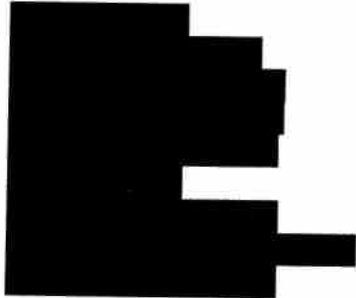


SCC – 07 – 0012

28 January 2011

*Claimants*



Nakllë/Naklo village Pejë/Peć

Represented by [REDACTED], Pejë/Peć)

vs.

1. [REDACTED] Agricultural Cooperative  
Drelje/Drelje
2. Kosovo Trust Agency(KTA) (Represented by UNMIK)  
TSS Compound, Industrial Zone, Prishtinë/Priština

*Respondents*

**To: the parties and the Privatization Agency of Kosovo (PAK)**

The Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (Special Chamber), the Trial Panel composed of Antoinette Lepeltier-Durel as Presiding Judge, Esma Erterzi and Sabri Halili, Judges, after deliberation held on 28 January 2011 delivers the following:

#### JUDGMENT

1. The claim of the Claimants is hereby accepted as grounded and the Claimants are recognized as the owners of the cadastral parcels No. 26, 289 and 291 registered in the possession list No.28 of the cadastral zone Jošanica/Joshanicë, Rugova, Pejë/Peć;
2. The Respondents are obliged to allow these parcels to be registered by the Directorate for Cadastre, Geodesy and Property (Municipality of Pejë/Peć) in the

name of the Claimants within one month from the service to the parties of this Judgment;

3. The SOE Agriculture Cooperative [REDACTED] is obliged to pay to the Claimants the sum of € 50 (fifty Euro) as reimbursement of the Court fees and to pay to the Special Chamber the sum of € 50 (fifty Euro).

**Factual and procedural background:**

On 11 and 17 January 2007, the Claimants subsequently filed a claim and requested the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (Special Chamber) to issue a preliminary injunction in order to suspend the privatization of the cadastral parcels No. 26, 289 and 291 registered in the possession list No.28 of the cadastral zone Jošanica/Joshanicë, Rugova, Pejë/Peć, as well as certify them as the co-owners of these parcels. The Claimants asserted that the parcels were taken from their predecessor "mistakenly without any judicial base".

The Claimants stated that their predecessor, [REDACTED], bought from [REDACTED] (other name [REDACTED]) some parcels identified as cadastral parcels No. 25, 26, 289, 290 and 291 of possession list No.30 (at that time) of the cadastral zone Jošanica/Joshanicë, of which surface was 13, 64, 22 ha. They explained that the parcels No. 25 and 290 with 4, 96, 86 ha were registered under the name of their predecessor whereas the parcels No. 26, 289 and 291 with 8, 67, 33 ha were later on registered under the name of Agriculture Cooperative [REDACTED], the predecessor of the Agricultural Cooperative [REDACTED]. The Claimants affirmed that the transfer under the name of the agricultural cooperative occurred in 1954 without any legal base or any legal decision.

With their claim, the Claimants provided the Special Chamber with:

- the sale contract No.341 dated 10 April 1952 with seven documents related to the payment and to the certification of the contract;
- acts of death of [REDACTED] and [REDACTED] the two sons of the late [REDACTED];
- the letter-documentation issued by the Directorate for Cadastre, Geodesy and Property (Municipality of Pejë/Peć) on 12 December 2006, according to which, from 1932 to 1954 the parcels No. 26, 289 and 291, possession list No.30 of cadastral zone of Jošanica/Joshanicë with 8, 67, 33 ha were registered in the name of [REDACTED] and since 1954 according to the book of changes these parcels had appeared registered in the name of the Collective Farm (legal predecessor of the first Respondent) with possession list No.33 (and now No.28) of cadastral zone of Jošanica/Joshanicë;
- the possession list No 28 of cadastral zone of Jošanica/Joshanicë, dated 8 December 2006;
- the Decision of the Municipal Court of Pejë/Peć No. O. 641/81, in order to prove that they were the rightful possessors of the contested parcels in 1981, and the Decision of the District Court of Pejë/Peć Ac. No. 369/81 which had upheld the Decision of the Municipal Court of Pejë/Peć;

- a notice of the claim and of the request for a preliminary injunction sent to the Kosovo Trust Agency (KTA) on 10 January 2007.

The claim and the request were served on the KTA on 29 January 2007. By letter filed with the Special Chamber on 5 February 2007, the KTA stated that, even though the assets of the Agricultural Cooperative Rugova would have been subject to a tender on 7 February 2007, the parcels No. 26, 289, and 291 would not have been sold on the bid day. Therefore, the KTA did not file any submission.

On 14 February 2007 the Special Chamber granted the preliminary injunction; it was conditioned on the Claimants to deposit of the amount of € 5000 in the Special Chamber account in order to indemnify the KTA for any eventual damage.

On 20 March 2007, the Claimants requested the Special Chamber to waive the requirement to deposit the € 5,000 security due to the fact that it would hinder them to face their family expenses.

The above submission was served on the Respondents. On 22 March 2007 the KTA requested the rejection of the above application as ungrounded.

On 17 May 2007, the Special Chamber rejected the Claimants' request to waive the requirement to deposit the € 5,000 security as inadmissible; thus the preliminary injunction became without any effect.

On 28 May 2007, the Claimants submitted the power of attorney signed by all of them.

After an unsuccessful negotiation settlement hearing on 13 June 2007, the KTA filed its defense on 27 June 2007. It requested the rejection of the claim, asserting that the land was registered as social property, that as a consequence it was entitled to administer it, that the land had been allocated by the Municipality of Pejë/Peć on permanent use to the SOE Rugova in 1980 and that the Claimants did not raise any substantial arguments supporting their claim. The KTA reminded that it had authority over the land that was registered as socially owned property in 1989.

On 25 July 2007, the Claimants filed their reply. They argued that the cadastral records by themselves did not give the title of ownership and raised the argument that pursuant to Article 33 of the Law on Basic Property Relations (Official Gazette SFRY No. 6/80) the title of ownership has to be proven and that consequently the Respondents had to prove how they had acquired the contested parcels. The Claimants emphasized that there were no land books in Kosovo which could be the basis of exclusive evidence of ownership and that the cadastral books could not be deemed as a reliable proof of ownership rights.

Concerning the fact that the Municipality of Pejë/Peć had allocated the disputed parcels on permanent use to the first Respondent, the Claimants argued that nobody is entitled to transfer more rights than it personally owns.

The KTA filed its rejoinder on 14 August 2007. It repeated its previous arguments and once again stated that the Claimants had not proven their ownership title.

On 17 September 2007, the Special Chamber held a public evidentiary hearing. At the hearing the Claimants clarified the line and right of inheritance as well as provided the Special Chamber with documentation. The Special Chamber tried to clarify the legal basis of ownership of the SOE in regards with the requirements set forth in Article 3 of the Law on Registration of Real Property (Official Gazette of SAP Kosovo, No. 37/71). The KTA answered that the land was registered in the possession list as social property and that it would present any documents concerning the transformation of property title. The Claimants reminded that they had successfully sued the Respondent in 1981 about the possession of the concerned parcels of land, and that the outcome showed they were in possession.

The properly summoned representative of the Cadastral Office in Pejë/Peć did not attend the hearing. The parties were given two weeks to provide the Special Chamber with additional information on the inheritance and the legal basis of ownership and another two weeks to file their submissions.

On 27 September 2007, the Claimants provided the Special Chamber with the Decision on inheritance and a certificate dated 21 July 2007 of the Directorate for Cadastre, Geodesy and Property (Municipality of Pejë/Peć) which stated that they did not possess any documentation which would serve as the legal basis for the registration change.

On 28 September 2007, the KTA repeated its previous submissions and explained that pursuant to the land reform acts of the 1950s private individuals were not allowed to own more than 10 hectares of land and this must have been the legal basis of the nationalization, consequently the registration of social ownership. The KTA argued that the Claimants should have initiated proceedings in front of the Municipal Court in 1987/88 in accordance with the Law on Administrative Procedure in order to regain their ownership title.

At the public hearing which was held on 23 January 2008, the parties maintained their previous arguments. The KTA claimed that the legal basis for social ownership is the Basic Law on Expropriation while admitting that it could not present any evidence of expropriation or nationalization or of other proceedings to transfer the ownership right. The Special Chamber declared the proceedings closed subject to the filing of the final submissions and announced it would render its judgment.

In their final submission filed on 8 February 2008, the Claimants discussed the applicable law to the case and upheld their claim in its entirety.

In its final submission also filed on 8 February 2008, the KTA repeated its previous arguments.

On 31 July 2008 the proceedings were suspended pursuant to UNMIK Executive Decision 2008/34 of 29 July 2008. The suspension was lifted on 16 July 2009. At the same time the Privatization Agency of Kosovo (PAK) was called into the suit and served with the claim and all subsequent submissions.

The PAK filed its defense with the Court on 30 October 2009. It agreed with the previous submissions of the KTA and requested the rejection of the claim. The PAK argued that the passive legitimacy of the first Respondent had to be discussed since there were no relations between the Claimants and this SOE and there was no damage caused by the SOE to the

Claimants. The PAK asserted that the Claimants had not claimed their alleged property rights for more than 60 years in order to avoid paying taxes. It added that the registration of the disputed land under the name of the SOE could not be a mistake since if it had been the case, the Claimants would have asked for a correction. The PAK stated also that the transfer of ownership had occurred since the parcels at hand had been abandoned. The PAK submitted the copy of the Decision of the Municipal Assembly of Pejë/Peć Br. 02-463/264 dated 30 June 1980 claiming that that decision served as the legal basis for the ownership of the SOE. Finally the PAK asked for compensation of its expenses in the proceedings.

On 9 November 2009, the defense of the PAK was served on the Claimants who did not reply.

The hearing scheduled on 16 March 2010 was postponed due to the fact that no local Judge was any more assigned to the Special Chamber.

In the meantime, by the order issued on 1 March 2009, the Claimants were requested to clarify whether they wished to be represented by a new lawyer since their current lawyer had indicated that he had ceased to represent them. With the submission filed on 12 April 2010, the same lawyer explained that he maintained his representation and that his withdrawal was wrong, due to a misunderstanding of the case to which the summons was related.

On 10 May 2010, the issuance of decisions including the judgment on the merits in these proceedings were delegated to the sub-panel.

The hearing was then scheduled on 22 June 2010 but upon request filed by the Claimants' representative, it was postponed to 21 September 2010.

At this hearing held by the full Trial Panel including the new local Judge appointed to the Special Chamber, the Claimants, the KTA and the PAK maintained their respective argumentation. The PAK stated that the way the disputed parcels became socially owned property and the decision issued for that purpose should be asked for to the Municipality of Pejë/Peć and that this Municipality should have been sued in these proceedings.

The Court decided to request the Municipality of Pejë/Peć to provide the Special Chamber with all documentation related to the ownership rights over the disputed parcels.

The Municipality of Pejë/Peć filed its response on 18 October 2010.

The final hearing was held on 30 November 2010. The Claimants and the KTA gave their final oral pleadings with comments on the latter submission of the Municipality of Pejë/Peć.

The Special Chamber declared that the oral proceedings ended.

#### **Legal reasoning:**

1. *the passive legitimacy of the Agricultural Cooperative* ██████████:

The passive legitimacy of the SOE Agricultural Cooperative [REDACTED] is challenged by the PAK which argued that there was no relation between the Claimants and this SOE as well as no damage caused by the SOE to the Claimants.

The Special Chamber cannot follow this argumentation. It notices that the subject matter of the claim is the ownership right over the cadastral parcels No. 26, 289 and 291 registered in the possession list No.28 of the cadastral zone Jošanica/Joshanicë, Rugova, in Pejë/Peć.

Concerning ownership claims and other property rights as well, the Claimants have to sue the current owner as it appears in the official documents related to those rights. In the present case, the cadastral documents provided by the Claimants, namely the possession list No. 28 of the cadastral zone of Jošanica/Joshanicë and the certificate written on 12 December 2006 by the Directorate for Cadastre, Geodesy and Property (Municipality of Pejë/Peć), show that the disputed parcels have been registered under the name of the SOE Agriculture Cooperative in Jošanica/Joshanicë.

The PAK has not provided more recent documents indicating that the current owner of these parcels would be the Municipality of Pejë/Peć.

As a consequence, the SOE has the passive legitimacy in this procedure.

2. the ownership right over the disputed parcels:

Article 20 of the Law on Basic Property Relations reads:

*“The property right can be acquired by law itself, based on legal affairs, and by inheritance. The ownership right can also be acquired by decision of the government authorities in a way and under conditions determined by law.”*

The contract of sale is one of the legal relations that allow acquiring the property right.

Moreover, Article 3 of the Law on registration of real properties in social ownership provides:

*“Registration of real property in social ownership shall be carried out on the basis of:*

- 1. an effective court decision or other administrative body decision, which determines that real property has passed to social ownership;*
- 2. a verified contract which includes provisions stipulating that the real property may be registered as real property in social ownership;*
- 3. a verified unilateral declaration, confirming that the owner of real property waives his/her ownership rights to the real property to the benefit of the social community.”*

In the present case, the Claimants provided the Special Chamber with the original written contract of sale No. 341 dated 10 April 1952 according to which [REDACTED] sold to [REDACTED] the disputed parcels. This contract bears the mention that it was certified by the Municipal Assembly of Pejë/Peć.

The Claimants also provided the certificates of inheritance which bring the evidence that they are the right heirs of the late [REDACTED]

The validity of the above mentioned contract of which the object was the sale of five land parcels is not challenged by the Respondents.

Consequently, the Special Chamber considers that the Claimants brought the evidence that the ownership right over the disputed parcels was acquired by their predecessor and that they acquired this right by inheritance.

Therefore, only another lately or prevailing property title over the same disputed parcels could convince the Court that the Claimants are not any more the owners of the land at stake.

Since the Respondents KTA and PAK, in their capacity of subsequent administrators of the SOE, first respondent, pretend respectively that the SOE Agriculture Cooperative [REDACTED] or the Municipality of Pejë/Peć acquired the ownership right over those parcels, they bear the burden of proof of the alleged prevailing ownership title.

The KTA's first argument consists in explaining that it has the administrative authority over the socially owned property registered as such in 1989. The Special Chamber does not contest that this is a part of the mandate of the Agency; however it considers that this does not mean that the ownership title is acquired only because of the fact that a parcel of land has been registered in the cadastral documents in the name of a SOE.

The cadastral registration is not an ownership title but is only the registration of an ownership title. Therefore this registration in itself is not the evidence of the ownership title. It has to be confirmed by the legal basis on which it has been carried out, as provided by Article 3 of the above quoted Law on Registration of Real Properties in Social Ownership.

The Respondents and then, upon order issued by the Special Chamber, the Municipality of Pejë/Peć, could not provide the Special Chamber with a document which could have been retained as the evidence of the transfer of the ownership right to the SOE Agriculture Cooperative [REDACTED]

In its certificate dated 12 December 2006, the Directorate for Cadastre, Geodesy and Property (Municipality of Pejë/Peć) explained that the disputed parcels had been recorded under the name of [REDACTED] (seller at the sale contract of 10 April 1952) "after the first measurement in 1932 until 1954" and "according to the book of changes 1/1954" had been transferred to the SOE. The Directorate mentioned: "We emphasize that changes have been done in 1954, the Directorate does not possess legal documentation."

Upon the request of the Special Chamber, the claimants provided another certificate also written by the Directorate for Cadastre, Geodesy and Property (Municipality of Pejë/Peć) on 21 July 2007 in which the Director stated: "With words "this Directorate does not possess legal documentation" is meant that it does not exist any contract, court or administrative decision nor a unilateral statement of the party-owner that he/she abdicates his/her property in favor of social property."

In this latter certificate, the Directorate also added that in 2006, according to the registration of changes No. 1/06, all real property from possession list No. 28 of cadastral zone

Jošanica/Joshanicë was registered in the name of Agriculture Cooperative [REDACTED] and not any more in the name of Agriculture Cooperative [REDACTED] of Jošanica/Joshanicë, based on the Decision of the Municipal Assembly of Pejë/Peć No. 02-463/274 dated 30 June 1980.

The Special Chamber has examined this Decision provided by the PAK and it has ascertained that it is not a court decision or other administrative body decision which determines that the property passed to social ownership.

In this decision, the Municipal Assembly of Pejë/Peć granted the request filed by the then newly established Agriculture Cooperative [REDACTED] to be given for permanent use 44 parcels of land which were so far allocated to the Agriculture Cooperative of Jošanica/Joshanicë for the reason that this cooperative had ceased to operate.

As indicated by the PAK, the Special Chamber can read in the reasoning of this decision that the Municipal Assembly of Pejë/Peć was referring to the fact that the land in question had been registered in the fund of socially owned property as land deserted by its previous legal owners.

Nevertheless, this decision only reminds such fact as admitted without expressly referring to the decision by which the land might have been declared as socially owned property. In other words this decision issued in 1980 does not give any clear information about the legal basis of the transfer of the ownership right over the disputed parcels, neither about the nature of the decision which might have been issued on such transfer (confiscation, expropriation, nationalization, etc...) nor about its date and its author.

Moreover, the fact of abandonment of land to which it is referred is contradictory with the fact expressly evidenced through the Decisions of the Municipal Court and of the District Court of Pejë/Peć issued respectively on 1 July 1981 and on 12 October 1981 which stated that the SOE Agriculture Cooperative [REDACTED] obstructed the Claimants from physical possession of the disputed parcels. Since the Claimants were in possession of the disputed parcels, the alleged abandonment of land could not have been the factual cause of an eventual formal Decision transferring the ownership right to a SOE.

Furthermore, the Special Chamber decided to ask the Municipality of Pejë/Peć for all its documentation about the eventual proceedings that might have been related to the disputed parcels. In its answer filed on 18 October 2010, the Municipality of Pejë/Peć indicated that it had not been able to find on which legal basis the transfer of ownership had been done.

From all the above mentioned documents, the Special Chamber reaches the conclusion that since no legal basis of a transfer can be submitted, it means that the Respondents have not brought any evidence of a transfer of the ownership right over the parcels at hand in favor of the SOE Agriculture Cooperative [REDACTED]

As a consequence, since the sole ownership right which is evidenced is the Claimants' one, the Special Chamber accepts the claim and states that the Claimants are the lawful owners of the disputed parcels. Their ownership right has to be registered in the cadastre.



### 3. Costs of the proceedings

In accordance with Section 11 of UNMIK Regulation 2008/4 and Section 56.2 of UNMIK Administrative Direction 2008/6 costs of the proceedings shall be borne by the unsuccessful party, here the SOE represented by the PAK due to the fact that the claim of the Claimants is approved.

Pursuant to Section 10 of Kosovo Judicial Council Administrative Direction No. 2008/02 read with Additional Procedural Rules regarding court fees established by the President of the Special Chamber, the Chamber's fees are on the following basis:

- For claims exceeding the amount of € 5,001 to € 10 000 (Article 10.1): a fee of € 50;
- For the issuance of the Judgment (Article 10.12): a fee of € 50.

In the present case, the value of the claim is not determined by the Claimants but the Special Chamber considers that the value of the disputed parcels as described by the Claimants is reasonably between 5, 000 € and 10, 000 €. Therefore, the amount of the Court fees is 100 €. The Claimant has already paid the sum of 50 €. Thus the SOE Agriculture Cooperative [REDACTED] will be obliged to reimburse to the Claimants such amount and to pay to the Special Chamber the sum of 50 €.

The Claimants did not present any claim for reimbursement of their own costs of the proceedings.

### 4. Legal advice

Pursuant to Section 9.5 of UNMIK Regulation 2008/4 an appeal against this decision can be submitted in writing to the Appellate Panel of the Special Chamber within thirty (30) days from the receipt of this decision.

Consequently it is decided as in the enacting clause of this Judgment.

Antoinette Lepeltier-Durel,  
Presiding Judge, EULEX

Esma Erterzi,  
Judge, EULEX

Sabri Halili,  
Judge

Tobias Lapke,  
Registrar, EULEX