before Municipal Court of Mitrovicë/Mitrovica on 31 October 2007, whereby, Đ. Č. authorized the lawyer G. G. to represent him before Special Chamber of the Supreme Court of Kosovo.

- Decision SCC-08-0046 issued by Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters on 12 March 2008 through which the Special Chamber referred the case to the Municipal Court of Prishtinë/Priština.
- Ruling No 552/2008 issued by Municipal Court of Prishtinë/Priština on 30 January 2009 through which the Court proceedings regarding the lawsuit of Đ. Č. for annulment of the Contract of Sale were terminated due to the liquidation process of the Respondent (SOE “Kosova-Export”).
- The Information Letter of Privatization Agency of Kosovo referred to the Municipal Court of Prishtinë/Priština on 3 September 2010 informing the Court that the Liquidation of the SOE “Bujqësia” was commenced with effect from 4 August 2010 pursuant to Decision of the Board of Directors of the Privatization Agency of Kosovo under Article 9.1 of Law No 03-L-067, hence, the Privatization Agency of Kosovo hereby request the suspension of all the cases against the SOE “Bujqësia”.
- Information Letter of Privatization Agency of Kosovo referred to the Special Chamber of the Supreme Court of Kosovo on 3 September 2010 informing the Court that the Liquidation of the SOE “Bujqësia” was commenced with effect from 4 August 2010 pursuant to Decision of the Board of Directors of the Privatization Agency of Kosovo under Article 9.1 of Law No 03-L-067, hence, the Privatization Agency of Kosovo hereby request the suspension of all the cases against the SOE “Bujqësia”.
- Information Letter of Kosovo Privatization Agency filed by Manager of the Regional Office of Prishtinë/Priština, A. B. for KPA on 23 December 2013, whereby the Kosovo Privatization Agency shares with the KPA the following information’s:
 Đ. Č. has filed the Lawsuit before the Special Chamber of the Supreme Court in relation with the claimed properties.
 The claimed properties were under the administration of the SOE “Bujqësia” during the period 1996-1999,
 The SOE “Bujqësia” underwent the liquidation process on 4 August 2010,
 The claimed properties are under the administration of Kosovo Privatization Agency,
 Kosovo Privatization Agency considers that the KPA does not have the jurisdiction over the properties of the SOE since according to the legal provisions applicable this is an exclusive competence of the Special Chamber of the Supreme Court of Kosovo and also since the SOE “Bujqësia” underwent the liquidation process all the legal and administrative procedures should be terminated and competent authority to review all the claims against the said SOE is Liquidation Authority of the SOE “Bujqësia”.

6. The Judgment No 723/90 issued by Municipal Court of Prishtinë/Priština on 17 September 1993 was verified positively by the Executive Secretariat of the KPA, whereas the claimed properties according to the Cadastral Data's are registered as follows:
 - ✓ Certificate for Immovable Property Rights UL-72614051 issued by Municipal Cadastral Office of Obiliq/Obilić on 12 February 2012, shows cadastral parcel no 848 and cadastral parcel no 896 registered as Socially Owned Property, under the name of the Enterprise "Kosovo-Export"-NSH "Bujqësia",
 - ✓ Certificate for Immovable Property Rights P-72614055 issued on 25 February 2010 by Municipal Cadastral Office of Obiliq/Obilić, shows the cadastral parcel no 167 registered on the name of "KEK S.H.A",
 - ✓ Certificate for Immovable Property Rights UL-72614051 issued by Municipal Cadastral Office of Obiliq/Obilić on 12 February 2012, shows cadastral parcel no 790 registered as Socially Owned Property, under the name of the Enterprise "Kosovo-Export"-NSH "Bujqësia",
7. On 18 June 2014, the Kosovo Property Claims Commission dismissed the claims through its Decision KPCC/D/A/244/2014. In paragraphs 20-22 and 23 of the Cover Decision, which according to the Certified Decision applies specifically to the claims at hand, it is said that according to an authorized representative of the Kosovo Privatization Agency the claimed properties in 2002 has been placed under the administration of Kosovo Trust Agency (and subsequently its successor the Privatization Agency of Kosovo) on this basis of the adoption of UNMIK Regulation 2002/12 as amended by UNMIK Regulation 2005/18. According to the representative, the Enterprise "Kosovo-Export" is under liquidation process and therefore the claimed properties falls exclusively under the jurisdiction of the Special Chamber of the Supreme Court of Kosovo under section 4.1 (c) and section 5.1 (a) of the Special Chamber of UNMIK Regulation 2008/4. In these circumstances, the Commission finds that the alleged property right holder did not lose the ability to exercise his right as a result of the 1998-1999 conflict, but instead as result of the subsequent privatization process, consequently, the Claims falls outside the Commissions jurisdiction. The Commission notes that the Decision does not prejudice the right of the claimant to seek relief before a Court of competent jurisdiction.
8. The Decision was served on Appellant on 14 October 2014. He filed an appeal on 30 October 2014.
9. The Appellee received the KPCC's Decision on 30 September 2014.

Allegations of the appellant

10. 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.
11. The Appellant alleges that his family acquired the property rights over the claimed properties on 1993 pursuant to the Judgment No 723/90 dated on 27 December 1996. By the same Judgment the Enterprise “Kosmet-Export, DPP Poljoprivreda” was ordered to return back the claimed properties to his family’s possession. The Appellant’s states that his uncle, V. Č. used the claimed properties during the period of 1993-1999, when, due to the well-known circumstances he was forced to leave the Kosovo, meaning that his family lost the possession over the claimed properties because of the conflict in 1998-1999. Therefore, the reasoning of the contested Decision is unclear because, first of all it does not contain relevant reasons, criteria and evidence that were used to dismiss the claims.
12. The Appellant point out the fact that the KPA was founded with the aim to facilitate implementation of the property rights of the persons who were displaced due to the armed conflict in Kosovo in 1998-1999, with the aim of restitution of properties to the owners. By this Decision, the Commission acted contrary to its legal obligation, by failing to determinate who used the claimed properties from 1993 to 1999. Also, the Appellant empathizes that his family was not aware neither that the ownership right should be registered in the cadastral books nor of the consequences of failing to register the changes at the cadastre, so, this fact cannot be interpret to his detriment. His family had the status of unregistered owner.
13. Based on the above, the Appellant seeks the Supreme Court to annul the KPCC Decision and return the case for reconsideration, or to confirm the repossession right in favour of the Appellant.

Legal reasoning

Admissibility of the appeal

14. The appeal was filed within 30 days as foreseen by Article 12.1 of the Law No 03/L-079 and is admissible.

Merits of the appeal

15. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of Law on Contested Procedure No 03/L-006 (henceforth: LCP) and after evaluating the allegations of the Appellant it found that the appeal is unfounded.

16. The Supreme Court finds that the KPCC has rendered a correct Decision when dismissed the claim due to its Jurisdiction; however, the Court reasons slightly differently than the KPCC's conclusion.
17. Pursuant to Section 3.1 of the Law No 03/L-079, a Claimant is entitled to an order from the Commission for repossession of the property if the Claimant not only proves ownership of a private immovable property or use rights of the private immovable property, but also 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 that occurred in Kosovo between 27 February 1998 and 20 June 1999.
18. At first, the Appellant alleges that his family gained the ownership right over the claimed properties based on the Judgment No 723/90 issued by Municipal Court of Prishtinë/Priština which became final on 27 December 1993. This Judgment was verified positively by the Executive Secretariat of KPA.
19. Pursuant to Article 20 of the Law on Basic Property Relations (Official Gazette No 6/80), applicable at the time when the Judgment No 723/90 was issued (on 1993), the right of property can be acquired by law itself, based on legal affair (legal transfer) or inheritance.
20. However, Article 33 of the Law on Basic Property Relations (OG SFRY, No 6/80), stipulates that on the basis of the legal affair the property right over the real estate shall be acquired by registration into the "public notary book" (cadastral book) or in some other appropriate way that is prescribed by law.
21. The Executive Secretariat of the KPA has found *ex officio* the Certificates for Immovable Property Rights that reflects the claimed properties registered under the name of the Enterprise "Kosovo-Export"/NSH "Bujqësia".
22. This leads to the conclusion that the Appellant's family has not gained the property right since the conditions of Article 33 of the Law on Basic Property Relations (SFRY, No 6/80) were not fulfilled.
23. The claimed properties were and they are still registered under the name of the Enterprise "Bujqësia", which means that it was and it is a socially-owned property. Pursuant to Article 321, paragraph 1 of the LCP there is no need to prove neither the facts that are widely known nor the facts that have been proved in previous court verdicts.
24. Confirmation and protection of the property rights over socially-owned properties and/or state-owned properties is not in the jurisdiction of KPCC, respectively the KPA Appeals Panel.
25. Based on all above mentioned points, the Supreme Court finds that the KPCC instead of dismissing the Appellant's claim as outside the scope of its Jurisdiction because the Appellant did not lose possession over the claimed properties due to the 1998-1999 conflict, should have dismissed the claim due to lack of its Jurisdiction as the establishment of right **over socially owned properties** is not within the Jurisdiction of the KPCC (according to the provision 3.1 (a) of the Law No 03/L-079), respectfully the KPA Appeals Panel.

26. The Supreme Court finds that no violation of the substantial law or incompletely establishment of the facts has been made.

27. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this judgment.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar