

DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENCINË KOSOVARE TË PRIVATIZIMIT	SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY OF KOSOVO RELATED MATTERS	POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODRNOSE NA KOSOVSKU AGENCIJU ZA PRIVATIZACIJU
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28 September 2012

SCC-11-0223

U.A. from XX
Represented by Lawyer XX

Claimant

Vs.

XX, Socially Owned Enterprise, XX
Represented by
Privatization Agency of Kosovo, Ilir Konusheci Street, No. 8, Prishtinë/Prištine

Respondent

The first Panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Privatization Agency Related Matters composed of the Presiding Judge Alfred Graf von Keyserlingk, Judge Shkelzen Sylaj and Judge Qerim Fazliji, after deliberation held on 28 September 2012, issues the following

Judgement

The claim is rejected as ungrounded

Factual and Procedural background

On 28 September 2011 the Claimant filed a claim with the Special Chamber for verification that he is the owner of a business premise (No.43, located in Trade Centre Building, Dardania, Gjilan/Gnjilane) on the basis of purchase contract he signed with the Respondent SOE in 2004. The Claimant paid the full purchase price to the Respondent and entered into possession of the property. However, the property was not transferred to him because the Privatization Agency of Kosovo (PAK) notified the competent court not to certify such transactions without prior approval of the PAK.

The Claimant alleges that he bought the contested premise in a public tender.

The Respondent contests the allegation that the premise was privatised in a public tender. It requests that the claim is rejected as ungrounded.

By order of the Panel of 8 August 2012 PAK was requested to submit an authorization appointing a lawyer who is a member of a bar association or chamber of advocates to represent it before the Special Chamber.

Regarding further allegations of the parties, reference is made to the case file and to the declarations of the parties in the hearing.

Legal Reasoning

The allegations of the Respondent submitted by its representative PAK are not to be taken into account because they were not submitted by a lawyer.

Before the Special Chamber every party, except for natural persons, must be represented by a lawyer (Annex Art 24 SCL 04/L-033). This also applies to SOEs represented by PAK. The wording of this provision lacks any indication why it should not apply. Art 73, 74, 85 and 86 Law on Contested Procedure (Law No.03/L-006, LCP), regulating who can be party, which actions can a party take and who can represent a party allows that parties and representatives who are not registered lawyers act in court but in relation to these provisions Annex Art 24 SCL is *Lex Posterior* and *Lex Specialis*. The Legislator issued Annex Art 24 SCL when the LCP already existed and it regulated by the Annex Art 24 SCL a special procedure in a special court, different from other Kosovo courts. The Annex Art 24 SCL supersedes also Art 29 Law on the PAK (04/L-034, PAKL) because it is issued later and regulates not representation generally, as does the PAKL but specifically representation in front of the SCSC. This also applies to Art 29.2 PAKL which regulates the Agency's "legal standing" to pursue any rights of an enterprise in a competent court on behalf of the concerned enterprise.

The Legal regulation that natural persons do not need a lawyer, but all others need a lawyer, does not violate Art 73 and 74 of the LCP. This is not possible because Art 73 and 74 do not apply. They are superseded by Art 24 SCL.

The requirement to be represented by a lawyer is not a violation of the constitutional right of Equality before the Law. It may remain open whether PAK as a "public body" (Art 1.1 PAKL) can plead for the fundamental right of equality, which is historically and in its constitutional context a right of natural persons and private legal entities against the state, not a right for a state organ against the state. The Respondent has a right to be treated equal, but constitutional Equality does not mean that everybody is treated equally regardless if they are reasonably and non-discriminatory aspects of differentiation. It is neither unreasonably nor discriminatory to privilege natural persons compared to legal entities (or a public state authority) in front of the court. Often, if not even regularly, natural persons do not have the financial means to afford a lawyer. This under constitutional aspects is a sufficient reason for their privilege to appear before the SCSC without a lawyer.

As result it may be stated that the Respondent as everybody except for natural persons must be represented before the Special Chamber by a lawyer who is member of a bar association or a chamber of advocates. As the respondent was not represented by a registered Lawyer it has to be regarded as not having appeared in court.

However no default judgement against the Respondent can be issued (Art 52.2 Annex SCL). The facts alleged by the Claimant do not support the claim.

According to Art 9.1 Law on Transfer of Real Property (Official Gazette of Kosovo No.45/81 and 29/86) the transfer of socially owned property shall be conducted by public tendering or by collecting written offers and according to Art. 9.2, any transfer contrary to this provision shall be null and void. This law applied in the year 2004 when the claimant bought the disputed immovable (Sect 1.1 UNMIK Regulation No.1999/24). The Claimant alleged that the sale of the immovable happened within a public tendering but he did not specify within

which wave of tender this took place and he did not specify the date, the concrete offer and conditions of the tender. Also when he was asked to specify he did not deliver details. He should have been warned that such specification would be requested in the hearing because the Respondent in his defence denied this fact. In this situation the court saw no reason to postpone the hearing in order to give now the Claimant the possibility finally to search about the details of the alleged tender of 2004.

Therefore the claim had to be rejected as ungrounded.

Court fees:

The court does not assign costs to the Claimant as the courts presidium till now did not issue a written schedule which is approved by the Kosovo Judicial Council (Art.57 Paragraph 2 Special Chamber Law). This means that till now there is no sufficient legal base to impose costs.

Legal Remedy

An appeal may be filed against this Decision within 21 days with the Appellate Panel of the Special Chamber. The Appeal should be served also to the other parties and to the Trial Panel by the Appellant within 21 days. The Appellant should submit to the Appellate Panel evidence that the Appeal was served to the other parties.

The foreseen time limit begins at the midnight of the same day the Appellant has been served with the written Decision.

The Appellate Panel rejects the appeal as inadmissible if the Appellant fails to submit it within the foreseen time limit.

The Respondent may file a response to the Appellate Panel within 21 days from the date he was served with the appeal, serving the response to the Appellant and to the other parties.

The Appellant then has 21 days after being served with the response to his appeal, to submit his response to the Appellate Panel and the other party. The other party then has 21 days after being served with the response of the Appellant, to serve his rejoinder to the Appellant and the Appellate Panel.

Alfred Graf von Keyserlingk
Presiding Judge