

**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-003/13**

Prishtina, 25 June 2013

In the proceedings of:

**Z. B.**  
Beograd  
Serbia

*Claimant/Appellant*

vs.

**B. O.**  
Ferizaj

*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 No. 44729), dated 19 April 2012, after deliberation held on 25 June 2013, issues the following

## JUDGMENT:

1. The decision of the Kosovo Property Claims Commission KPCC/D/R/152/2012 (case file registered at the KPA under number KPA 44729), dated 19 April 2012 is annulled and the claim for private property is dismissed due to the lack of jurisdiction.
2. The appellant is obliged to pay the cost of the proceedings in the amount of € 60 (sixty euros) within 90 (ninety) days from the day this judgment is being served or otherwise through compulsory execution.

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

On 13 August 2007, Z. B. filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of his property right over the apartment located in Ferizaj, Street "Leninit" no.17, Lamela A, Entrance II, Floor II, apartment no.4 in the surface of 40.70m<sup>2</sup>. He lost possession of this property on 17 June 1999 as a consequence of the situation in Kosovo during 1998/1999. Hereby he seeks the confirmation of his ownership right over the apartment and repossession of the same.

To support his claim, he provided the KPA with the following written evidence:

- Decision from the Technical School "Zenel Hajdini" in Ferizaj no.109 dated 06 December 1991 wherewith claimant was allocated with an apartment for use, located in Ferizaj, street Lenini no. 17 Lamela "A" II. Second entrance, no.4 in the surface of 40,70 m<sup>2</sup>.
- Identification card no. L3073 dated 15 December 2003 issued by the competent entity of the Internal Affairs of Serbia.

The claimant submitted a number of other documents not related to the respective claim for occupancy right over the said apartment.

In 2008, the KPA issued information regarding the claim by marking the alleged location of apartment, whereby the notification team found that this property was a possession of B. O. who claimed his right to use the apartment.

The respondent in order to support his allegations on his right to use the property subject of claim has submitted the following documents:

- Decision for temporary housing by the Municipal Council of Interim Government, no. 362/199 dated 16 September 1999, wherewith the respondent was allocated with an apartment for temporary housing located in Ferizaj, Street “17 nëntori” Building A, first floor, apartment nr.4;
- Tax invoice on property under the name of the respondent, dated 23 March 2004;
- Identification card issued by UNMIK on 07 March 2006.

The notification team could only verify the decision on temporary housing of the Municipal Council.

With decision KPCC/D/R/152/2012, dated 19 April 2012, the claim was rejected, with the reasoning that the claimant has failed to provide legitimate facts and evidence for the confirmation of the right over the property subject of his claim. The decision of the Technical School “Zenel Hajdini” no.109, dated 06 December 1991, could not be positively verified by the KPA Notification Team, and such a decision cannot legitimize the claimant as entitled over the property subject of the claim. Therefore, the appellant could not prove his alleged right as property right holder.

On 16 October 2012 the claimant Z. B. has received the decision of KPCC. On 28 September 2012 the respondent has received the decision of KPCC but has not filed a response to the claim.

The appellant Z.B. has filed an appeal on 01 November 2012, challenging the decision of the KPCC with the allegation that the decision contains an erroneous and incomplete determination of factual situation and misapplication of substantive law, with the request to accept his appeal and his right to use the apartment and to return the claimed property into his possession. He stated that based on the decision from the Technical School “Zenel Hajdini” in Ferizaj no.109 dated 06 December 1991, he was allocated with an apartment for use, located in Ferizaj, in the street Lenini no. 17 Lamela ”A” II. Second entrance, no.4 in the surface of 40,70 m<sup>2</sup>.

**Legal reasoning:**

The appeal is admissible because it was filed within the legal timeline of 30 days from the day when the decision was served. Pursuant to Section 12.1 of UNMIK Regulation no. 2006/50 as amended by Law no. 03/L-079 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property a party may file an appeal within thirty (30) days after the notification on the decision.

The Supreme Court established that the appealed decision of KPCC is issued under essential violations of provisions of Article 182 para 2 subpara b of LCP and Section 3.1 of UNMIK Regulation no 2006/50 as amended by Law No03/L-079, which violations are of absolute nature and are regulated by this court *ex officio*. Under this ground the appealed decision has to be annulled and the summary claim of the claimant be dismissed, as this Court and the KPCC do not have jurisdiction in this case.

Pursuant to Section 3.1 of UNMIK Regulation No 2006/50 as amended by Law No 03/L-079, a claimant has a right to an order by the Commission for re-possession of private immovable property if he/she proves the ownership over the property or property use rights, and that he/she is unable to exercise these rights due to circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999. The Court does not find that litigious apartment is in private ownership.

The decision of Technical School “Zenel Hajdini” in Ferizaj, no 109 dated 06 December 1991 wherewith to the claimant was allocated with an apartment for use, located in Ferizaj, street Lenini no. 17 Lamela ”A” II. Second entrance, no.4 in the surface of 40,70 m<sup>2</sup>, which was negatively verified, does not represent a valid document for obtaining the ownership pursuant to Article 20 of Law on Basic Property Relations. According to this legal provision the ownership is obtained under legal affairs, inheritance and based on decision of public entity as provided for by law.

The appellant is not able to submit the sales contract of the apartment pursuant to Article 16-29 of the Law on Housing (Official Gazette of R. of Serbia no. 52/92,67/92,33/93,46/94 and 49/95. According to these provisions the users of socially owned apartments could have bought or privatized these properties. The appellant failed to present documents with which his ownership right over the property subject of his claim could be confirmed. In case such a contract has ever been concluded it should have immediately been legalized by the competent court pursuant to provision of Article 4 para 2 of Law on Property Transfer - the confirmation of contract by the court is a constitutive element. Ownership cannot be obtained without respective confirmation of contract at the court, pursuant to Article 20 of Law on Basic Property Relations.

Based on the administered evidence and confirmed facts it is considered that the claimant could not prove himself as the owner of claimed property before the armed conflict 1998/1999 and that this property is still under social ownership. According to section 3.1 (a) UNMIK/REG/2006/50 only

ownership claims with respect to private property could be adjudicated under the said regulation and not ownership claims regarding socially owned properties. Therefore this subject matter is not under the jurisdiction of the KPCC and consequently of the Supreme Court.

Based on the foregoing the decision of KPCC regarding the claim in question has to be annulled and this claim has to be dismissed because it is out of jurisdiction of the KPCC and the Court pursuant to provision of Article 198 para 1 of LCP and section 3.1 (a) UNMIK/REG/2006/50.

**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 (Section 10.11, 10.15, 10.21 of AD 2008/2): € 30;

These court fees are to be borne by the appellant/claimant who filed an inadmissible claim. Pursuant to Article 46 of the Law on Court Fees, when a person with residence or domicile abroad is obliged to pay a fee, the deadline for the payment may not be less than 30 days and no longer than 90 days. The Supreme Court decided the deadline 90 (ninety) days for the subject matter in question. 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 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**