

**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-181/2015

Prishtinë/Priština,
13 December 2017

In the proceedings of:

Ž. D.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed Beshir Islami, Presiding Judge, Krassimir Mazgalov dhe Isa Kelmendi, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission (hereinafter “the KPCC”) KPCC/D/A/244/2014 dated 18 June 2014 (the case file registered at the Kosovo Property Agency under the number KPA22997) after the deliberation held on 13 December 2017 issues the following:

JUDGMENT

1. The appeal filed by Ž. D, registered under GSK-KPA-A-181/2015, against the Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 concerning the case registered in KPA under KPA22997 is rejected as ungrounded.
2. The Decision of KPCC/D/A/244/2014 dated 18 June 2014 regarding the case registered in KPA under KPA22997 is upheld.

Procedural and factual background

1. On 14 May 2007, Ž. D. (hereinafter: the appellant) filed a claim with Kosovo Property Agency (KPA) (hereinafter: the KPA) in the name of his father D. D, seeking re-possession of cadastral parcel no.217/5, a cultivated land with a surface 0.78.63 h, located at the place called “utrina” at the cadastral parcel Softaj/Softović Municipality of Ferizaj/Uroševac (hereinafter: the claimed properties). He declared that his family had acquired ownership over the claimed properties through the Judgment on denationalisation. The loss of possession was as a result of circumstances in the 1998/1999 period in Kosovo.
2. To support his claim, the appellant provided the KPA with the following documents:
 - A copy of possession list no.179 issued by the cadastral service of the municipality of Ferizaj/Uroševac dislocated in Serbia. Date of issuance is 30 September 2002 and proves that the claimed property was registered as co-ownership over ½ of the ideal part of parcel 217/5 in the name of appellant’s father D. D. and his uncle Ć. D.
 - Appellant’s identification card issued on 29 September 1980 with residence address in Softaj Ferizaj.
 - Judgment of Municipal Court in Ferizaj/Uroševac No.282/95 dated 5 September 1995 granting the statement of claim of D.D. and Ć. D. and annulling the contract on gift of land to the Agricultural Cooperative of that time with a surface of 2.45.00 h, without specifying the parcels.
 - Minutes of the Commission for return of properties ascertaining that although the contract was nullified, the same property could not be returned because it had been alienated, so instead of returning the same property the parties agreed on the return of parcel 230, with a surface of 0.60.18 h and parts of parcels 217/1 and 217/4, with a total surface of 2.17.15 h, thereby fulfilling the obligation for return according to the Judgment of 1995.
3. The Claim notification was made on 5 October 2007 by finding the claimed properties as cultivated land and usurped by unknown persons. On 21 July 2010, the claim was published in the PAK Notification Gazette No.4 and on the List of UNHCR's Property Office. The Gazette and the List were left with the village leader who agreed to make it available to the interested parties as well as at the Municipal Court of Ferizaj/Uroševac, at the PAK Regional Office in Gjilan/Gnjilane. Also, the List and Gazette were distributed to the UNHCR Main Office, the Ombudsperson, and the Kosovo Cadastral Agency (KCA)
4. KPA had ex officio found the ownership certificate in which cadastral parcel 217/5 was registered as socially owned land of “Milan Zečar” Combine from Ferizaj/Uroševac. The certificate was issued on 8 August 2008.
5. On 18 June 2014, the Kosovo Property Claims Commission dismissed the Claim through its Decision KPCC/D/A/244/2014. In paragraphs 19, 23 and 82 of the Cover Decision, which according to the certified decision applies specifically to the claim in question, it is said that the claimed property had been placed under the administration of the Kosovo Trust Agency (and subsequently under its successor the Privatization Agency of Kosovo) pursuant to UNMIK Regulation 2002/12 as amended by UNMIK Regulation 2005/18 and that the

"Milan Zečar" Combine was in the liquidation process. Therefore, the claimed property falls exclusively under the jurisdiction of the Special Chamber of the Supreme Court of Kosovo under section 4.1 (c) and Section 5.1 (a) of UNMIK Regulation 2008/4 on the Special Chamber. Under these circumstances, the Commission ascertains that the alleged property right holder has not lost the ability to exercise his right as a result of the 1998-1999 conflict, but as a result of the subsequent privatization process. Consequently, the claim falls outside the jurisdiction of the commission.

6. In addition, in paragraph 82 of the reasoning of the decision, the Commission ascertains that the compensation of damages falls outside the KPCC Jurisdiction, taking into consideration that the decision does not prejudice the right of the claimant to seek a resolution before a court of competent jurisdiction.
7. The decision was served on the appellant on 8 January 2014. He filed an appeal on 4 February 2014.

Allegations of the appellant

8. The appellant states that the KPCC decision contains essential violations and misapplication of the substantive and procedural law, as well as erroneous determination of facts.
9. The appellant alleges that his family acquired the property rights over the claimed properties in 1995 pursuant to Judgment no. No.232/95 dated 5 September 1995. By the same judgment, the Enterprise "was ordered to return the claimed properties to the possession of his family". The appellant stated that in the cadastral records, the property is listed in the co-ownership of his father and uncle, and this has not been contested. The reason for establishment and the jurisdiction of the Kosovo Privatization Agency (formerly the Trust) cannot be grounds for refusal of the claim according to the appellant.
10. The appellant underlines that the Commission acted contrary to its legal obligation by failing to determine who had used the claimed property before the 1998/1999 conflict. Moreover, the appellant states that there was no opposing party and that the ownership of his family had not been contested by anyone.
11. Based on the above, the appellant requests from the Supreme Court to annul the KPCC Decision and to return the case for reconsideration, or to confirm the right of re-possession in favour of the appellant.

Legal reasoning

12. After reviewing the case file submissions and the appeal allegations pursuant to Article 194 of the Law no.03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No.38/2008) (hereinafter LCP), the Court, regarding the examination of the judgment ex officio and for the reasons mentioned and not mentioned in the appeal, found that the appeal is admissible and timely under Article 186 par. 1 in conjunction with Article 196 of the LCP. This is because the appellant received the decision of the Commission on 8 January 2015 and filed the appeal on 4 February 2015. From this, it can be concluded that

the appeal was filed within the 30-day deadline foreseen by the provision of Section 12 par. 1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-79. This legal provision foresees that "*an appeal against the KPCC decision can be appealed within 30 days from the day it is received*".

Merits of the appeal

13. The Supreme Court examined the appealed Decision and ascertained that the appeal is ungrounded and that KPCC rendered a correct decision when it dismissed the claim due to the lack of jurisdiction.
14. In accordance with Article 3.1 of Law No. 03/L-079, the Claimant is entitled to an order by the Commission for repossession of the property if the claimant proves not only the ownership over a private immovable property, but also that he or she is now unable to exercise such property rights because of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999
15. Initially, the appellant alleges that his family acquired the ownership right over the claimed property based on the Judgment No.282/95 dated 5 September 1995 issued by the Municipal Court of Ferizaj, which became final on 20 October 1996. This judgment was verified positively by the Executive Secretariat of the KPA.
16. The KPA Executive Secretariat *ex officio* found the Certificate on Immovable Property Rights that reflects the claimed properties registered on behalf of the enterprise "Milan Zečar" of Ferizaj.
17. In accordance with Article 20 of the Law on Basic Property Relations (Official Gazette No.6/80), applicable at the time when Judgment no.723/90 (in 1993) was issued, the right of ownership is acquired by itself law, based on legal affairs (legal transfer) and inheritance.
18. However, Article 33 of the Law on Basic Property Relations (OG SFRY, No.6/80) stipulates that on the basis of legal work, the property right over a real estate shall be acquired by registration into the "public notary book" (cadastral books) or in some other appropriate way that is prescribed by law. The current Law as well no.03/l-154 on Property and Other Real Rights in Article 36, Paragraph 1, provides that "The transfer of ownership of an immovable property requires a valid contract between the transferor and the transferee as a legal ground and the registration of the change of ownership in the immovable property rights register".
19. This leads to the conclusion that the appellant's family did not acquire the property right because the requirements of Articles 20 and 33 of the Law on Basic Property Relations (OG SFRY, No.6 / 80) have not been met.
20. The claimed property has been and still is registered in the name of the enterprise "Milan Zečar" of Ferizaj, which means that it was and still is a socially owned property. Pursuant to Article 321, paragraph 1 of the LCP, there is no need to prove neither the facts that are widely known nor the facts that have been proved in previous court verdicts.

21. The confirmation and protection of property rights over socially owned property and / or state property is not within the jurisdiction of the KPCC, respectively the KPA Appeals Panel.
22. Based on all aforementioned items, the Supreme Court ascertains that the KPCC correctly established that the appellant did not lose the possession of the claimed property because of the conflict of 1998-1999, but as a result of being included in a privatization process by the Kosovo Trust Agency - now Privatization Agency.
23. Also, the Court finds the KPCC's rejection of compensation due to lack of jurisdiction by the KPCC as supported by law, because it falls outside its jurisdiction.
24. The Supreme Court ascertains that there was no violation of the substantive law or incomplete determination of facts.
25. This judgment does not prejudice any property right for the current possessor nor is it an obstacle for the parties to initiate proceedings before the competent body or competent court if they find it in the legal interest
26. Based on the above and in accordance with Article 13.3 sub (c) of Law 03/L-079, it has been 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 legal remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Isa Kelmendi, Judge

Bjorn Olof Brautigam, Acting EULEX Registrar