

**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- 081/14

**Prishtinë/Priština,
10 December 2014**

In the proceedings of:

A. D.

Mitrovicë/Mitrovica

Appellant

vs.

N/A

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Esma Erterzi, Presiding Judge, Willem Brouwer and Sylejman Nuredini, 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 the number KPA 10678), dated 21 August 2013, after deliberation held on 10 December 2014, issues the following:

JUDGMENT

1. The appeal of A. D. against the decision of the Kosovo Property Claims Commission KPCC/D/R/215/2013, dated 21 August 2013, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPCC/D/R/215/2013, dated 21 August 2013 as far as it is regarding the claim registered at the KPA under the number KP10678, is confirmed.

Procedural and factual background

1. On 24 November 2006, A. D. (henceforth: the Claimant) filed a claim asking for repossession of the parcel no. 397/1 with the surface of a 00.10.59 ha (henceforth: the claimed property), located in the Municipality of Istog/Istok, cadastral zone Gurrakoc/Đurakovac.
2. In the claim, A. D. did not claim that the possession of the property was lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/1999; accordingly he did not mention a date of loss of the possession. Instead, D. maintained to be the co-owner of the property which was nationalized in 1954 and given for use to the Public Enterprise "Dubrava" which built several business buildings over it.
3. To support the claim, he submitted, *inter alia*,

The Possession List no 351 issued by the Serbian Geodesic Institute, Centre for Cadastre of Immovable Property Istog/Istok on 25 August 2004. According to the Possession List the claimed property was co-owned by A. D. together with his brothers, sisters and his mother.
4. The notification of the claim carried out on 14 November 2008 and reflects the property as a yard, a totally destroyed house (according to the Possession List the claimed property is composed of house, yard and meadow) and meadow which was not occupied. The KPA team was accompanied by R. P. who declared that D. family was not residing in the notified property since 1950.

5. Since no party contested the validity of the claim within 30 days legal time frame, pursuant to provision of Section 10.2 of the Law No. 03/L-079, the claim remained uncontested.
6. On 21 August 2013 the Kosovo Property Claims Commission (KPCC) through its decision KPCC/D/R/215/2013, dismissed the claim. In paragraph 23 of the Decision, which applies specifically to the claim, it is stated that on the basis of the various types of the verified documents submitted by Claimant or obtained by the Executive Secretariat *ex officio*, or based on the Claimant's own statement, the Claimant failed to show that his claim involves circumstances directly related or resulting from the 1998-1999 conflict. The Claimant never had possession over the property, accordingly the claim fall outside the mandate of the Commission and stands to be dismissed.
7. The Decision of the KPCC was served on the Claimant (hereinafter Appellant) on 20 December 2013 who filed an appeal on 14 January 2014.

Allegations of the Appellant

8. The Appellant notes that he is a refugee from Split, who was registered with the Istog/Istok Municipality and took permanent residence in his family house in Gurrakoc/Đurakovac. The house was inherited from his parents. According to the Appellant, after the death of his parent's one of his brothers that lives in Mitrovicë/Mitrovica has constantly visited, maintained and invested in the house until the Appellant moved there and in 1999 was displaced. The Appellant alleges that, as a person who has been damaged, he should be given the compensation, if not immediately, then in any time.
9. The Appellant additionally presented:
 - The Contract No.191 concluded on 19 October 1998, between the Municipal Committee of Istog/Istok (as provider of funds) and the Appellant (as user of funds). According to the Contract, the Committee provided funds to the Appellant for construction of a house. However, the Contract contains no specification regarding the location or the parcel number on which the house should be constructed.

- The Contract No.233 dated 2 December 1998, concluded between Municipal Committee of Istog/Istok and the Appellant for construction of the house. Article 2 of the contract specifies that the funds have to be used before 1 June 1999.
- The Certificate No. 273 issued by Red Cross, Municipality of Podgorica (Montenegro) on 6 August 1999, the Certificate No.1659 issued by Municipal Assembly of Bare (Montenegro) on 17 August 1999 indicating that the Appellant was refugee from Istog/Istok Municipality who was registered within the Red Cross in Podgorica (Montenegro), afterwards he was transferred in Bare (Montenegro) and finally he moved in Mitrovičë/Mitrovica according to the Certificate No.101 dated 6 April 2009.

Legal reasoning:

Admissibility of the appeal

10. The appeal was filed within 30 days as foreseen by Section 12.1 of the Law No. 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

11. The issue to consider in this case is whether the KPCC had jurisdiction to examine the claim of A. D. filed with the KPA in 2006.
12. According to Article 3.1 of 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. 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.
13. In the current case, the possession over the property was lost in 1954 (the Appellant himself asserts this fact) as result of the nationalization in 1954. According to D.it was promised a land to be given him as compensation, but this was never happened. It is clear that the claim concerns a dispute that started before 1998, and that it has no

relation to and is not resulting from the armed conflict in 1998/1999. The fact that he was a refugee is not sufficient to prove that he possessed the property before the conflict but had lost it due to the circumstances of the armed conflict. The documents in the file and his allegation/admission as well indicate that the loss of the possession took place long before the conflict as a result of nationalization. His or his brothers interest to keep the land at hand as no compensation was given, on the contrary of the promises made, do not prove the ownership right over the property or his legal possession over the property.

14. The KPCC dismissed the claim on the grounds of that it did not have jurisdiction to decide on the merits of the claim since the Appellant failed to show that his claim involves circumstances directly related to or resulting from the 1998-1999 conflict.
15. In the appeal it is stated that the Appellant ask for compensation which does not correspond to the claim he submitted in front of the KPA. It explicitly states that the claim is for repossession.
16. For the first time with the appeal the Appellant notes that his claim relates to compensation, however, this is not supported by the content of the first instance file, neither by the claim, nor by any other document or statement within it. Therefore, the assertions in the appeal are to be treated as defensive arguments only. The Court, neither in the first, nor in the second instance can deliberate *plus petitum*, the Court adjudicates only within the scope of the claim submitted – argument after art. 2.1 of the Law on Contested procedure, applicable *mutatis mutandis* under section 12.2 of the Law No. 03/L-079. Moreover, neither the Commission nor the KPA Appeals Panel of the Supreme Court has the mandate to deliver decisions over claims for compensation in respect of destroyed private immovable property. The Law No. 03/L-079 itself does not provide for compensatory mechanism for destroyed property.
17. Regarding the new evidences provided by the Appellant only to the Court in the appeal instance without giving any reason to justify the lack of submitting the same evidences before the first instance

Section 12.11 of the Law No. 03/L-079 prescribes that “*New facts and material evidence presented by any party to the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidences could not reasonably have been known by the party concerned*”.

18. Moreover, the submitted evidences do not relate to the claimed property, thus, are not considered.
19. Consequently the appeal according to Section 13.3 (c) of the Law No. 03/L-079 is to be rejected as unfounded and the Decision of the KPCC is to be confirmed as far as it is related to the case which had to be decided upon in this judgment (KPA10678).
20. Because of the fact that the KPCC and the KPA Appeals Panel of the Supreme Court do not have jurisdiction in the case, they did not examine the merits of the case. This judgment is without prejudice of the right of the Claimant to file a claim before the competent court, if he has any.

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