

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

**ASC-09-0083**

In the lawsuit of

**Socially Owned Enterprise** [REDACTED]

*Claimant/Appellant*

[REDACTED] Prishtinë/Priština

represented by the Privatization Agency of Kosovo

Illir Konushevci 8, Prishtinë/Priština

vs

[REDACTED], **Trade Company**

*Respondent*

represented by [REDACTED], lawyer in Prishtinë/Priština

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 Claimant against the decision of the SCSC of 29 October 2009, SCC-09-154, (joined in the first instance with SCC-09-0133) on 4 February 2010 issues the following

### **DECISION**

**The appeal is dismissed as inadmissible.**

#### **Procedural and factual background:**

On 7 August 2009 the Claimant filed a claim (SCC-09-0154) with the SCSC to order the Respondent to stop any action changing the last factual possession

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status regarding the immovable property registered in the cadastral plots numbers 7155/1 and 7154/1 situated on "Railway Road"/Železnička Street no 24-26 in Prishtinë/Priština. On the same day the Claimant filed the request for issuing temporary security measures on prohibiting the registration and alienation of the fore mentioned immovable property. On 10 August 2009 the Claimant filed a request (SCC-09-0154) for issuing a preliminary injunction alleging that the Respondent has started to destroy and damage the buildings situated on the fore mentioned cadastral plots.

On 14 August 2009 the Trial Panel of the SCSC issued a decision (SCC-09-0154) by which the Respondent was ordered to stop any action regarding the fore mentioned cadastral plots number 7155/1 and 7154/1 in Prishtinë/Priština, which may lead to differ the factual status of those plots, and to refrain from taking any action on said parcels, especially but not exclusively to refrain from damaging and destroying any constructions. According to the decision the preliminary injunction will remain in effect until the final decision on the merits is taken by the SCSC. The Respondent has appealed against the fore mentioned decision. The Appellate Panel has rejected the appeal by its decision taken on 4 February 2010 (ASC-09-0053).

On 29 October 2009 the Trial Panel issued a decision (SCC-09-154) by which the Claimant's request dated 7 August 2009 for issuing a preliminary injunction was dismissed as inadmissible. According to the decision the request for preliminary injunction must have the same object as the main claim with it was filed together with, while in this case it had a clearly different object. The decision continues that the Privatization Agency of Kosovo has not submitted a claim regarding the property rights covered by the request for the preliminary injunction. Furthermore the decision of the Trial Panel states that in the case SCC-09-0154 a preliminary injunction related to the possession claim was already granted.

On 16 November 2009 the Claimant/Appellant filed an appeal against the fore mentioned decision of the Trial Panel dated 29 October 2009. In its appeal the Claimant/Appellant requests the Appellate Panel to annul the decision and confirm the decision of the Trial Panel dated 14 August 2009, by which the preliminary injunction was granted. Even the Claimant/Appellant is of the opinion

that the Trial Panel has already decided the same issue by its previous decision. Furthermore the Claimant/Appellant submits that the Trial Panel's previous decision of 14 August 2009 granting the preliminary injunction is appealed.

**Legal Reasoning:**

*Representation of the Claimant*

The Kosovo Trust Agency (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 Special Chamber, were then factually taken over by the Privatization Agency of Kosovo (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 Special Chamber, 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.

The Claimant is therefore considered duly represented by the PAK.

*Right to appeal*

According to Section 4.4 of UNMIK Regulation (REG) 2008/4 the Appellate Panel shall have exclusive jurisdiction to decide appeals against any judgment or decision by a Trial Panel unless otherwise provided by the present Regulation. Section 55.5 of UNMIK Administrative Direction (AD) 2008/6 stipulates that if a Trial Panel issues a decision, which is granting injunctive relief, such decision may be appealed.

UNMIK REG 2008/4 does not foresee any restrictions of the right to appeal, if a preliminary injunction is not granted. Therefore pursuant to Section 4.4 of UNMIK REG 2008/4 the Appellate Panel considers that also the decisions of a Trial Panel, by which preliminary injunctions are not granted, are appealable.

*Lack of legal interest to appeal*

The appeal is inadmissible on the grounds of the Claimant/Appellant lacking any legal interest in this matter.

The Appellate Panel decided today in the case number ASC-09-0053 (Claimant: Socially Owned Enterprise [REDACTED] Respondent/Appellant: [REDACTED]) to dismiss the Respondent's appeal against the decision of the Trial Panel dated 14 August 2009, SCC-09-0154. By that decision the Claimant/Appellant was granted a preliminary injunction against the Respondent, on the basis of its application dated 10 August 2009 and connected with its claim filed on 7 August 2009.

In its appeal in the case at hand the Claimant/Appellant has clearly announced that it does not see any room for upholding their request for the second preliminary injunction, if the first decision – as confirmed today by the Appellate Panel, ASC-09-0053 – stays in place. Therefore, there is no more legal interest on the Appellant's part to attack the appealed decision. An appeal only against the legal reasoning of a court decision or judgment is not allowed, as the legal reasoning itself bears no gravamen for any of the parties.

Richard Winkelhofer, EULEX Presiding Judge

signature

Torsten Koschinka, EULEX Judge

signature

Eija-Liisa Helin, EULEX Judge

signature

Tobias Lapke, EULEX Registrar

signature