

**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-111/13

Pristina, 12 March 2014

In the proceedings of:
H K, represented by K K
M G 28
M

Appellant

vs.

N/A

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Willem Brouwer, EULEX Presiding Judge, EULEX Judge Esma Erterzi and Judge Sylejman Nuredini on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/183/2012, dated 14 December 2012 (case file registered at the KPA under No. KPA 1026), after deliberation held on 12 March 2014, issues the following

JUDGMENT:

- 1. The appeal is rejected as unfounded;**
- 2. The decision of the Kosovo Property Claims Commission KPCC/D/R/183/2012 dated 14 December 2012 is confirmed as far as it regards the claim registered under KPA 1026.**

Procedural background:

1. On 20 July 2007 the appellant filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of his right of use over an apartment in the apartment building at Obiliviceva street no 28 in Mitrovica (the apartment).
2. The KPCC decided the claim to be dismissed, because the loss of the right to use the apartment was not due to the circumstances directly related to the armed conflict of 1998-1999.
3. The decision was served upon the appellant on 23 April 2013.
4. Appellant filed an appeal against the KPCC decision at the KPA on 7 May 2013 which is within the period of 30 days mentioned in section 12.1 of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 on Resolution of Claims Relating to Immovable Property, Including Agricultural and Commercial Property.

Factual background

The Appeals panel takes as facts as established by the KPCC and not contested by parties or otherwise proven wrong the following:

5. The appellant rented the apartment as from November 1987. The tenancy-right was given to the appellant on 10 November 1987 by a decision of the Municipal Committee for Urbanism, Communal and Housing Issues of the Municipal Assembly of Titova Mitrovica.
6. In 1992 the appellant was accused of disclosure of a state secret and arrested. The appellant became expelled from his job and the tenancy-right. After having been released from this arrest he migrated. His wife and children followed later that same year.
7. According to the appellant, these events took place under the Milosevic regime.
8. Appellant seeks the confirmation of his tenancy right over the apartment since the possession and use of the property has been taken by third parties.

Legal reasoning:

Position of the appellant

9. The appellant asks modification of the decision of the KPCC in such a manner that he will be recognised in his tenancy-right.

Jurisdiction

10. According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 (here after: the Regulation), a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of a private immovable property, but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
11. Since the appellant lost his ability to exercise his tenancy-right in 1992 some six years before the above mentioned armed conflict, the KPCC has rightfully decided not to have jurisdiction on this matter and the appellants claim to be dismissed.
12. The appellant suggests that the loss of the ability to exercise the tenancy-right was a result of his political activity in 1992. This however does not bring the event under the working of the Regulation. The text of Section 3.1 of the Regulation is clear regarding the limitation of the jurisdiction to the mentioned period.

Conclusion

13. The aforementioned brings the Supreme Court to the conclusion that the appellant's claim has to be rejected as unfounded.

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.

Willem Brouwer, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar