

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-137/12

Prishtinë/Priština
17 April 2013

In the proceedings of

H. B.

Claimant/Appellant

vs.

K. A.

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/152/2012 (case file registered at the KPA under the number KPA17897), dated 19 April 2012, after deliberation held on 17 April 2013, issues the following

JUDGMENT

- 1- The decision of the Kosovo Property Claims Commission KPCC/D/R/152/2012, dated 19 April 2012, as far as it regards the case registered under No. KPA17897 is annulled.
- 2- The claim of H. B. regarding use right over a socially owned apartment of 38m², situated in Pristina, “Beogradska” str. No. 12” is dismissed, as falling outside the jurisdiction of the KPCC.
- 3- Costs of the proceedings determined in the amount of € 60 (sixty euro) are to be borne by the appellant and have to be paid to the Kosovo Budget within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 29 January 2007, H. B. as a property right holder filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of user right and repossession of an apartment with the surface of 38m², situated in Prishtinë/Pristina, Beogradska bb 12. The claimant stated that the apartment was allocated to him for temporary use from Municipality of Prishtinë/Pristina.

To support his claim, he provided the KPA amongst others with the following documents:

- Allocation Decision No. 07. Br. 360, dated 14 September 1995, issued by the Secretariat for Urbanism and Municipal Housing Affairs - Municipality of Prishtinë/Pristina, allocating the claimed property/apartment to the claimant;
- Request of the Secretariat for Urbanism of the Municipality of Prishtinë/Pristina No. 032. Br. 352-675, dated 21 November 1997 to the Distribution of “Elektroprivreda” in Prishtinë/Pristina, concerning electricity issues for the inhabitants of the apartments in the area where the also claimant lived;
- ID card, dated 27 august 1996 issued on the Republic of Montenegro.

According to a verification report from 11 April 2007 KPA verified Administrative Decision No. 07. Br. 360, dated 14 September 1995.

The KPA organized the notification of the claim. It visited the property three times: on 7 July 2008, 14 July 2008 and on 21 July 2008. The notification team went to the place where the property was allegedly situated and put up the sign on the door of the claimed apartment, indicating that it was subject to a claim and that interested parties should file their response within 30 days. During the notification the claimed property was found occupied by unknown person who was not present.

On 18 August 2008 the respondent K. A. approached the KPA and signed the application for taking part in the proceeding. She asserted that she has the permission from a third person to use the property.

To support her allegation she provided the KPA amongst others with the following documents:

- Official List of the Ministry of Labor and Social Welfare which lists the criteria by which a person gets shelter;
- Copy of Social Card No. 19/4877, by which respondent received a sum of money as social welfare;
- Written request from the respondent to the Property Sector of the Municipality of Prishtinë/Pristina, dated 28 September 2004, requesting shelter;
- Response/information No. 010/46-1046, dated 28 November 2004, issued by the Directorate of Property and Finance – Property Sector of the Municipality of Prishtinë/Pristina, indicating that the claimed property is socially owned and that the user is Municipality of Prishtinë/Pristina;
- Certificate No. 973/04, dated 18 August 2004, issued by the Directorate of the General Administration – Sector of Local Communities, showing that the respondent is resident of Local Community No. 1;
- Invoice for Property Tax Payment of Immovable Property, dated 9 February 2005, issued by the Municipality of Prishtinë/Pristina, showing the respondent - K. A. as a tax payer. This document does not identify any property (there are no identified elements referring to the claimed property as well).

On 18 August 2009, with his letter addressed to the KPA, the claimant explained that the respondent (K.A.) is the person which illegally occupied the property. The claimant requested from the KPA eviction.

On 18 January 2012, the Municipality of Prishtinë/Pristina received the sent notice for participation in the proceeding in front of the KPA.

On 19 April 2012, the KPCC in its decision KPCC/D/R/152/2012 dismissed the claim as the claimant did not prove property right over the claimed property.

The KPCC decision was served to the claimant on 5 October 2012, while the same was served to the respondent on 25 October 2012.

On 9 October 2012, the claimant (henceforth: the appellant), filed an appeal with the Supreme Court. He insists that the enacting clause of the decision is in contradiction with its reasoning and that the violation of substantive laws is made. Furthermore, he stated that the decision is made on erroneously and incomplete established state of facts.

The appeal was served to the respondent (from now on: appellee). She did not respond.

Legal reasoning:

The appeal is admissible. It has been filed in a timely manner.

According to Section 12.1 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079, a party may submit an appeal “...*within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim*”.

The appellant was served with decision KPCC/D/R/152/2012 on 5 October 2012. He then submitted his appeal against it on 9 October 2012, *i.e.* within the 30 day deadline.

In accordance with Section 12.4 of the UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079 the KPA served the appeal to the appellee. She did not reply.

However, the claim does not fall within the jurisdiction of the KPCC as the use right, claimed by the appellant/claimant is related to a property which was socially owned, not private.

According to section 2.1 of UNMIK Administrative direction 2007/5, implementing UNMIK/REG/2006/50 on the resolution of claims relating to private immovable property, including agricultural land and commercial property as amended by Law No. 03/L-079, hereinafter

the Administrative direction (AD) “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 apartment in question has never been private immovable property and in this respect is outside the scope of application of the proceedings in front of the KPA.

It is established from the documents in the file that the apartment was socially owned and the Municipality in Pristina was the allocation right holder of this property (The usage of socially owned apartments, the rights of occupants and allocation right holders were regulated by the Law on Housing Relations (OG of the SAPK, No. 11/83, 29/86,42/86)). In 1995 the apartment in question was allocated temporarily to the claimant.

There is no evidence whether afterwards the claimant concluded a contract on use in accordance with article 37 of the Law on Housing.

Regardless, even if the claimant did have an occupancy right it would have been irrelevant in these proceedings as the establishment of such right **over socially owned properties** is not within the jurisdiction of the KPCC, respectfully the KPA Appeals Panel.

Although the KPCC as a quasi-judicial body by deciding on the merits of the claim already has accepted its jurisdiction, the Court *ex officio* assesses whether the case falls within the scope of its jurisdiction (Art. 195.1 (b) of the Law on Contested Procedure).

Therefore the decision of the KPCC insofar as it has been appealed had to be annulled and the claim dismissed (Section 11.4 (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079), not rejected/refused, as determined in the cover decision KPCC/D/R/152/2012. In fact the individual decision, related to the particular claim (KPA17897) uses the term “dismissed”, however the cover decision relates to the merits of the claim, therefore it has to be annulled.

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, 10.15 and 10.1 of AD 2008/2) considering that the value of the property at hand could be reasonably estimated as being € 7.600, and that the fee cannot be more than € 30: € 30

These court fees are to be borne by the appellant who loses the case and has filed an inadmissible claim. According to Article 46 of the Law on Court Fees the deadline for fees' payment for a person who lives abroad is between 30 and 90 days. Article 47.3 provides that in case the party fails to pay the fee within the deadline, the party will have to pay a fine of 50% of the amount of the fee. Should the party fail to pay the fee in the given deadline, enforcement of payment shall be carried out.

Legal Advice:

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

Anne Kerber, EULEX Presiding Judge

Sylejman Nuredini, Judge

Elka Filcheva-Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar