

7/15/09

DISTRICT COURT OF GJILAN/GNJILANE
AC. nr. 351/2009

THE DISTRICT COURT OF GJILAN/GNJILANE, through a panel composed of EULEX Judge Johanna Schokkenbroek, Presiding Judge, EULEX Judge Klaus Jung and Judge Hasan Sadiku, members, assisted by the International legal officer Alice Pisapia and interpreter in Albanian language Daut Latifaj, in the legal case of the claimant Kosovo Privatization Agency (address: Llis Konushevci" street no 8 Pristine/Pristina, legal representative: Naser Krasniqi) against the respondent Municipal Assembly-Regulative Commission of Public Procurement Viti/Vitina (address: Komuna e Vitise Municipality of Viti 61000 Kosovo, legal representative: Ibrahim Ramadani) after deliberation on the appeal of the claimant Privatization Agency of Kosovo against the ruling C.nr. 328/2009 of incompetence of the Municipal Court of Viti/Vitina, dated 7 October 2009, in non public session held on the 16th April 2010 issued the following:

RULING

The appeal of the claimant Privatization Agency of Kosovo is approved and the ruling of the Municipal Court of Viti/Vitina, C.nr. 328/2009, dated 7 October 2009 is hereby **ANNULED** and sent to the Municipal Court of Viti/Vitina for re-procedure.

REASONING

Factual assessment

On 2 October 2009, the claimant Privatization Agency of Kosovo (PAK) submitted a claim for determination of ownership right with a request for preliminary injunction with the Municipal Court of Viti/Vitina. Respondent is the Municipal Assembly-Regulative Commission of Public Procurement Viti/Vitina (MAV).

The claimant by his claim requested to be determined as the legal and factual owner of the cadastral parcel no 709-3 registered in the name of the SOE Banja e Kllokotit in Kllokot-Viti, Cadastral zone Kllokot and to annul all the actions and unlawful acts of the respondent.

The Municipal Court of Viti/Vitina in its ruling C. nr. 328/09, dated 07 October 2009, declared itself as incompetent to decide on the claim submitted by the PAK concerning

the verification of the right to ownership and the same applies for the request for ordering an injunction. The decision was based on art 4 and 5 of UNMIK Regulation 2002/13 dated 13 June 2002.

PAK filed an appeal against this ruling on 20 October 2009 with the District Court of Gjilan/Gnjilane stating that the competent court for the claim is the Municipal Court of Viti/Vitina. According to the appeal UNMIK regulation 2008/4 (on the Establishment of a Special Chamber of the Supreme Court of Kosovo) section 4.1 the Special Chamber of the Supreme Court of Kosovo has no competence because this Regulation supersedes UNMIK Regulation 2002/13 dated 13 June 2002.

With a decision of the President of the Assembly of EULEX Judges, dated 23 February 2010, the present case is assigned to EULEX judges of the District Court of Gjilan/Gnjilane.

With a decision of the President of the Assembly of EULEX Judges, dated 15 March 2010, EULEX Judge Johanna Schokkenbroek is assigned as Presiding Judge and with a decision of the President of the Assembly of EULEX Judges, dated 08 April 2010, EULEX Judge Klaus Jung is assigned as panel member. The third professional judge in the panel, Hasan Sadiku, is appointed by the acting president of Gjilan/Gnjilane District Court.

Legal reasoning

Article 41 of the applicable Law on Contested Procedure, Law No. 03/L-006 (LCP) states :

41.1 The court within whose territory is located the immovable property is exclusively competent to adjudicate the disputes that are related to the property and other property rights, disputes over obstruction to possession of immovable item, disputes over the lease of the immovable property or contracts for use of residence and working premises.

Art 4.1. UNMIK Regulation 2008/4 (on the establishment of a Special Chamber of the Supreme Court of Kosovo) states:

"The trial panels of the Special Chamber shall have primary jurisdiction for claims or counterclaims in relation to the following:

.....
.....

(c) Claims, including creditor or ownership claims, brought against an Enterprise or Corporation currently or formerly under the administrative authority of the Agency,

where such claims arose during or prior to the time that such Enterprise or Corporation is or was subject to the administrative authority of the Agency;"

According to section 12 of UNMIK Regulation 2008/4 it supersedes any provision in the Applicable Law that is inconsistent with it.

According to UNMIK Regulation 2008/4 the jurisdiction of the Special Chamber is limited to claims against KTA and the enterprises administered by the KTA. The Special Chamber has therefore no competence for claims against municipalities. Therefore, the issue of competence in such cases is regulated by the LCP.

Pursuant to article 41 of LCP the competent court in this case is the Municipal Court of Viti/Vitina.

This decision is in accordance with the jurisprudence of the Special Chamber of the Supreme Court of Kosovo (SCC-09-0023) where it is decided that the jurisdiction of the Special Chamber is limited to claims against KTA and enterprises administered by KTA.

Since no decision is rendered on the merits of the claim the case has to be sent to the Municipal Court of Viti/Vitina for re-procedure.

Therefore it is decided as in the enacting clause of this ruling.

Court expenses

Since there was no request for compensation of expenses no compensation will be granted.

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Prepared in English,
an authorized language.



Presiding Judge
Sjoerd van den Broek

Legal remedies

In accordance with article 228.1 of LCP no revision against this ruling is allowed