

DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENCINË KOSOVARE TË MIRËBESIMIT	SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON KOSOVO TRUST AGENCY RELATED MATTERS	POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODNOSE NA KOSOVSKU POVERENIÇKU AGENCIJU
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ASC-09-0108

In the lawsuit of

1. [REDACTED], from village Sušica/Sushicë, *Claimants*
Municipality of Priština/Prishtinë
2. [REDACTED], from village Ugljare/Uglar
Municipality of Kosovo Polje/Fushë Kosovë
3. [REDACTED], from village Gornja Gušterica/Gushterica e Epërme

all represented by attorney [REDACTED], from Priština/Prishtinë

" [REDACTED]

Vs

[REDACTED], Fushë Kosovë/Kosovo Polje, *Respondent/Appellant*
Represented by the Privatization Agency of Kosovo

the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (SCSC) composed of Richard Winkelhofer, President of the SCSC, as Presiding Judge, Torsten Frank Koschinka and Eija-Liisa Helin, Judges, on the appeal of the Respondent against the decision of the SCSC of 24 November 2009, SCC-08-0217, after deliberation held on 8 March 2010, delivers the following

DECISION

The appeal is rejected as ungrounded.

On the occasion of the appeal, points 1 and 4 of the decision of the SCSC of 24 November 2009, SCC-08-0217, are eliminated.

Reasons at Law:

In their claim of 10 May 2007, filed with the Municipal Court Prishtinë/Priština under C nr 1196/07, the Claimants seek the revocation of a sales contract over certain parcels of land between their father, [REDACTED], and the Respondent.

On 2 January 2008, the Municipal Court Prishtinë/Priština dismissed the claim on the grounds that (only) the SCSC were competent to deal with the matter.

On 11 July 2008, the Claimants filed a claim with the SCSC regarding the same matter, requesting the annulment of the sales contract (among other reasons given) for having been concluded under threat, and the obligation of the Respondent to return the property and possession over the disputed land.

In the further course of the proceedings, the Claimants applied for the "delegation" of the case to the Municipal Court Prishtinë/Priština, to "continue the procedure".

Following UNMIK ED 2008/34, on 10 September 2008, the SCSC stayed the proceedings.

With the challenged decision of 24 November 2009, the SCSC implicitly lifted the stay, called the Privatisation Agency of Kosovo (PAK) into the suit (1), referred the case to the Municipal Court Prishtinë/ Priština (2), pointed out that an appeal from any decision of the Municipal Court Prishtinë/ Priština will lie with the SCSC (3), and held that appeals against this decision were to be submitted to the Appellate Panel of the SCSC (4). In the legal reasoning, the Trial Panel states that it were "necessary to exercise jurisdiction over the Privatisation Agency of Kosovo in order to fully adjudicate the claim" and to therefore call them into the suit, states that the Municipal Court Prishtinë/Priština as the court the case was referred to were particularly competent to decide the case impartially and in line with the relevant provisions of Section 4.2 UNMIK REG 2008/4 and Section 15 UNMIK AD 2008/6, holds that pursuant "to Section 70.3 (a) of UNMIK Administrative Direction 2008/6, and Sections 206 and 207 of the Law on Contested Procedure no separate appeal is allowed against the decision to call

III

the Privatisation Agency of Kosovo into the suit", and repeats the contents of points (3) and (4) of the enacting clause.

In the appeal, timely filed by the PAK on behalf of the Respondent, the Appellate Panel of the SCSC is requested to "change the decision".

The appeal has to be rejected as ungrounded.

Before dealing with the contents of the appeal, a preliminary remark has to be made as regards the representation of Socially Owned Enterprises (SOEs) as parties before the SCSC by the PAK:

The KTA, established in November 2002 by UNMIK REG 2002/13, as amended by UNMIK REG 2005/18, ceased its operations in June 2008. Its activities, including the representation of Socially Owned Enterprises (SOEs) before the SCSC, were then factually taken over by the PAK.

Taking into consideration the factual situation on the ground in Kosovo with the KTA not any more exercising its duties and powers as defined in UNMIK REG 2002/13, as amended, further taking into account that there is an imminent need for SOEs being duly represented before the SCSC, and considering that as a basic principle legal systems following the rule of law do not allow for legal vacuums, the representation of SOEs by the PAK for the time being will be accepted.

In the appeal at stake, the PAK identifiably does not act on its own behalf (as having been called into the suit as 2nd Respondent), but (only) on behalf of the (1st) Respondent. As mentioned above, this representation of the Respondent by the PAK is considered due.

The attacked decision does not touch upon the merits of the case, at all. Without referring to the legal reasoning given there, however, the Appellant talks about the merits of the case only and submits that the decision were "confused and unclear on the relevant facts, regarding the subject of the claim that should be subject of deliberation..." and that it did not "contain exact evidences of the cadastral parcels, surface of plots and their location". In particular, the appeal

does not indicate any reason as to why the Appellant may be of the opinion that point 2 (the referral decision) were inaccurate.

Against this background, point 2 (the referral decision) has to be upheld. No obstacles for the Municipal Court Prishtinë/Priština to reach an objective decision as laid out in Section 15.1 (b) AD 2008/6, can be seen. In addition, the Municipal Court Prishtinë/Priština had already started collecting evidence on the merits of the case, before the decision to declare its incompetence was taken. To refer the case and to "continue" with it before the Municipal Court might simultaneously speed up the proceedings.

The same goes for point 3: It cannot be seen why the decision to direct potential appeals against the Municipal Court's decision to the SCSC (see Section 4.3 REG 2008/4) should not be accurate. The appeal does not give any reasons, neither. As a consequence, point 3 has to be upheld, too.

As to point 1 of the appealed decision: No valid reason can be found why it has been or would be "necessary to exercise jurisdiction over the Privatisation Agency of Kosovo in order to fully adjudicate the claim", and for calling them into the suit, as done by the Trial Panel. Moreover, there is no indication that the PAK should have any (own) interest in the matter at stake. They may only act on behalf of the (only) Respondent, and they actually do. This is the only role they can duly play in this context. On the occasion of the appeal, point 1 of the decision therefore has to be omitted.

It should, as well, be noted that the additional information given by the Trial Panel as to the exclusion of an appeal against point 1 of the decision, is not correct: According to Section 9.5 REG 2008/4, on principle all decisions of the Trial Panel can be appealed; this provision serves as a *lex specialis* to the provisions quoted in the appealed decision (Art 206, 207 of the Code of Civil Procedure, Official Gazette 4/77-1478 et al of the SFRY), even if they should be considered applicable here. In addition, Art 207 *leg cit*, last sentence, would only exclude "separate" appeals in the course of proceedings, but not appeals against the final decision. Finally, the decision on the admissibility of appeals rests exclusively with the Appellate Panel.

Lately, point 4 of the appealed decision has to be omitted on the occasion of the appeal, too, as instructions to file an appeal by quoting the law, without any

discretion on the side of the court, are no decisions to be taken in the enacting clause. Such information may be given within the legal reasoning or – rather – to be attached to a decision only, but cannot be a part of it.

The Appellant's remarks as to the question of the legal succession of the Claimants to the late owner of the property in question, may well touch upon a valid point, but can be addressed by the Municipal Court Prishtinë/Priština only when going into the merits of the case.

The same goes for the question of the accurate notification of the Agency on the intention to file a claim.

As indicated lately, a power of attorney for the representative of the Claimants could not be found, at least not in the case file of the SCSC. Also this fact may be paid attention to.

Eventually, the Municipal Court Prishtinë/Priština might see the necessity to clarify the identity of the Appellant; according to the information the SCSC has access to, "██████████" as a conglomerate may not exist any more in its previous shape.

A decision concerning costs was not to be taken.

Richard Winkelhofer, EULEX Presiding Judge signature

Torsten Koschinka, EULEX Judge signature

Eija -Liisa Helin, EULEX Judge signature

Tobias Lapke, EULEX Registrar signature