

**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-210/15

Prishtinë/Priština,
28 March 2018

In the proceedings of:

F. I.

Appellant

KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, Judge, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/264/2014 (case file registered with KPA under KPA01086) dated 21 October 2014, after deliberation held on 28 March 2018, issues this:

JUDGMENT

1. The appeal of F. I. filed against the Decision of the Kosovo Property Claims Commission KPCC/D/R/264/2014, dated 21 October 2014, as far as it regards the claim registered with KPA under KPA01086, is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/264/2014, dated 21 October 2014, as far as it regards the claim registered with KPA under KPA01086, is confirmed.

Procedural and factual background

1. On 17 August 2007, F. I. (hereinafter: the Appellant) filed a claim with the Kosovo Property Agency (hereinafter: the KPA) seeking compensation for the cadastral parcel No. 2976, with a surface of 0.03.73 ha, located in the place called "JNA", Cadastral Municipality of Peja/Peć (hereinafter: the claimed property) without specifying the date of property loss. According to the allegations of the Appellant the claimed property was transferred in the name of Municipality of Peja/Peć without any valid legal act.
2. To support his claim, the Appellant provided the KPA with the following:
 - Ruling No EKC. Br. 5/19 dated 30 September 1953, whereby is confirmed that the surface from 303 m² of the land of I. family was expropriated for public needs;
 - Ruling of the Expropriation Commission of Pejë/Peja with No EKC. Br. 5/30 dated 30 September 1953, by which 21 m² of the land of I. family was expropriated for public needs;
 - Submission of the Appellant addressed to the Municipal Court of Pejë/Peja regarding the civil suit C.Nr.54/01, by which the Appellant addressed the Court with a judicial expertise that includes a background of the cadastral development of the claimed property from 1932 to the present day,
 - Copy of the Cadastral Plan according to the civil case No 195/05 and geodesy expert report M. M. dated 28 January 1997 for the civil case C. No. 65/95.
 - Judgment No C.No.54/01 issued by Municipal Court of Pejë/Peja, on 30 March 2001, recognizing the right on use of the claimed property to the Appellant. The Ruling became final on 28 June 2001

- Notice from the Municipality of Pejë/Peja, Office of the Chief Executive Officer regarding the request for execution of the Judgment No. 54/2001, by which the municipality notifies the Appellant that the Municipal Public Attorney has filed a request for reopening of the proceedings.
 - Ruling of the District Court of Pejë/Peja No AC.Nr.262/03 dated 25 May 2004, quashing the Ruling of the Municipal Court of Pejë/Peja which granted the request for reopening of the proceedings.
 - Request dated 8 June 2010 addressed to the Supreme Court of Kosovo for reconsideration – reopening of the proceedings;
 - Response of the Supreme Court of Kosovo KCRJ.Nr.1/2010 forwarding the case to the jurisdiction of the District Court of Pejë/Peja for the request for reopening of the proceedings.
 - Response of the Municipality of Pejë/Peja reference I-463/010 regarding the Appellant's request addressed to the municipality.
 - Response of the Municipality of Pejë/Peja reference LP 2008/11 regarding the Appellant's request addressed to the municipality.
 - Response of the Municipality of Pejë/Peja LP 2009/11 regarding the Appellant's request addressed to the municipality.
3. On 28 May 2010, the claim was published in the KPA Gazette no.1 and was distributed to all relevant offices and institutions in the Peja Region and was published in the UNHCR bulletin. The property was found to be a two-storey building (first floor a business premise) and nobody had responded to the claim. The claimed property was notified again on 25 January 2011.
 4. The KPA Executive Secretariat had verified positively the cadastral documents, apart from the possession list no.313, from which it was confirmed that cadastral parcel 2976 is listed in the name of H. B. I. (updated on the basis of the Contract on Sale Vr.nr.7242/02, dated 2 September 2002.
 5. On 21 October 2014, the KPCC, through its decision KPCC/D/R/264/2014 decided to dismiss the claim because the Commission concludes that the claim does not involve circumstances directly related to 1998-1999. Paragraph 53 of the Decision states that the claim for compensation of physical damages of the claimed property is dismissed due to lack of jurisdiction of KPCC, under Regulation 2006/50, as adopted by Law No.03/L-079.
 6. On 19 January 2015, the decision was served onto the appellant. The appeal was filed on 16 February 2015.

Allegations of the appellant

7. The Appellant states that the Decision of the KPCC contains essential violation of material and procedural law and erroneous and incomplete determination of the factual situation.
8. The Appellant alleges that KPCC's finding that the loss of possession was not a result of the conflict or circumstances related to the conflict does not stand, stating that he was very close to the confirmation of the ownership right before the Court in Pejë/Peja in 1997, however even though the evidentiary procedure was completed, the judgment was not rendered. In 2001, the Municipal Court by the final judgment recognized his right to use, and the cadastral office by abusing official position made the cadastral changes.
9. According to the Appellant, the decision does not consider that the change of ownership was done without legal basis and even though the land was compensated upon expropriation, the residential house was not compensated and the demolition was done without his consent and without compensation.
10. The Appellant attached to the Appeal the same documents that were already presented in the first instance as well as documents that prove that the Appellant has exhausted all available legal remedies before the regular courts, which are not subject of review of the present Judgment.

Legal reasoning

Admissibility of the Appeal

11. The Supreme Court reviewed the challenged Decision pursuant to the provisions of the article 194 of the Law on Contested Procedure No 03/L-006 (hereinafter: LCP) found that: The Appeal is admissible as it has been filed pursuant to article 12.1 of the Law No 03/L-079 which foresees that a party may file an appeal against the Decision of the Commission within thirty (30) days of the notification of the parties of a decision.

Merits of the Appeal

12. The appeal is unfounded.
13. Decision of the KPCC is correct. The Supreme Court finds no erroneous and incomplete determination of the factual situation or erroneous application of the material and procedural laws.

14. According to Article 3.1 of the Law no. 03/L-079, the Appellant has a right to an order from the KPCC for repossession of the property if the Appellant establishes his ownership or use right over the claimed property, and that he was unable to exercise such property rights over the respective property because of the circumstances directly related or which resulted from the armed conflict that has occurred in Kosovo between 27 February 1998 and 20 June 1999.
15. The Supreme Court notes that the Appellant, even though he claims legal rights over the property, he failed to present any document to substantiate his rights that he could have had before or during the armed conflict that has occurred in Kosovo between 27 February 1998 and 20 June 1999.
16. The documents submitted by the Appellant do not prove his property right over the claimed property and the fact of expropriation according to the allegations of the Appellant cannot be a subject of review by the KPCC or the Supreme Court due to the lack of jurisdiction regarding expropriation of the year 1953. The Law No. 03/L-079 has no legal remedies available to the parties for this period due to the time and substantial limitation prescribed by article 3.1.1 of the Law No 03/L-079.
17. The KPA Executive Secretariat found that a proceeding has been conducted before the regular court in 1997, which is also asserted by the Appellant. He claims that the expropriated land was compensated under the applicable law at that time, whereas the house was not compensated. The Appellant's initial request was for compensation of material damage and compensation for the lost profits upon demolition of the house.
18. The Supreme Court finds that even though the Appellant's claim was not mentioned in the Appeal nor in the Decisions of the KPCC, the Claim was also inadmissible for the reasons set out in the article 18 of the Law No 03/L-079, which prescribes that: *"The provisions of the present regulation shall apply to any claim under section 3.1 of the present Regulation which has been submitted to a court of competent jurisdiction, provided that judicial proceedings in respect of such claim have not commenced prior to the date of entry into force of the present regulation"*. Consequently, provision of the aforementioned article should be understood that KPA jurisdiction is excluded as a party has submitted a claim before the competent court prior to the date 16 October 2010 (the date of entry into force of UNMIK Regulation 2006/50, as amended by the Law No 03/L-079. As it was made clear by the Commission in its Decision *"the evidence submitted by the Claimant and verified by the Executive Secretariat show that the Claimant filed a claim in 1997 and in 2001 before the Municipal Court of Pejë/Peja.*
19. The KPCC dismissed the Claim as inadmissible due to the fact that the loss of possession was not related to the conflict and this was proved in the case files. The course of the administrative procedure and proceedings before the regular court was also asserted by the Appellant through the documents attached to the Claim.

20. Also, the reasoning of the KPCC in paragraph 53 of the Decision dismissing the claim for compensation of the damage or lost profit from the use of the property because it falls outside jurisdiction of the KPCC, is correct and in compliance with the law.
21. Based on the abovementioned facts it results that the factual situation in relation to this legal matter was established in a proper and complete manner and that the decision of the KPCC was not challenged by any legal evidence and as such it legally stable and well-reasoned and no violation of the procedural or material law could be found
22. In light of the above and pursuant to article 13.3 (c) of the Law no. 03/L-079, the court decided as in the enacting clause of this Judgment.

Legal advice:

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

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Timo Eljas Torkko, EULEX Registrar