

**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-42/12

**Prishtinë/Priština,
5 March 2013**

In the proceedings of

**B S
K 4
B
S**

Claimant

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 request of the claimant concerning the decision of the Kosovo Property Claims Commission KPCC/D/A/29/2008 (case file registered at the KPA under the number KPA14194), dated 19 December 2008, after deliberation held on 5 March 2013, issues the following

RULING

The case is sent back to the KPCC as the KPA Appeals Panel is not the competent court. The request of the claimant cannot be interpreted as an appeal.

Procedural and factual background:

On 21 September 2006, B S filed a claim with the Kosovo Property Agency (KPA), seeking repossession of a property located in Pejë/Peć, Jablanica/Ljesanska. The claims form which was signed by the claimant contained the following information: parcel No. 40 with a surface of 9 acres and 82 m². The claim was registered at the KPA under no. KPA14194.

Possession List No. 24, dated 7 No. 2007, however, shows that parcel No. 40 is composed of three parts: a house of 54 m², a yard of 5 ar and a meadow of 9 ar and 82 m².

With its decision KPCC/D/A/29/2008 of 19 December 2008, specified by the Certified Decision of 17 March 2009, the KPCC granted the claim for repossession of “*parcel number 40, with the surface of 0 He, 9Ar, 82m²*”.

As the claimant had empowered the Balkanski Centar za Migracije I Humanitarne Aktivnosti (BCM) to receive any decision and other correspondence (limited power of attorney of 26 October 2011), the KPCC decision was served on the BCM on 9 November 2011.

On 31 January 2012, the claimant submitted the following request:

*“KOSOVO Property Agency
Secretariat for private property protection, Pristina*

In your decision KPA 14194 – according to the possession list No. 24, municipality of Pec, CZ Jablanica (Ljesavska) in relation to my submission from 12.05.2011 you recognized my property right, but only for one part of the parcel no. 40, with a surface of 9 ar and 82 m².

Since in the mentioned decision you did not include the entire area of the parcel number 40, I kindly ask you to recognize my right over the rest of the property for the parcel 40 according to the possession list no. 24 as follows:

- Part of the parcel 40, area of 00 ha 00 ar and 54 m² – land, house and*
- Part of the parcel 40, area of 00 ha 05 ar and 00 m² – land, yard.”*

Further on in his letter he reminds the KPA of several requests concerning other cases before the KPA, especially requests to take over the administration of several properties.

The KPA interpreted this request as an appeal and sent it to the KPA Appeals Panel. On the order of the Panel of 21 January 2013, the KPCC explained that as the claimant only had claimed 9 ar and 82 m² of the parcel, the decision of 2008 correctly referred only to this part of the parcel.

Legal Reasoning

The case has to be sent back to the KPCC without a decision on an appeal as the request of the claimant does not contain such appeal. The claimant does not yet want the KPA Appeals Panel to decide, but limits himself to (amongst others) a request to the Kosovo Property Agency to extend its decision to the other parts of the parcel.

This interpretation of the claimant's request firstly results from the phrasing of the request: The claimant does not use the word "appeal" as should have been expected if he wanted to file an appeal (which would go with costs). Furthermore the claimant does not name one of the reasons because of which a decision can be appealed (wrong application of the law, erroneous establishment of facts). The claimant also does not request the Court to change the decision, but the Kosovo Property Agency ("your decision", "you") to change the decision. At last, the claimant in this document includes requests for other claims, amongst them the requests to take over the administration of his properties. These requests cannot be fulfilled by the Court, but only by the KPA.

The Court wants to add that the request of the claimant did not reach the KPA within the period of 30 days after the service of the decision, as the law provides for appeals (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). That the claimant did not send his request within the prescribed period for appeals also can be seen as an indication that the claimant did not want to file an appeal (which would have been inadmissible).

From all this results that the claimant did not want to appeal the decision, but just to request further action from the KPA/KPCC. Without an appeal, however, the Court cannot decide on the decision of the KPCC.

The KPA/KPCC will have to react to the requests of the claimant, especially decide on the request concerning the parts of parcel No. 40 on which the KPCC did not decide.

Anne Kerber, EULEX Presiding Judge

Sylejman Nuredini, Judge

Elka Filcheva-Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar