

**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-180/14

**Prishtina,
27 April 2016**

In the proceedings of

L.R.

Ankaraja 4/4

Prizren

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/239/2014 (case file registered at the KPA under No. KPA11600), dated 30 April 2014, after the deliberation held on 27 April 2016, issues this

JUDGMENT

1. The appeal filed by L.R. against the decision of the Kosovo Property Claims Commission KPCC/D/R/18239/2014, dated 30 April 2014, as far as it regards the claim registered at the KPA under No. KPA11600, is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/R/239/2014, dated 30 April 2014, as far as it regards the claim registered at the KPA under no. KPA11600, is confirmed.

Procedural and factual background

1. On 2 February 2007, L.R. (hereinafter: the Appellant) filed a claim at the Kosovo Property Agency (KPA), registered with case number KPA11600, seeking re-possession of an apartment located in the complex of officers' apartments with number IV/4 Prizren, with surface area of 64.44 square metres (hereinafter: the claimed property), for which he declared that it is joint property of his and his wife K.R., purchased from the previous owner in 2007.
2. Together with the claim, he submitted the following to the KPA:
 - Copy of the sale and purchase contract Leg.Nr. 640/07, certified by the Municipal Court in Prizren on 31 January 2007, which proves that spouses L.R. (the Appellant) and K.R. purchased the property from the previous owner S.B;
 - Copy of a Decision issued by the municipal Administration for determination of the property tax dated 19 April 2007;
 - Copy of the sale and purchase contract concluded between the military authority as allocation right holder and S.B. as buyer of the apartment.

The above stated documents were positively verified by the KPA.

3. On 06 September 2006, the KPA identified the claimed property by placing the claim notification sign. The property was found empty and nobody contested the claim.
4. The KPCC, with its decision KPCC/D/C/239/2014 dated 30 April 2014, dismissed the claim for the fact that it fell outside the jurisdiction of the Commission, because the possession of the claimed property was not lost due to the armed conflict.
5. The KPCC decision was served on the Appellant on 26 June 2014. On 25 July 2014, an appeal was filed by the claimant/appellant.

Allegations of the appellant

6. The appellant in his appeal alleges that based on the provisions of the UNMIK Regulation 2006/50, as amended by the Law 03-L/79, the Supreme Court is obliged to issue a positive individual decision for him since this is not explicitly prohibited by the Regulation and the Law. The appellant does not deny that he is in unimpeded possession of the property, but requests a decision in his favour by the Court.

Legal reasoning**Admissibility of the appeal**

7. The appeal was filed within the time limit of 30 days as foreseen by the Law no. 03/L-079, Article 12.1, and is admissible.

Merits of the appeal

8. According to Article 3.1 of the 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. Therefore, the claimant has to prove not only the ownership title over an immovable private property, but also to prove that he or she is currently not able to exercise such property rights due to the circumstances directly related to or resulting from the armed conflict.
9. From the gathered evidences by the KPCC, especially the sale and purchase contract, it appears that the claimed property was purchased in January of 2007 and now the appellant has unimpeded possession of the property.
10. The KPCC has limited mandate that deals only with property claims related to immovable private property, whose possession was lost due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
11. Consequently, the KPCC acted rightfully when it considered the matter as outside its jurisdiction. The Supreme Court confirms that pursuant to Section 3.1 of the UNMIK Regulation 2006/50, as amended by the Law No. 03-L/79, the KPCC has no jurisdiction to decide on the claim because the loss of possession does not derive from the circumstances related to the armed conflict.
12. In relation to the appellant's request for a positive decision based on the fact that the Regulation and the Law do not prohibit it, the Court found that the request is unfounded because the limitation of the mandate in time is related to the armed conflict and the related circumstances, and time limit determined by the law.
13. Based on the aforementioned and pursuant to Article 13.3, under c (c) of the Law 03/L-079, it has been decided as in the enacting clause of this Judgment. This Judgment does not prejudice the claimant's right to seek the alleged rights before the competent court, if he considers it necessary.

Legal advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the Law no. 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar