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-153/11

Prishtinë/Priština, 31 May 2012

In the proceedings of:

N.D.

Claimant/Appellant

vs.

1. **I.A.**

2. **H.I.**

3. **J.K.**

4. **H.O.**

5. **F.G.**

6. **K.K.**

7. **I.K.**

8. **B.D.**

9. **H.R.**

10. **B.A.**

11. **A.I.**

Respondents/Appellees

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/ACR/91/2010 (case files registered at the KPA under Nos. KPA50357 and KPA90789 to KPA90807), dated 2 September 2010, after deliberation held on 31 May 2012, issues the following

JUDGMENT

1- **The appeal of N.D. is rejected as unfounded.**

2- **The decision of the Kosovo Property Claims Commission KPCC/D/ACR/91/2010, dated 2 September 2010, as far as it regards the**

cases registered under Nos. KPA50357 and KPA90789 to KPA90807, is confirmed.

3- **The appellant has to pay the costs of the proceedings which are determined in the amount of € 530 (€ five hundred thirty) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 8 November 2007, N.D. filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized as the owner of a property located in Pristinë/Priština, Verternik, claiming repossession. The claimed parcel No. 1649 is a 4th class field with a surface of 1 h 12 ar 82 m² which has partly been used for construction. The claimant explained that she had acquired the land by inheritance, that she had lost it on 12 June 1999 and that the loss was the result of the circumstances 1998/1999 in Kosovo. She declared that the property was usurped and that a number of houses were built illegally on the parcel. To support her claim, the claimant provided the KPA with the following documents:

- Possession List No. 11063, issued by the Municipality of Pristinë/Priština, Cadastral Zone Pristinë/Priština, on 22 October 2004 (UNMIK), showing that N.D. (X.N.) was in possession of the litigious parcel No. 1649;
- Cadastral Plan regarding Possession List No. 11063, issued on 10 December 2004 by the Cadastre and Geodesy Directorate of Pristinë/Priština, showing amongst others shape and location of parcel No. 1649;
- Judgment P. No. 680/94, issued by the Municipal Court of Pristinë/Priština on 26 September 1997, by which it was established that the property sales contracts OV No. 638/64 from 30 April 1964 and OV No. 1741/67 from 19 September 1967, concluded between A.M. from Pristinë/Priština and V. "W." from Pristinë/Priština were void. Therefore the first respondent, Y. "Z" from Llapllasellë/Laplje Selo, was obliged to return into possession and ownership of the second respondent, N.D. from Pristinë/Priština, the claimant, amongst others the immovable property parcel No. 1649, a 4th class field with a surface of 1 h 12 ar 82 m² . The property was registered as socially owned property, used by P. (A.) "K.". According to the judgment, the late A.M., the legal

predecessor of N.D., on 19 September 1967 had concluded with "W.", the legal predecessor of Y. "Z.", a contract by which she sold - amongst others - parcel No. 9/3 which nowadays is registered as parcel No. 1649. After hearing some witnesses, the Municipal Court found that the Y "Z" had exerted pressure on A.M. in the form of blackmail and threats to force her to sell the property to "W.".

The submitted Possession List No. 11063 could be verified. The claimant had been registered as the possessor of the parcels according to the judgment Nr. 680/94, dated 26 September 1997. The claimant also had been registered as owner/possessor of the property with the Certificate for the Immovable Property Rights issued on 24 March 2009 by the Municipal Cadastral Office of Pristinë/Priština - UL-71914059-11063.

On 2 March 2009, the KPA informed the claimant that her original claim (KPA50357) had been divided into 23 different claims (KPA50357 and KPA90789 to KPA90810) as multiple houses had been found on the property. The Supreme Court is not able to locate these different parts of the parcel from the content of the files, the reasoning part of the judgment, however, will show that in this case it was not necessary to ask for additional information from the KPA. The Court wants to add that the appealed decision of the KPCC only deals with 20 different files (KPA50357 and KPA90789 to KPA90807). Accordingly, only these cases are covered by this decision of the KPA Appeals Panel.

When officers of the KPA asked the claimant whether she ever had used the property, the claimant informed them that after she had received the court decision of 1997, she went to the parcel and saw that three or four houses were built there.

The Court will give the remaining facts according to the different case files:

1. GSK-KPA-A-153/11(KPA50357):

   On 10 July 2008, the KPA notification team went to the place where the claimed parcel allegedly was located and put up a sign indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days. The KPA officers noted that the property was occupied and that 22 houses were built on it. The local people claimed that they had bought the property twenty years ago from the company "Z".

   On 9 March 2010, the notification of 2008 was checked. Although the notified point was found to be

1 m without the parcel, the notification was considered to have been properly done.

2. GSK-KPA-A-154 (KPA90789)
   GSK-KPA-A-155 (KPA90790)
   GSK-KPA-A-156 (KPA90791):
   On 22 December 2008 (probably after the splitting of the cases), the KPA notification team again went to the place where the claimed parcel allegedly was located and put up on several parts of the parcel several signs indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days. They found the property occupied by I.A. who had built several houses on the parcel.

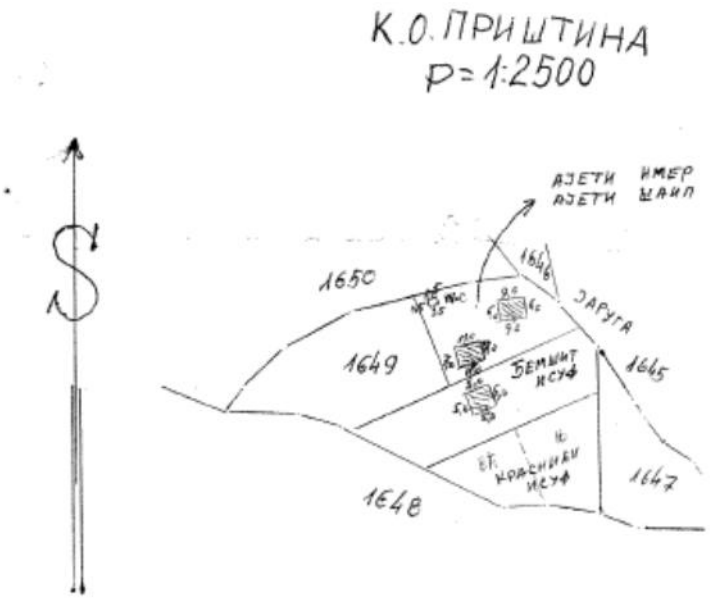
   The notification was checked on 3 March 2010 and was found properly done.

   On 16 January 2009, I.A. went to the KPA and stated that his father had bought the property in 1974. As his father died in 1976, they at first could not discover who the seller had been. He himself, I.A., had used the parcel since 1980 and at that time constructed his house. Another building followed in 1984. The respondent explained furthermore, that in 1994 he had a court dispute with the owner of the property, which at that time was "Z". Based on the court order, he was obliged to pay compensation to "Z", which he did. In 1997, the respondent filed an appeal against the court decision before the District Court. The District Court annulled the order and sent the case back for retrial. Although the respondent allegedly had fulfilled his obligations to "Z", he was not allowed to transfer the property to his name.

   I.A. submitted amongst others the following documents to the KPA:

   - Judgment No. 1266/1994, issued on 3 July 1997 by the Municipal Court of Prishtinë/Priština, according to which "Z" from Llapllasellë/Laplje Selo was the sole owner of parcel No. 1649 and I.A., S.A. and D.I. were obliged to vacate the property; I.A. and S.A. had to pay 25.000 Dinars for the area of 0.15.00 ha, D.I. 20.400 Dinar for the area of 0.06.00 ha where they had built residential houses;
   - Decision No. 1073/97, issued on 24 December 1997 by the District Court of Prishtinë/Priština, according to which the aforementioned judgment was reversed and sent back for retrial; the District Court found that contract No. 638/64, dated 3 April 1964, was not sufficient to prove that "Z" was the owner because according to the contract not "Z" but P. "K" had bought the parcel.;

- an expert's report, prepared on 13 September 1995 by the surveyor "P." (the rest of the name is not readable) for the proceedings before the Municipal Court; according to this report, three houses had been built on parcel No. 1649 by I.A., S.A. and D.I., another part was occupied by I.K. as a garden for potatoes and onions; the expert added a sketch which showed the parcel and the occupied parts:



The three houses with annex buildings I.A. built cover today more space of the southern part of the parcel than shown in this sketch; the first house stands approximately 600m east of the western edge of the parcel.

3. GSK-KPA-A-157/11 (KPA90792)
   GSK-KPA-A-158/11 (KPA90792):
   These files concern parts of the parcel east of the buildings which I.A. built. The notification was done at the same time as in the cases GSK-KPA-A-154 to GSK-KPA-A-156 and by a later check was found to be correct. These parts of the parcel were found occupied but uncultivated. Nobody responded to the claim.

4. GSK-KPA-A-159/11 (KPA90794):
   Also on 22 December 2008, the KPA team put up the notification sign on this part of the parcel. On this part the team found a newly built house, the occupant was H.I., who claimed a legal right to the

property yet refused to sign a note of participation in the proceedings.

5. GSK-KPA-160/11 (KPA90795)
   GSK-KPA-A-171/11 (KPA90806):
   When the notification team notified the occupants of these parts of the parcel, they found a newly built house - GSK-KPA-160/11 (KPA90795) - as well as a house that probably was constructed before this new house - GSK-KPA-A-171/11 (KPA90806). J.K. claimed a legal right to the property. The later check proved the notifications to have been properly done.

   On 20 January 2009, J.K. went to the KPA and explained the following: In 1985 S.K., his father, had bought 1,5 ar from a person which was unknown to J.K.. In 1986 S.K. had built a house. In 1995, S.K. bought another 4 ar from the Q. P.. He stated that the documents had been burned in 1999 during the war in the village Mramor and that a house with several storeys was built in the year 2000. He named several witnesses for this statement, his son affirmed the statement in written.

   To sustain his submission he presented to the KPA several tax bills obviously concerning different properties as well as several other bills and receipts. Furthermore he declared that together with his father his uncle, G.G., had bought the land (see written statement in case GSK-KPA-A-162/11 (KPA90797)).

6. GSK-KPA-161/11 (KPA90796):
   While conducting the notification of this claim on 22 December 2008, the KPA officers found a newly constructed house on this part of the parcel. H.O. claimed a legal right to the property.

   On 20 January 2009, H.O. went to the KPA and gave his statement which he completed during the further proceedings. He explained that in 1995, he had bought the property with a surface of 1,9 ar from the former "P." (A.) through his late neighbor S.K.. G.G. also was involved. As the former director of the P., T., did not fulfill his obligations, the transfer was not completed. H.O. stated that he was the owner of the house built in the year 2000.

   In 2010, H.O. submitted to the KPA documents regarding a case pending with the Municipal Court of Prishtinë/Priština (C. Nr. 1582/08). These documents show that the claimant, N.D., in 2008 has filed a lawsuit against the occupants of the parcel No. 1649 (the requests, however, often refer to parcel No. 1619), requesting eviction and compensation of damage.

7. GSK-KPA-A-162/11 (KPA90797):

   After the notification, which had been done properly on 22 December 2008, F.G., who occupied this part of the parcel, went to the KPA on 20 January 2009 and confirmed the statement of H.O.. He explained that G.G. had bought the land together with S.K. and H.O.. As the former director of the P., T., did not fulfill his obligations, the transfer was not completed. In the year 2000 a house with two rooms was constructed, in 2004 a two-storey house was built. F.G. also submitted documents concerning the lawsuit of the claimant against the occupants of the parcel from which concludes that his father, G.G., had bought a part of the parcel with a surface of 2,5 ar.

8. GSK-KPA-A-163/11 (KPA90798):

   The notification of this part of the parcel was done on 2 April 2009. The KPA notification team found a newly constructed house. In spite of the notification, nobody responded to the claim. The notification was checked on 11 February 2010 and was found to have been properly done.

9. GSK-KPA-A-164/11 (KPA90799):

   The notification of this part of the parcel was done on 23 March 2009. The KPA notification team found a newly constructed shop. Local people told the KPA officers that the person occupying the property lived abroad. In spite of the notification, nobody responded to the claim. The notification was checked on 11 February 2010 and was found to have been properly done.

10. GSK-KPA-A-165/11 (KPA90800):

    During the notification, which had been done properly on 22 December 2008, the property was found occupied by K.K.. K.K. declared to have a legal right to the property and that he was represented by his lawyer. He refused to give more information to the KPA.

11. GSK-KPA-A-166/11 (KPA90801):

    The notification was done properly on 22 December 2008. The property was found occupied by I.K. who recently had built a house on the property and declared to have a legal right to the property. He did not give more information to the KPA.

12. GSK-KPA-A-167/11 (KPA90802)

    GSK-KPA-A-168/11 (KPA90803):

    The notification was done properly on 22 December 2008. The KPA notification team found two recently built houses, the occupant, B.D., claimed legal right to the property.

13. GSK-KPA-A-169/11 (KPA90804):

    Also on 22 December 2008, the KPA officers went to the part of the parcel which was object of this claim. The notification was done properly. The officers found a newly constructed house. The occupant, H.R., stated that he had a legal right to the property.

    On 3 March 2009, H.R. explained to the KPA that he had bought the property from N.S. from the village Leshkoshiq/Leskovcić in the Municipality of Obiliq/Obilić, on 25 September 2000 for 48.000 German Marks. H.R. declared that N.S. had guaranteed him that the property was his own property and that in case the property was taken from H.R. he, N.S., would compensate it with his own apartment. He submitted a sales contract the content of which sustained his statement.

14. GSK-KPA-A-170/11 (KPA90805):

    The notification was done properly on 22 December 2008. The KPA notification team found a recently built house. The occupant, B.A., claimed a legal right to the property but did not provide more information.

15. GSK-KPA-A-172/11 (KPA90807):

    Also this notification was properly done on 22 December 2008. On this part of the parcel the KPA notification team again found a newly built house. The occupant, A.I., responded to the claim on 15 January 2009. He explained to the KPA that they had used the property since the 70s and had started to live on it in 1980. He submitted several bills/receipts for electricity as well as a Death Certificate showing that I.I. had died on 1 March 1986.

From these statements, the Court deducts the following facts:
In 1964, the claimed property was sold by M.A. to the socially-owned enterprise K.. With judgment No. 680/94, dated 26 September 1997, the Municipal Court of Prishtinë/Priština annulled the purchase contracts and restored the litigious property to the legal successors of M.A., namely the claimant.

Already before 1994, however, I.A., S.A. and D.I. had built three houses on the parcel, another part of the parcel was occupied by I.K. as a garden (see plan above). In 1994 another socially-owned enterprise, Z, filed a claim against these persons, stating its ownership right based on the sale of the property in 1964 to K.. By judgment No. 1266/94, dated 3 July 1997, the Municipal Court of Prishtinë/Priština found in favour of Z. and held that the respondents were obliged to recognize the ownership claim of Z.. By judgment No. 1073/97, dated 24 December 1997, the District Court of Prishtinë/Priština overturned parts of this decision

since it was K., not Z., who had acquired the ownership right over the parcel in 1964.

The claimant had visited the parcel in 1997 and discovered three or four houses. The other houses were built later on.

On 2 September 2010, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/ACR/91/2010 dismissed the claims as they did not fall within the Commission's mandate. The Commission argued that the claimant never had been in possession of the claimed property and that the dispute about ownership of the property pre-dated the conflict.

The decision was served on the claimant on 22 August 2011. On 15 September 2011, the claimant (henceforth: the appellant) filed an appeal with the Supreme Court, challenging the KPCC's decision on the grounds of erroneously established facts and misapplication of the applicable material and procedural law.

The appellant declared that the KPCC erroneously established the fact that she had never been in possession of the property. The decision of the Municipal Court of Prishtinë/Priština No. P-680/94 had become final on 28 Octobre 1997. The appellant states that only because of the armed conflict she had not been able to register herself as the owner/possessor of the land with the cadaster. But she did this later on. When she visited the land in 1997, three or four houses were built on the land. The appellant is of the opinion that, as on most of the land no houses were built, this land was "free" and therefore in her possession. The appellant holds that by visiting the land and talking to the occupants she actively took possession of the bigger part of the land where no houses were built. That this part had not been in possession of the occupants concludes according to the appellant from the fact that later on other people build their houses on these parts of the parcel.

Furthermore the appellant states that there is no ongoing dispute on the land but that the dispute ended with the final decision of the Municipal Court of Pristina No. P-680/94 dated 26 September 2010. The dispute before the local court was about her right to take over possession, not her ownership rights.

The appellant requests the appeal to be accepted and a decision issued establishing her right for repossession of the property.

The appeal was served on the respondents (henceforth: the appellees). J.K., H.O. and F.G. replied on 9 November 2011. They referred to the ongoing proceedings before the Municipal Court of Prishtinë/Priština and requested to await the outcome of these proceedings before adjudicating the cases.

Legal reasoning:

The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

However, the appeal is ungrounded. The decision of the KPCC is correct, the Court finds neither incomplete establishment of facts nor erroneous application of the material or procedural law. The case is not within the jurisdiction of the KPCC.

The Court does not notice wrong establishment of facts. As far as the appellant questions the assessment of the KPCC regarding her possession of the parcel this is not a question of the establishment of facts but an opinion about a legal question. In short, the question whether the appellant had possession of the parcel or not constitutes a legal question, not a question of facts. The term "possession" is a legal term. To affirm "possession" or to deny it requires a legal assessment which goes far beyond the simple establishing of facts. Even if – sometimes – legal terms can be used to describe facts in a short way, this can be done only in cases where the legal term is very simple and not dependent on a complicated legal assessment. In the circumstances of this case, however, the question whether the appellant was in possession of the parcel or parts of it is more than doubtful and would require a thorough legal assessment as to, for example, whether the persons who built the houses wanted to possess more than the part of the parcel where their houses were built upon (this is a question of facts) or whether they themselves were in possession of more than these part of the parcels yet possessed it as if they possessed it "for" or "instead of" the appellant (a question of facts and their legal interpretation).

As far as the appellant alleges that the dispute relating to the property ended with the judgment of the Municipal Court of Prishtinë/Priština and states that the dispute among the parties now regards "only" her right to take over possession, not her ownership, this similarly does not constitute wrong establishment of facts. The KPCC stated: "The dispute about ownership of the property pre-dates the conflict and cannot be said to involve circumstances directly related to or resulting from the armed conflict in Kosovo during the period 1998 to 1999. The dispute relates essentially to whether the Claimant, or a socially owned enterprise, either K. or Z. or their successors, are the owners of the land, and whether any of the Respondents have acquired an ownership interest. Litigation in relation to the issue of ownership of the parcel has continued from at least 1994, when the original action was filed by the Claimant, to the present day. Since 2006/2007 the Claimant has taken steps to exercise her property right over the parcel. Any inability of the Claimant to

currently exercise her property right over the land is a result of the protracted litigation in relation to the ownership of the property and not a result of circumstances related to the conflict". From these remarks it becomes clear that the KPCC did not wrongly establish the facts. The KPCC shows that the conflict about the parcel has its roots back in a time before the armed conflict in Kosovo. Whether this conflict was about the ownership or the right of repossession insofar is without any importance. The only important issue in this context is the question who has the rights (which ones ever) to this parcel of land. If the appellant distinguishes between litigation for ownership and litigation for the right of repossession this distinction here is only artificial and constructed.

At last, the Court does not note a misapplication of the law. The Court agrees that the cases are not in the jurisdiction of the KPCC.

The jurisdiction of the KPCC is set up by Section 3.1 of UNMIK Regulation No. 2006/50 as amended by Law No.03/L-079, which reads that the KPCC has the competence to resolve "*conflict-related claims involving circumstances directly related or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999".*

The Supreme Court considers that the requirement "conflict-related" is not met in the present case and as a consequence that the KPCC had no jurisdiction over the subject matter.

Whether or not a case is "conflict-related" has to be decided with regard to the origin and the main focus of the dispute. The question whether the claimant ever has been in (direct or indirect, see Articles 103 and 109 of the Law on Property and Other Real Rights, Official Gazette of the Republic of Kosovo, 4. August 2009) possession of the parcel is of secondary importance.

In this case, the origin of the dispute lies in the time before the armed conflict of 1998/1999. Already in 1997, at least three different people, family members of some of the occupants of today, disputed with Z. about the ownership rights/right of possession of the bigger part of the parcel (see the drawing from the expertise above). During the same time, the claimant disputed (successfully) the right of K. to the parcel and, at last, in 1997 the claimant informed the three occupants of her right and tried to come to an agreement with them.

This dispute continued when other persons built their houses on other parts of the parcel. This is clear for members of the families and for neighbours of the first three occupants, who nowadays allege an ownership right deriving from the right of their parent or neighbour (GSK-KPA-A-154 to GSK-KPS-A-156; GSK-KPA-A-160 and GSK-KPA-A-171; GSK-KPA-A-161; GSK-KPA-A-162 and GSK-KPA-A-172).

Also in regard to the other occupants, the Court does not find a violation of the claimant's ownership rights which could place the claims under the jurisdiction of the KPCC. The (alleged) violation of the claimant's ownership rights which has been evoked by these buildings cannot be considered separate from the violation provoked by the first three or four houses. Even if the occupants took advantage of the instable situation resulting from the armed conflict in 1998/1999, the building of more houses did only aggravate the (alleged) violation of the claimant's ownership rights, which already had occurred before 1997 and had no connection whatsoever with the armed conflict.

The circumstance that in 1994 the first three occupants alleged rights to almost the whole of the parcel (see the drawing above) is also an argument to the assessment that the claimant's loss of the possibility to exercise her rights was only aggravated by the later buildings and already dates from this time. It is therefore not related to the armed conflict of 1998/1999.

The Court does not fail to notice that there are parts of the parcel to which nobody alleges a right. However, even if it would be possible to decide on parts of an undivided parcel without exactly defining their boundaries – in this way raising the issue of executing an unclear decision and the legality of the latter – the Court abstains from deciding on these parts.

As the cases are not in the jurisdiction of the KPCC, the ongoing proceedings before the Municipal Court of Prishtinë/Priština are not prejudicial (art. 13 Law No 03/L-006 on Contested Procedure), the Court does not find reason to adjourn the case (request of appellees J.K., H.O. and F.G.).

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 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being comprised at more than € 200.000: € 500 (€ 50 + 0,5% of € 200.000, yet not more than € 500).

These court fees are to be borne by the appellant who loses the case. According to Article 46 of the Law on Court Fees, the deadline for fees' payment if a person with residence or domicile abroad is obliged to pay a fee, is not less than 30 (thirty) and not more than 90 (ninety) days. The Court considers 90 (ninety) days to be the adequate deadline in this case. Article 47 Paragraph 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 ***Sylejman Nuredini, Judge***

Elka Filcheva-Ermenkova, EULEX Judge ***Urs Nufer, EULEX Registrar***