

**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-012/13**

**Prishtinë/Priština,  
17 April 2013**

In the proceedings of:

**The K. H. and  
Ch. S. “M.T.”,  
Through the representative lawyer N.Sh.**

**Pristina**

***Appellant /Respondent***

**vs.**

**A. L.**

**Prishtinë/Priština**

***Appellee/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 appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/160/2012 (case file registered at the KPA under number 01135), dated 6 June 2012, after deliberation held on 17 April 2013, issues the following

## JUDGMENT

The appeal of The K. H. and Ch. S. “M. T”, through the authorized lawyer N. Sh. against the decision of the Kosovo Property Claims Commission KPCC/D/C/160/2012 (case file registered at the KPA under number KPA01135), dated 6 June 2012, is grounded.

The decision of the Kosovo Property Claims Commission KPCC/D/C/160/2012 (case file registered at the KPA under the numbers KPA01135), dated 6 June 2012, is modified and the claim of A.L. from Pristina that he has the right of property over commercial premises with surface of 138.82 sq. m, situated in Pristina, on the basis of contract for transfer of property, concluded on 21 January 1999 between the state of Federal Republic of Yugoslavia - Federal Ministry of Defense-Military Post 5374 as a seller and A. L. as a buyer is rejected as ungrounded.

The appellee has to pay the costs of the proceedings which are determined in the amount of € 330 (€ three hundred and thirty euro) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

### **Procedural and factual background:**

On 1 January 2007, A.L. filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of his property right over commercial premises with surface of 138.82 sq. m, situated in Pristina, on the basis of contract for transfer of property, concluded on 21 January 1999 between the state of Federal Republic of Yugoslavia - Federal Ministry of Defense - Military Post 5374 as a seller and A. L. as a buyer. He claimed the loss of possession was related to the armed conflict of 1998/1999. He lost possession on 1 June 1999.

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

- Contract on lease of business premises, dated 21 December 1998 regarding the disputed property, concluded between the state of Federal Republic of Yugoslavia - Federal Ministry of Defense-Military Post 5374, represented by Colonel S. K, as a lessor and A. L. as a lessee;
- Contract for the purchase of business premises, dated 22 January 1999 regarding the disputed property, concluded between the state of Federal Republic of Yugoslavia - Federal Ministry of Defense-Military Post 5374, represented by Colonel S.K., as a seller and A. L. as a buyer; The claimant asserts that the contract is not registered in the Court, because of the armed conflict;

Both contracts were negatively verified, according to the verification report. In contradiction to that the following decision of the KPCC stated that the contract for the purchase was positively verified.

The KPA informed the potential interested parties about the claims by placing notifications on the premises on 22 January 2008.

The interested party K. H. and Ch. S. "M. T.", through her official representative filed a response. The representative stated that they operate in Kosovo since 1999 and they used the premises, which they considered as state owned. The organization does not claim any ownership rights itself.

With Decision KPCC/D/C/160/2012 (case files registered at the KPA under the numbers KPA01135), dated 6 June 2012, the KPCC admitted that the claim is founded. In the decision it is argued that he purchased the claimed property from the Yugoslav Army in January 1999. The purchase contract has been positively verified (*which contradicts to the verification report in the file that states exactly the opposite*), the claimant acquired right of property and permanent use right over the premises while the ownership of the underlying land remains with the Yugoslav National Army. The Claimant (*the decision says*) used the claimed property until September 1999, when he was forced to leave the property by unknown persons (*the Claimant on his turn first said to have lost the possession in June 1999 and later in the course of the procedure claimed to have lost possession in March 1999*).

The decision was served to the claimants on 30 October 2012 and to the respondent on 2 November 2012.

On 30 November 2012 the respondent filed an appeal, through an authorized attorney. He asserts that the claimant has not presented any valid evidence for the alleged property right. The contract presented is not verified by the Court. The property is registered neither in the cadastral records of the Municipality of Pristina, nor in the Property-apartment service for property tax before the Municipality of Pristina. In a meeting held on 11 December 2003 the Kosovo Parliament declared null and void all sublegal and legal acts issued by the Republic of Serbia or Yugoslavia after 22 March 1989. The documents, presented by the

claimant – two contracts and two letters have chronological order of numbers 7, 8, 9 and 10 with preliminary number of the unit 803 for two years in a row (1998-1999), as if nothing else happened meanwhile in this military mail office.

**Legal reasoning:**

**Admissibility of the appeal:**

The appeal is admissible. It has been filed by an interested party, who took part in the proceedings in front of the KPCC and within the 30 day period after the service of the decision, as prescribed by the Law – section 12.1 UNMIK/REG/2006/50, as amended by Law No. 03/L-079.

**On the merits:**

The Appeals Panel after analyzing the evidence and examining the decision concluded that it was taken in violation of the substantive law.

The KPCC has grounded the claim, considering that the property was acquired by a contract of property transfer, concluded on 21 January 1999 under the regulations of the Law on Securing Housing for the Yugoslav People's Army (OG, SFRY No 84/90). The aim of the law was to provide regulations how to be satisfied the housing needs of the members of the Yugoslav People's Army. This law was no longer applicable in 1999. It ceased to be in force in 1993. It was revoked with the Law on the Property of the Federal Republic of Yugoslavia (OG, FRY 41/1993). The law regulated the acquisition, utilization and disposal of property that belonged to the Federal republic, including the property used by federal agencies, such as those in charge of defense. Art. 18 of the said law prescribed that it is the Federal Minister of defense in concurrence with the Federal Government who decides on the acquisition and disposal of residential buildings, apartments, garages and commercial premises in residential buildings used by the federal agencies in charge of Defense and the Yugoslav Army.

In the particular case there is no evidence that the property in dispute was in the use of the Yugoslav Army at first place.

Second, even if it were the case, even if the property has been in the *patrimonium* of the Yugoslav Army and there was a hypothetical possibility for the Army to dispose of it, there is no evidence that the Minister of Defense at that time has delegated that right to the person who signed the contract on behalf of the seller, *i.e.* Colonel S.K.. The contract was not verified at the relevant municipal Court as required by art. 33 of the Law

on Basic property Relations (OG, SFRY 6/1980) and art. 4 of the Law on Trade f Immovable Property (OG SRS 43/1981) and could not transfer any rights.

Claimant indeed might not have been able to register the contract in 1999, due to the events related to the armed conflict, but afterwards many years have passed prior to him filing a restitution request with the KPA in 2007 and he never tried (even though he lived and still lives in Kosovo ) to proceed with the registration of the contract (most probably because the verification process that the Court would have made would have resulted in denial the contract to be registered). The KPCC on its turn could not verify the contract itself, as stated in the verification report. In this regards it is strange that in the final decision it is stated that the contract was positively verified. After all, the presented contract for purchase does not legitimate the claimant as the owner and the KPCC had to reject his claim. By granting it the KPCC has made a decision in contradiction with the substantive law, as determined in art. 184 of the Law on Contested Procedure, which is *mutatis mutandis* applicable in the proceedings in front of the KPA Appeals Panel. Therefore and in accordance with art. 201 (d) on the Law on Contested Procedure the Appeals Court had to modify the decision of the KPCC and to reject the claim.

#### **Costs of the proceedings:**

Pursuant to Annex III, Section 8.4 of the Administrative Direction (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 (OG 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 (10.1 and 10.21 of AD 2008/2) considering that the value of the properties at hand could be reasonably estimated at € 50000,00 and is € 300,00 (€ 50 + 0.5% of € 50000).

These court fees are to be borne by the appellee who loses the case. According to Article 45.1 of the Law on Court Fees, the deadline for fees' payment is 15 (fifteen) 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**

**Elka Filcheva-Ermenkova, EULEX Judge**

**Sylejman Nuredini, Judge**

**Urs Nufer, EULEX Registrar**