

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEÇE KAI**

**GSK-KPA-A-119/2014
GSK-KPA-A-121/2014**

Prishtinë/Priština, 1 June 2016

In the proceedings of:

The legal entity **U. K. DOO**

Appellant

Representative: A. Q. V., lawyer
Prishtinë/Priština

vs.

K. P.

Representative: N.H., lawyer

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Rolandus Bruin, and Anna Bednarek, Judges, on the appeals against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/C/216/2013 (case files registered at the KPA under the numbers KPA14328 and KPA14326) dated 21 August 2013, after the deliberation held on 1 June 2016, issues the following

JUDGMENT

The appeals of U. K. DOO against the decision of the Kosovo Property Claims Commission No. KPCC/D/C/216/2013, dated 21 August 2013, as far as they concern the claim numbers KPA14328 and KPA14326 are dismissed as belated.

Procedural and factual background:

1. On 10 October 2006 M.R. an authorized representative of the legal entity U. K. DOO (henceforth: the Appellant) filed two claims at the Kosovo Property Agency (the KPA), seeking confirmation of its ownership right, repossession and compensation for the unlawful use of:
 - a) in one claim the commercial buildings (open construction/eaves) located in the military area fuel storage in Hani i Elezit/Elez Han (formerly known as: Đeneral Jancovic), in the border crossing of Kačanik/Kaçanik, with the surface of 687 m²;
 - b) in the other claim commercial buildings (five steel tanks above the ground) with the surface of 250 m² in the military area/fuel storage in Hani i Elezit/Elez Han (formerly known as: Đeneral Jancovic), in the border crossing of Kačanik/Kaçanik; (henceforth together: the claimed properties).
2. The claim mentioned in the paragraph 1.a was registered at the KPA under KPA14328 and the claim under 1.b was registered under KPA14326.
3. The claims no. KPA14328 and no. KPA14326 were notified on 6 February 2009 by putting signs on the claimed properties. During the notifications it was found that the claimed properties were commercial with buildings and were occupied by K. P. (hereinafter: the Appellee). The Appellee signed the notices of participation on 6 February 2009 explaining that the claimed properties were not used for residential purposes and that it had legal rights over them.
4. The Appellee also submitted replies to the claims alleging that it has been legally exercising the right of use and of possession over the claimed properties.
5. By its decision of 21 August 2013 (no. KPCC/D/C/216/2013), the KPCC decided to dismiss both claims with the reasoning that they were related to movable property rather than to private immovable properties, and as such the claims fell outside of the jurisdiction of the KPCC. Regarding the Appellant's requests for compensation the KPCC advised that these requests

could be addressed to the local competent courts. On the last page, the KPCC decision contains the advice about the possibility to file an appeal within 30 days of the notification of the decision.

6. On 20 December 2013, the KPCC decision with regard to two claims was served on the Appellant. To the Appellee the KPCC decisions were served on 18 December 2013.
7. The Appellant filed the appeal against the KPCC decision with regard to the claim no. KPA14328 at the Supreme Court on 31 January 2014. He filed a separate appeal against the KPCC decision with regard to the claim no. KPA14326 at the Supreme Court on the same date 31 January 2014. The Supreme Court registered the appeal against the Decision rendered in the case No KPA14328 under number 119/2014 and the appeal against the Decision rendered in the case No KPA14328 under number 121/2014.
8. The Appellee received a copy of the appeals on 16 July 2014. He did not respond to the appeals.

Allegations of the appellant

9. The Appellant states in both appeals that the challenged decisions contain fundamental errors in the assessment of the claims due to an erroneous establishment of the facts which led to an erroneous application of the substantive law. Therefore, the Appellant requests the Supreme Court to annul the appealed decisions and to accept the claims submitted before KPA as grounded.

Legal reasoning

Admissibility of the appeal

10. The appeals are belated.
11. Section 12.1 of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (henceforth: UNMIK Regulation 2006/50) provides as follows: “*Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision*”.

12. The KPCC decisions were both served on the Appellant on Friday 20 December 2013. So the time limit of 30 days ended on Sunday 19 January 2014, but is prolonged to Monday 20 January 2014 according to Section 7.2 of the Administrative Direction No. 2007/5 Implementing UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 to Annex 1 to that law.
13. Yet the Appellant filed his appeal on 31 January 2014. He was sufficiently advised of the time limit, as the decision contained an instruction on this deadline.
14. The Appellant did not present any legitimate excuse for this delay. This means that he filed the appeals outside the time limit of 30 days.
15. Therefore the appeals have to be dismissed on procedural grounds as belated pursuant to Section 13.3 subparagraph (b) of UNMIK Regulation 2006/50.

Legal Advice

16. Pursuant to Section 13.6 of UNMIK Regulation 2006/50 this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Anna Bednarek, Eulex Judge

Rolandus Bruin, EULEX Judge

Sandra Gudaityte, EULEX Registrar