

<p style="text-align: center;">DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENCINË KOSOVARE TË MIRËBESIMIT</p>	<p style="text-align: center;">SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON KOSOVO TRUST AGENCY RELATED MATTERS</p>	<p style="text-align: center;">POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODNOSE NA KOSOVSKU POVERENIÇKU AGENCIJU</p>
--	---	--

ASC-09-0102

In the lawsuit of

Claimants/Appellants

1. [REDACTED] and

2. [REDACTED], both from [REDACTED], Gjakovë/Đjakovica

Both represented by [REDACTED], Lawyer, [REDACTED],
Gjakovë/Đjakovica

vs.

Respondent

[REDACTED] SOE - Gjakovë/Đjakovica

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 Claimants against the decision of the SCSC of 24 November 2009, SCA-07-0055, on the suspension of the procedure due to the liquidation procedure of the respondent, after deliberation held on 4 February 2010, delivers the following

DECISION

The appeal is rejected as ungrounded. The decision of the SCSC of 24 November 2009, SCA-07-0055, is upheld.

Reasons at Law:

In their claim of 14 December 2005 with the Special Chamber, the Claimants requested the Respondent to recognize them as legitimate owners of certain cadastral parcels, to hand these parcels over and to allow registration of their ownership rights in the cadastral records.

On 15 February 2006, SCC-05-0552, the Special Chamber referred the case to the Municipal Court Gjakovë/Đakovica, retaining the competence of deciding over appeals against their decisions.

With judgment of 23 March 2007, C. no. 128/96, the Municipal Court Gjakovë/Đakovica rejected the claim on the grounds that all assets of the Respondent had been transferred to the "████████████████████" the Respondent therefore lacking passive legitimacy (see pp 36 ff of the first instance file).

In their appeal with the Trial Panel of the SCSC, dated 17 August 2007, against this judgment the Claimants aim at its amendment as to "oblige the legal representative of the defendant KTA ... to cancel the sales contract ... and interrupt the liquidation procedure of the ████████████████████ ..." (see pp 13 ff of the first instance file).

The Special Chamber stayed the proceedings temporarily, due to the suspension of the operations of the KTA, following UNMIK ED 2008/34 (see p 74 of the first instance file).

On 11 June 2007, the Special Chamber had already been notified by the KTA that the liquidation of the Respondent had been commenced from 14 May 2007, simultaneously requesting the Special Chamber to suspend all cases against the Respondent.

With the attacked decision, the Special Chamber lifted the stay (1), and suspended the procedure due to the ongoing liquidation procedure of the Respondent (2), in the legal reasoning referring to "Section 212 article 4 and 6 of the Law on Contested Procedure" and Section 9.3 UNMIK REG 2002/12, as amended by UNMIK REG

2005/18, and informing the Claimants that they may pursue their claim "before the liquidation committee appointed for the Enterprise by the Kosovo Trust Agency".

In their appeal of 7 December 2009, the Claimants request the amendment of the attacked decision as to continue with the procedure "against the Respondent the Liquidation Committee appointed by the KTA..."

The appeal has to be rejected as ungrounded.

As quoted by the Trial Panel, Section 9.3 UNMIK REG 2002/12, as amended by UNMIK REG 2005/18, reads as follows:

"9.3 Any legal action against a Socially-owned Enterprise subject to liquidation pursuant to this section shall be suspended upon application by the Agency to the court of the place where the action is filed. Such application shall be accompanied by:

- (a) Proof of submission of the notice described in section 39.3 of the Regulation on Business Organizations (when the object of the liquidation proceeding is a Corporation);
- (b) Proof of publication of information contained in such notice in a major Albanian language publication of general circulation in Kosovo once a week for two consecutive weeks, and a major Serbian language publication pursuant to criteria to be established by the Board;
- (c) Proof of appearance in the website of the Agency in Albanian, Serbian and English if a website exists at the time of liquidation; and
- (d) Proof of notification to entities, which the Agency believes or should reasonably have believed, have a claim against the Socially-owned Enterprise concerned."

In addition, Section 13.1 UNMIK AD 2007/1 implementing UNMIK REG 2005/48 On the Reorganisation and Liquidation of Enterprises and their assets under the administrative Authority of the Kosovo Trust Agency provides that the notification accompanied by the required evidence has the effect of a moratorium as set out in Section 5.1 UNMIK REG 2005/48.

The notification of the KTA of 11 June 2007 to the Special Chamber about the initiation of the liquidation procedure of the Respondent fulfils all the criteria as set

out in the portrayed provision. In particular, the list of claimants who were notified directly by the KTA includes the Appellants.

Under these circumstances the suspension of the case, as decreed by the Trial Panel, was a compulsory consequence. The continuation of the proceedings "...against the Respondent the Liquidation Committee appointed by the KTA...", as requested by the Appellants, before the Special Chamber is not possible and were against the principle of equality of all creditors in the liquidation procedure. Only the assertion of all creditors` claims before the Liquidation Committee assures this equal treatment.

Any negligence of the Municipal Court Gjakovë/Đakovica with the delivery of their judgment, as claimed by the Appellants, cannot be taken up by the Special Chamber. In addition, it cannot be seen why they should not have been able to address the Liquidation Committee, after the opening of the liquidation procedure being announced and directly notified to them, even though the first instance decision should have been rendered immediately after the notification.

A decision concerning costs was not to be taken.

Richard Winkelhofer, EULEX Presiding Judge

Torsten Koschinka, EULEX Judge

Eija-Liisa Helin, EULEX Judge

Tobias Lapke, EULEX Registrar
