

**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-41/15**

**Prishtinë/Priština,  
7 December 2017**

In the proceedings of:

**H.H.**

Represented by  
Lawyer N. K.

**Appellant**

vs.

**Privatisation Agency of Kosovo**  
Prishtinë/Priština

**Appellee**

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anna Bednarek and Erdogan Haxhibeqiri, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/232/2014 (the case file registered at the KPA under the No KPA00443) dated 13 March 2014, after the deliberation held on 7 December 2017 issues the following:

**JUDGMENT**

1. **The Appeal of H. H. against the Decision of the Kosovo Property Claims Commission KPCC/D/C/232/2014 dated 13 March 2014 is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/C/232/2014 dated 13 March 2014, as far as it regards the Claim registered with the Kosovo Property Agency under the No KPA00443 is confirmed.**

**Procedural and factual background:**

1. On 23 November 2006, H. H. (hereinafter “the Appellant”) filed a Claim with the Kosovo Property Agency (hereinafter “the KPA”) in the capacity of the alleged property right holder (hereinafter “the PRH”), seeking the repossession over the commercial property, located on the land parcel No 1498/7 of the total surface 4588 m<sup>2</sup>, in Fushe Kosovë/Kosovo Polje (hereinafter “the claimed property”). The Appellant stated that the loss of possession took place on 1 June 1999. According to H. H., his ownership title was confirmed by the Judgment of the Municipal Court of Prishtinë/Priština rendered in the case P. br. 1893/05.
2. Together with the Claim the Appellant submitted to the KPA *inter alia*:
  - The copy of the Contract on Sale of Immovable Property concluded in Belgrade on 7 December 2004 between Izolacija Holding Belgrade Joint Stock Company as seller and the Appellant as buyer of the “eastern part of storage area in Pristina Industrial zone with total surface of 700m<sup>2</sup>, which represents a part of storage facility in a shape of letter “L”, with a total surface of 1300m<sup>2</sup>, located on the cadastral parcel No 1498/7”. The signatures below the Contract were certified by the clerk of the Municipal Court in Belgrade.
  - The copy of the Judgment rendered in the case P.br. 1893/05 by the Municipal Court of Prishtinë/Priština on 27 December 2005 recognizing the Appellant’s ownership rights over – *inter alia* – she claimed property.
  - The copy of the Possession List No 8961 issued on 22 July 1996 showing the claimed property being owned by the Socially –Owned Enterprise “Izolacija”.
  - The copy of the Power of Attorney (hereinafter “the PoA”) granted on 19 February 2007, based on which the Appellant authorised the lawyer N. K. “to take on his behalf all other legal actions regarding the immovable property described in the enacting clause of the Judgment rendered in the case P. br. 1893/05 before all competent bodies and institutions in Kosovo”. The signature of the Appellant was certified by the clerk of the Municipal Court in Rozaje.
3. The case was registered under the number KPA0000443.
4. On 15 July 2008 the Claim was delivered to the authorities of “Arberia” Company, but they refused to sign the Notice on Participation and to give any comment regarding the claimed property.
5. On 21 June 2010 the information about the pending Claim was published in the KPA’s Notification Gazette No 2, in the Municipality of Fushë Kosova/Kosovo Polje and the Cadastral Office of the same, the Municipal Court of Prishtinë/Priština, the KPA’s Regional Office in Prishtinë/Priština. Additionally the Gazette and the list were distributed to the Head Office of the UNHCR, the Ombudsperson, the Kosovo Cadastral Agency (KCA) and the UNMIK Office in Graçanicë/Gračanica.

6. The Claim was notified to the Privatisation Agency of Kosovo (hereinafter “the PAK”) on 11 November 2013. On 13 December 2013 the PAK, acting on behalf of the Socially – Owned Enterprise “Izolacija” from Belgrade filed a Response to the Claim requesting to dismiss it, as its subject refers to the socially-owned property listed under the name of the SOE “Izolimi” with its seat in Belgrade, or reject it as ungrounded. The PAK argued that the procedure followed by the Appellant, which allegedly lead him to the acquisition of the property rights over the claimed property, was in violation of several laws: Article 36 of the Law No 03/L-154 on Property and Other Real Rights, Law on Basic Property Relations and Article 9 on the Law on Transfer of Immovable Properties, Article 103 of the law on Contracts and Torts. Moreover, the PAK pointed out, that the Contract mentioned by the Appellant remains without legal effect as it was not certified by the court within which territory the immovable property is located. Additionally, in the opinion of the PAK, the Judgment of 27 December 2005 submitted by the Appellant was rendered by the incompetent Court. The Special Chamber of the Supreme Court of Kosovo on KTA Related Matters (hereinafter “the SCSC”), however on 30 June 2009 withdrew the case from the Municipal Court in Prishtinë/Priština. Consequently, the PAK explained, that the Appellant on 26 August 2013 filed a claim to the SCSC for confirmation of ownership rights over the cadastral parcel No 1498/7, requesting its return to his possession.
7. On 13 March 2014, the Kosovo Property Claims Commission (hereafter “the KPCC”), through its Decision KPCC/D/C/232/2014 (hereafter “the KPCC’s Decision”) dismissed the Claim. In the reasoning of the Decision (paragraph 312), the KPCC underlined that the Appellant failed to show that his Claim involves circumstances directly related to or resulting from the 1998-99 conflict. For that reason it fell outside the KPCC’s jurisdiction and stood to be dismissed.
8. The KPCC’s Decision was served upon the Appellant on 12 August 2014 and on the Appellee on 11 July 2014. On 8 September 2014 the Appellant filed an Appeal against the KPCC’s Decision. On 4 February 2015 the Appeal was served on Appellee, however he did not reply to it.

**Allegation of the Appellant:**

9. The Appellant alleges that the KPCC’s Decision contains essential violation of the applicable law; and rests upon erroneous and incomplete determination of the factual situation. He requests the Supreme Court of Kosovo to accept the Appeal, to quash the Decision and to send the case for retrial. According to the Appellant, the Commission did not explain which documents lead it to the conclusion expressed in the Decision.

**Legal Reasoning**

10. The Supreme Court of Kosovo found that the appealed KPCC’s Decision was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied. Therefore, the Appeal is rejected as unfounded.
11. The KPCC dismissed the Claim assessing that the Appellant failed to show that his Claim involves circumstances directly related to or resulting from the 1998-99 conflict. Indeed, the case file does not contain any document proving the Appellant’s title to the

claimed property before/during the mentioned conflict and that the loss of possession of it took place during that period of time. On the contrary, the Appellant justified the Claim by explaining he acquired the ownership rights over the claimed property on the basis of the Contract on Sale concluded on 7 December 2004, which validity was subsequently verified and confirmed by the Judgment of the Municipal Court of Prishtinë/Priština rendered on 27 December 2005. The PAK acting on behalf of the SOE “Izolimi” from Belgrade questioned not only the validity of the mentioned Contract, but also the competence of the Court to render a Judgment with regard to the socially-owned land, indicating at the same time, that the Judgment is not final and the case is still pending before the Special Chamber of the Supreme Court of Kosovo.

12. It is important to underline here, that the dispute between the parties relates to the question of assessment of the legal effects of the Contract concluded on 7 December 2004. The source of the dispute between the parties appeared after the conflict that occurred in Kosovo in 1998 and 1999. This sole fact already excludes the KPCC’s and the KPA Appeals Panel’s jurisdiction to deal with the Claim.
13. The role of the KPA is not however to substitute the courts in Kosovo in adjudicating cases that belong to their competence. The Appellant and the Appellee should have though addressed their requests to the court of competent jurisdiction, which in that case is the Special Chamber of the Supreme Court of Kosovo on the PAK related matters, adjudicating complaints regarding the socially-owned immovable properties. The Appellee argued that the case was pending before the latter Court.
14. Additionally in the case at hand, the Appellant had filed a claim to the Municipal Court of Prishtinë/Priština already in the year 2004. The Supreme Court notes however that according to Article 18 of the Law No 03/L-079: *“The provisions of the present Regulation 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”*. The provision of the quoted Article thus should be understood that the jurisdiction of the KPA is excluded in case a party submitted a claim to the competent court before 16 October 2010 (the date of entry into force of the UNMIK Regulation 2006/50). The documents gathered in the case file confirm the circumstance of the Appellant seeking confirmation of ownership right to the claimed property. Consequently, the case at hand falls outside the jurisdiction of the KPA and the KPA Appeals Panel for that reason as well.
15. For all the reasons mentioned above and pursuant to Article 13.3.(c) of the Law No 03/L-079 and Article 195, paragraph 1(d) of the Law on Contested Procedure (LCP), it is 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 cannot be challenged through ordinary or extraordinary remedies.

**Beshir Islami, Presiding Judge**

**Anna Bednarek, EULEX Judge**

**Erdogan Haxhibeqiri, Judge**

**Bjorn Olof Brautigam, Acting EULEX Registrar**