

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-033/14

Prishtinë/Priština, 23 March 2016

In the proceedings of

D.P.

Lastva Grbaljska bb
Kotor
Montenegro

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Rolandus Bruin EULEX Judge, Anders Cedhagen EULEX Judge on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/R/207/2013 (case file registered at the Kosovo Property Agency (henceforth: KPA) under the number KPA28554) (henceforth: the KPCC Decision) dated 11 June 2013, after deliberation held on 23 March 2016, issues the following

JUDGMENT

- 1. The appeal of D.P. against the decision of the Kosovo Property Claims Commission no. KPCC/D/R/207/2013, is rejected as unfounded.**

2. **The decision of the KPCC no. KPCC/D/R/207/2013 is confirmed as far as it concerns claim no. KPA28554.**

Procedural and factual background

1. On 6 March 2007, D.P. (hereinafter: the Appellant) filed a claim with the KPA, seeking ownership and repossession of an apartment in Pejë/Peć, Str. Bratstva i Jedinstva, no. 39, with a surface of 65 m² (hereinafter: the claimed property).
The Appellant alleged that he lost possession of the claimed property on 12 June 1999 due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99.
2. To support his claim, he submitted *inter alia* the following documents:
 - a Copy of transcript/extract from the Possession List of the Cadastral Service of Immovable Property, Cadastral District of Pejë/Peć No. 3887 dated 23 October 1995 (henceforth: the Possession List No. 3887). According to this document the parcel no. 918 in a surface of 01.21 Ar (house, outhouses – 1.05 Ar - and yard – 16 m²) is registered as socially owned property in the name of Varteks Enterprise – Varaždin.
 - a copy of ‘Urbanistic and Technical Requirements’ dated 15 October 1996, no. 05-351/2471, issued by the Division of Urban Planning, Communal and Residential and Construction Affairs and Property and Legal Services of the Municipality of Pejë/Peć on request of Varteks Belgrade (henceforth: the Planning Requirements Document). The document contains urban planning requirements for the cadastral parcel in Pejë/Peć no. 918/2, that is used by Varteks Varaždin enterprise - Pejë/Peć.
 - a Copy of a document of the Socially Owned Enterprise for Foreign and Domestic Trade “Vartex”, Belgrade, Zemun, dated 7 January 1995 (henceforth: the Document on Use of the Yard). According to this document, the yard with a total surface area of 16m² as a part of parcel 918/2 was given for use to the Appellant. Furthermore, the document notes that in that yard no structures have been erected and that the same is being used by the Socially Owned Enterprise “Water Supply Company” for throwing garbage there.
 - a Copy of a Decision of the Executive Council of the Municipal Assembly of Pejë/Peć, dated 5 June 1992, no. 03-353/347. According to this document a part of

the socially owned urban cadastral parcel no. 1093 in Pejë/Peć Cadastral District is granted for temporary use to N.P. and L.P(henceforth; the Decision on parcel 1093).

- a Copy of a Decision of the Secretariat for Urban Planning, Communal and Housing Affairs of the Municipal Assembly of Pejë/Peć, dated 19 November 1992, no. 05-351/2367. According to this Decision to V.S, D.D, D.D, R.J, N.P. and L.P is granted permission to set up a provisional prefab building on a part of cadastral parcel no. 1093/1 in Pejë/Peć Cadastral District (henceforth: the Decision on parcel 1093/1).

- a Copy of a Certificate on request of D.P. issued by the Municipal Assembly of Pejë/Peć, dated 28 May 1991, no. 08-463/149. According to this document the Appellant's mother, S.P. have been allocated the parcels no. 3/1 and 3/2 in Rashiq/Rašic Cadastral District.

- a Copy of a Certificate on request of S.P. issued by the People's Committee of Pejë/Peć Municipality on 19 December 1961, no. 04-7/1258-1961. According to this document she paid the taxes for 'IV quarter of 1961'.

3. On 17 September 2008, the KPA notified the claim. The KPA found the claimed property occupied by an unknown person, who did not introduce himself, did not allow the KPA Notification Team to make a picture of the claimed property and refused to sign a notice of participation in the proceedings.
4. According to the KPA Verification Report, dated 21 March 2011, and the Consolidated Verification Report dated 24 March 2011 the Planning Requirements Document was not found in the Department for Urbanism in Pejë/Peć and could not be positively verified. The KPA *ex officio* established that according to the Certificate(s) for the Immovable Property Rights UL-71611071-03886 and UL-71611071-03886, dated 15 March 2011, the parcel 918/1 and 918/2 are registered in the name of Water Supply Company "Hidrodrini" from Pejë/Peć, respectively in the name of the natural person G.Z.
5. According to the KPA Claim Processing Report, dated 23 April 2013, "*The ES found out that the Claimant filed a claim in HPD for the same property, namely an apartment located in parcel 918/2. This claim was granted by HPCC decision DS501661 by (...)order and order for repossession of the property*". In the Report is also stated that the Decision on parcel 1093 and the Decision on parcel 1093/1 are not related to the claimed property.

6. By its Cover Decision KPCC/D/R/207/2013 dated 11 June 2013 the KPCC decided to refuse the claim. In the reasoning (paragraphs 10 and 36 of the Cover Decision that are specifically related to claim KPA28554) the KPCC states as follows. The Appellant seeks confirmation of ownership over an apartment located on land parcel no. 918/2. The submitted Possession List No. 3887 identifies the claimed property in the name of a third party. The Document on Use of the Yard from Vartex Belgrade confirms that they gave parts of parcel 918/2 to the Appellant for use, but the document relates only to the land parcel on which the claimed property, the apartment, is located and does not indicate that the claimed property was part of this transaction. That document can therefore not serve as evidence of an ownership right of the Appellant over the claimed property. The Appellant failed to submit other evidence in support of his submitted claim. Further, the KPA has not been able to obtain ex officio any evidence that would support the Appellant's claim.
7. In the English – leading – version of the KPCC Decision is both in the Cover Decision and in the Certified Decision used the word '*refused*' in relation to the decision to reject the claim. In the Albanian translation is used on both places the word '*refuzohet*' and in the Serbian translation the word '*odbacuje*' and '*odbija*'.
8. The decision was served on M.P. on behalf of the Appellant. According to the notification report this service was carried out on 7 November 2013. This notification report is received by the KPA in Prishtinë/Priština on 26 November 2013.
9. The Appellant filed an appeal against the KPCC Decision. He dated his letter of appeal 5 December 2013. He states that he received the KPCC Decision on 18 November 2013. The KPA stamped the letter of appeal as received on 16 December 2013.
10. The Supreme Court sent a Court Order to the Appellant dated 27 November 2015. The Appellant is – as far as is still relevant for the case – asked how he delivered his letter of appeal to the KPA and on what date.

11. In his answer to the Court Order the Appellant states – as far as is relevant here – that his letter of appeal was sent from Podgorica on 5 December 2013 by registered mail and that the KPA received the letter on 16 December 2013. He submits a copy of the ‘Avis de réception – CN 07’ (i.e. an acknowledgement of receipt). On this acknowledgement of receipt is printed after ‘No de l’envoi’: ‘05.12.13’. As date on the acknowledgement of receipt is written ‘5-12’13’. As date to be completed on the destination is written ‘16/12/13’, next to a signature.
12. After receiving this answer of the Appellant the Supreme Court asked the KPA whether the KPA still has the envelope in which the appeal was sent to the KPA as is normal procedure at the KPA and whether the acknowledgement of receipt was signed by the KPA. In answer to this questions the KPA stated there is no envelope in the claim file and the responsible officer of the KPA declared that de acknowledgement of receipt has been received by the KPA and was signed by him on 16 December 2013.

The Appellant’s allegations

13. The Appellant alleges that the KPCC decision contains a fundamental error and serious misapplication of the applicable material or procedural law and that the same rests upon an erroneous and incomplete determination of the facts.
14. The Appellant notes that the appealed KPCC decision introduced legal uncertainty as well, because in the Certified Decision it is stated that the claim is ‘rejected’ (‘odbačen’ in Serbian) and in section C to the Cover Decision that it was ‘declined’ (‘odbijen’ in Serbian). There is a substantial difference between ‘rejection’ and ‘declination’. The one excludes the other.
15. The Appellant alleges further that the parcel no. 918/2 on which he built the alleged claimed property, was given to him in possession and ownership by the property right holder based on a written statement and after that he constructed the immovable property on that parcel. When the parcel was transferred to him there was not a single immovable property built on it. Therefor it was by then not possible to transfer any property right on any immovable property on that parcel.

16. The Appellant recommends that the Supreme Court approves his appeal, modifies the KPCC decision by granting his claim and confirms his ownership right over the claimed property, and returns it to him for repossession, or returns the case to the KPCC for reconsideration.

Legal reasoning

17. The appeal is admissible. If 7 November 2013 is taken into account as date of reception of the KPCC Decision by the Appellant, although the Appellant did not receive the KPCC on that day in person, the appeal is still filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property as amended by Law No. 03/L-079 (hereinafter: UNMIK Regulation 2005/50). Article 127, paragraph 2, of the Law on Contested Procedure (Law No. 03/L-006) (henceforth: LCP), is applicable in this situation according to Section 12.2 of UNMIK Regulation 2006/50, as the UNMIK Regulation 2006/50 does not provide otherwise. According to that Article 127 LCP the date of submitting the letter of appeal to the post office in case of sending by registered mail is considered to be the date of filing the appeal. From the acknowledgement of receipt follows that the Appellant submitted the letter of appeal at the post office on 5 December 2013. That is within the 30 days deadline after 7 November 2013.
18. On the merits the Supreme Court has to examine whether the KPCC rightfully concluded that the Appellant did not prove that he gained any property right on the claimed property.
19. The Supreme Court agrees with the KPCC that the Appellant did not prove any property right. As the KPCC reasoned, the only evidence that relates to the claimed property as apartment is the Planning Requirements Document. This document, as the Appellant does not deny, cannot be the basis of transfer to him of a property right on the alleged apartment that is mentioned as the claimed property. Also the Appellant confirms that at that time there was no apartment yet, so it could not be transferred to him by the owner of the parcel, Varteks Enterprise. Also none of the other documents, meant here fore in paragraph 2 grants any property right on the claimed property to the Appellant. Therefore the conclusion of the KPCC is right

that there is no evidence in support of the claim of the Appellant and the KPCC Decision does not rest upon an erroneous or incomplete determination of the facts.

20. The allegation of the Appellant that the KPCC Decision introduces legal uncertainty can also not lead to accept his appeal as it is not based on facts. There is no difference in the Decision of the KPCC as stated in the Cover Decision and the Certified Decision. In both documents it is concluded in the leading English version to '*refusal*' of the Appellant's claim. Also in the Albanian ('*refusohet*') and Serbian ('*odbacuje*') is used in both documents the same wording.
21. In the light of foregoing, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 the Supreme Court decides as in the enacting clause of this judgment.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50, this judgment is final and cannot be challenged through ordinary or extraordinary remedies

Beshir Islami, Presiding Judge

Rolandus Bruin, EULEX Judge

Anders Cedhagen, EULEX Judge

Sandra Gudaityte, EULEX Registrar