

**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-52/12

Prishtinë/Priština, 7 August 2012

In the proceedings of

K.N.

Claimant/Appellant

vs.

SOE “I.”,

Represented by R.S.

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Anne Kerber, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/132/2011 (case file registered at the KPA under the number KPA 00442), dated 26 October 2011, after deliberation held on 7 August 2012 and pursuant to section 13.3 (c) UNMIK/REG/2006/50 as amended by Law No. 03/L-079 and section 12.2 ibid in relation to 465.1 of the Law on contested procedure, issues the following

JUDGMENT

- 1- The appeal of K.N. against the decisions of the Kosovo Property Claims Commission KPCC/D/R/132/2011 regarding case file registered at the KPA under the number KPA 00442, is rejected as unfounded.
- 2- The decision of KPCC/D/R/132/2011 regarding case file registered at the KPA under the number KPA 00442 is confirmed.
- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 530 (€ five hundred and thirty euro) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 26 February 2007 N.K. (the claimant) on behalf of the property right holder (PRH) B.K., filed a claim with the Kosovo property Agency (KPA) seeking for repossession over a commercial building with a surface of 783 square meters, situated in Pristina, 24 “Zeleznicka” and parcels 7155/1 and 7154/1. The claimant declared that he is the sole owner of the property and presented final court judgement nr. 1893/05 from 27.12.2005 of the Municipal Court of Pristina.

The claimant has indicated the socially owned enterprise (SOE) “I.” as the occupant of the property.

The claimant has explained to the KPA that before and after the armed conflict of 1998/1999, the PRH used to live in the village of Rosaje in Montenegro and he lives there currently. It was also clarified that the PRH had a “pre-contract” with the SOE in 2002. In 2004 he concluded a purchase contract with the enterprise. However he was never able to enter in possession of the property. The claimant admits that the inability to exercise property right is not related to the armed conflict.

The KPA processed the claim. The notification of claimed property was done on 21 November 2011 in the presence of a representative of the respondent party “I.”. The RP replied formally to the claim on 16 December 2008. The RP asserted that the enterprise is under the administration of the Kosovo Trust Agency and there is an on-going court case regarding the claimed property.

While processing the claim the Executive Secretariat of the KPA has established that both parcels 7154/1 and 7155/1 are object of different proceeding in front of the Special Chamber of the Supreme Court after. Those proceeding have been initiated by the above mentioned SOE.

With a cover decision KPCC/D/R/132/2011, dated 26 October 2011 regarding case file registered at the KPA under the number KPA 00442 the KPCC has accepted that the claim falls outside the mandate of the Commission as set out in section 3.1 of UNMIK/REG/2006/50 as amended by Law No 03/L-079.

The Commission noted that the PRH has purchased the property in 2001, he has never been in possession of the property and that “he did not lose possession...as a result of the armed conflict”.

Following the cover decision, on 16 January 2012 the KPCC issued an individual decision.

Decision was served to the claimant on 10 February 2012.

The claimant filed an appeal on 12 March 2012.

The decision is appealed “based on the reasons envisaged by the law”, as stated in the appeal.

Legal Reasoning:

The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. The last day of the prescribed period falls on 11 March 2012, which is a Sunday, therefore and per argumentum of art. 126.5 of the Law on contested procedure it expires on the first working day after that, which is Monday, the 12 March 2012.

However, the appeal is ungrounded. The decision of the KPCC is correct, the cases is not within the jurisdiction of the KPCC.

According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of private immovable property, but also 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 that occurred in Kosovo between 27 February 1998 and 20 June 1999.

According to section 2 General principles, point 2.1 of UNMIK/DIR/2007/5 as amended by Law No. 03/L-079 “any person who had an ownership right, lawful possession of or any lawful right of use of or to private immovable property, who at the time of filing the claim is not able to exercise his/her rights due to circumstances directly related to or resulting from the armed conflict of 1998/1999 is entitled to reinstatement as the property right holder in his/her property right”.

The grammatical interpretation (the use of the past form of the verb have, i.e. “had”) and the historical interpretation (the socio-historical context in which the regulation was created – to ensure restitution of rights that existed by the time of the conflict) of this article, both show that the legislator did not mean to create a law that serves the resolution of any kind of property dispute, but only to create a legal instrument for restitution of property rights of persons who had them by the time the armed conflict of 1998/1999 erupted. Therefore any property right, acquired post factum, after the armed conflict has erupted should not be dealt with by the Kosovo Property Agency.

In the instant case it is not disputable that the PRH if ever, acquired ownership rights in 2002 or 2004, he never had the possession over the property, neither before, nor after the armed conflict.

As the claim is out of the jurisdiction of the KPCC, the Commission had not to decide on the ownership of the appellant.

Following the same line - because of the lack of jurisdiction, the Court has not to decide whether the appellant is the owner of the claimed property or not.

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of AD 2007/5 as amended by Law No. 03/L-079, the parties are exempt from costs of proceedings before the Executive Secretariat and the Commission. However such exemption is not foreseen for the proceedings before the Appeals Panel. As a consequence, the normal regime of court fees as foreseen by the Law on Court Fees (Official Gazette of the SAPK-3 October 1987) and by AD No. 2008/02 of the Kosovo Judicial Council on Unification of Court fees are applicable to the proceedings brought before the Appeals Panel.

Thus, the following court fees apply to the present appeal proceedings:

- court fee tariff for the filing of the appeal (Section 10.11 of AD 2008/2): € 30
- court fee tariff for the issuance of the judgment (10.21 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being comprised at € 783000: € 3965 (€ 3965 = € 50 + (0,5% of € 783000)), but not more than €500.

These court fees are to be borne by the appellant who should pay them within 90 days from the day the judgment is delivered to him.

Legal Advice:

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Anne Kerber, EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar