

<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>
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13 January 2011

SCA – 08 – 0085

Claimants/ Appellants

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All with address: [REDACTED] Street, Podujevë/Podujevo

Represented by attorney-at-law [REDACTED] Prishtinë/Priština

Vs.

Respondents

1. **Podujevë/Podujevo Municipality**, Podujevë/Podujevo
2. **SOE [REDACTED]**, Podujevë/Podujevo
3. **Kosovo Trust Agency**, represented by UNMIK
Office of Legal Affairs, UNMIK Headquarters, TSS, Prishtinë/Priština
4. **Privatization Agency of Kosovo**, 8 Ilir Konushevci Street, Prishtinë/Priština

The Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (the Special Chamber), Trial Panel, composed of Norbert Koster, Presiding Judge, Roxana Comsa and Ilmi Bajrami, Judges, after deliberation held on 13 January 2011, issues the following

JUDGMENT

1. **The appeal is rejected as ungrounded. The Judgment of the Podujevë/Podujevo Municipal Court 214/2006 dated 18 June 2008 is confirmed.**
2. **The Appellants are conjointly obliged to pay court fees in the amount of 80 Euros for the appeals proceedings to the Special Chamber.**

Procedural and factual background:

On 30 March 2006, the Claimants filed an ownership claim to the Special Chamber for the real property registered in possession list 1231, cadastral parcel 339/0 (garden) and 339/0 (building), location "Qyteza", with the surface of 00.40ha in Podujevë/Podujevo Municipality, against the First and the Second Respondent. The Claimants also filed a request for interim measure, in order to prevent both the First and the Second Respondent from any action related to transferring the real property or approving any construction works on it. The Claimants maintained that the property was illegally taken from their predecessors without compensation. They stated that the land had not been expropriated or confiscated. The Claimants maintained that they had earlier filed requests for the property in 1993 at the Commission for Land Rectification, Podujevë/Podujevo Municipality, and in 2002 at the Directorate for Legal and Property Issues, Podujevë/Podujevo Municipality, which were denied. The Claimants further filed a claim at the Podujevë/Podujevo Municipal Court, which on 29 March 2004 declared that the claim falls under the jurisdiction of the Special Chamber.

On 18 May 2006 the Special Chamber, SCC-06-0139, referred the case to the Podujevë/Podujevo Municipal Court with the right of appeal to the Special Chamber.

On 18 June 2008 the Podujevë/Podujevo Municipal Court, C.nr.214/2006, rejected the claim as ungrounded. The Claimants received the judgment on 15 July 2008 and filed an appeal with the Podujevë/Podujevo Municipal Court in due time (15 September 2008).

The appeal together with the case file was transferred to the Special Chamber on 8 October 2008. The Claimants (hereinafter the "Appellants") additionally submitted the English translation of the appeal and the municipal court judgment. The appeal is based on wrong interpretation of facts, essential violation of the procedural and material law. The Appellants maintained that the municipal court had failed to address the claim against the Podujevë/Podujevo Municipality, the interpretation of the factual situation is wrong and the expert report taken into consideration was not professional and it did not clarify the situation before 1952. On the basis of the above reasons the Appellants are seeking that the municipal court judgment is quashed and the case is returned for retrial.

On 7 April 2009 the appeal and supporting documents were sent out to the Respondents Podujevë/Podujevo Municipality and SOE [REDACTED] for Reply.

On 12 May 2009 the Respondent SOE [REDACTED] filed a response to the Appeal. The Respondent submits that the Appeal should be rejected as ungrounded because the disputed land registered as per possession list 1231, cadastral parcel 339/1, with the surface of 00.40ha has been registered in the name of the Enterprise since its establishment in 1952 as the Agricultural Cooperative [REDACTED]. The Respondent further submits that the possession list 123 presented by the Appellants does not bear any reference to the disputed property, does not have an official stamp or date and should therefore be disregarded as evidence by the Special Chamber.

On 2 June 2009 the Special Chamber decided to call the Kosovo Trust Agency and the Privatization Agency of Kosovo into the suit as respondents.

On 17 June 2009 the Appellants filed a Reply to the response of the Second Respondent. They maintained that the property belonged to their predecessor [REDACTED] until 1952 and they are not aware why was the property registered in the name of the Agricultural Cooperative [REDACTED]. They submitted that such transfer was illegal, based on discriminatory law and without compensation. They submitted that the court shall request information from the Archive of Kosovo and the Municipal Cadastral Office in Podujevë/Podujevo.

In response to the appeal filed on 23 June 2009 the PAK submitted that the appeal should be rejected as ungrounded and the municipal court judgment confirmed. The property is registered as socially-owned since 1950 in the name of the AC [REDACTED]. The Appellants have failed to provide evidence of the alleged ownership rights of their predecessor. The submitted possession list is not verified by the competent authority and therefore is not sufficient to prove the alleged property rights.

On 29 June 2009 the Third Respondent filed a response to the appeal. UNMIK on behalf of the KTA submitted that it represents the SOE [REDACTED] pursuant to section 29.2 and 29.3 of UNMIK REG 2002/12 and requested that the SOE should be precluded from representing itself in the current proceedings and from making further submissions. Further, it stated that there is no indication that the property belonged to the Municipality of Podujevë/Podujevo neither the Appellants alleged that. The participation of the Municipality is not relevant for the adjudication of the property claim and therefore the appeal in this part should be rejected. With regards to the alleged wrong verification of relevant facts the KTA submitted that the municipal court has verified the factual situation based on the cadastral records from 2007 and opinion of two court experts, while the Appellants have failed to provide any credible evidence for their alleged property rights. With regards to the alleged wrong application of material rights, the KTA maintained that the Appellants have failed to substantiate any credible facts. The possession list 123 dated 20 April 1923 was not considered to be authentic by the Municipal Court of Podujevë/Podujevo and therefore did not constitute any proof for their allegations. Further, the Appellants have failed to submit any proof for their alleged property rights between 1923 and 1952. The KTA further submitted that the SOE acquired property rights with the registration in the cadastral books in accordance with article 33 of the Law on Basic Property Relations 6/80. On the basis of the above the KTA submitted that the appeal should be rejected as ungrounded and the municipal court judgment confirmed.

Reasons at Law:

The appeal is admissible, but ungrounded. Based on Section 63.2 of UNMIK AD 2008/6 the Special Chamber decided to dispense with the oral part of the proceedings.

The appealed judgment rejecting the claim as ungrounded is confirmed. The Special

Chamber confirms the legal reasoning in terms of failure to prove the alleged ownership rights and the alleged illegal expropriation in 1952. The Claimants failed to present facts and evidence on which they ground their claim in terms of Article 219 of the Code of Civil Procedure, Official Gazette 4/77-1478, 36/80-1182, 69/82-1596 of the SFRY (CCP). The municipal court correctly took into consideration the cadastral records for the property and the expert report presented to the court on 18 June 2008. The experts stated that the cadastral records date back to 1952 when the property was registered as socially owned in the name of the Respondent SOE and it did not undergo subsequent changes. The property registration is recorded in possession list 80 and copy of the cadastral plan dated 1952 and possession list 1231 and copy of the cadastral plan dated 19 March 2008. The expert report was presented by the experts during the court hearing of 18 June 2008 and was not challenged by the parties.

The Appellants have not applied for new evidence in terms of Section 64 of UNMIK AD 2008/6. The arguments that the expert report presented at the first instance is not complete as it did not provide information on the manner of expropriation and the history of the property before 1952 cannot be followed for the reasons above.

Regarding the fact that respondent No. 1 - Podujevë/Podujevo Municipality – is not mentioned in the first instance judgment the panel understands that this is not a substantial issue. Indeed the claim against the Municipality was not withdrawn and consequently the Municipality should have been listed as respondent in the first instance judgment. The respective omission, however, is a technical error which can be reconciled by a decision of the first instance court supplementing the judgment. The parties are free to seek such supplementation if they deem it appropriate.

Court fees

According to the SCSC's Additional Procedural Rules regarding Court Fees as in force from 10 March 2010 (based on Section 57.2 of UNMIK AD 2008/6), the following court fees for the current proceedings apply:

Court Fee Tariff Section 10.11 (filing of the appeal)	30 Euros
Court Fee Tariff Section 10.21 in conjunction with 10.12 and 10.1 (decision in second instance)	50 Euros
Total	80 Euros

The court fee for issuing the judgment as governed by Section 10.21 in conjunction with Sections 10.12 and 10.1 of the Court Fee Tariff has to be determined according to the value of the claim. Neither in first nor in second instance statements as to the value of the claim, were made. The court fee for the judgment in second instance therefore is set to 50 Euros.

These court fees are to be borne by the Appellants who are therefore (conjointly) obliged to pay the mentioned amount to the Special Chamber (see Article 2 [1] Law on Court Fees, Official Gazette of the Socialist Autonomous Province of Kosovo of 3 October 1987).

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

Pursuant to section 9.5 of UNMIK Regulation 2008/4 an appeal against this judgment can be submitted in writing to the appellate panel of the Special Chamber within 30 (thirty) days from the receipt of this judgment.

Norbert Koster, Presiding Judge
EULEX

Roxana Comsa, Judge
EULEX

Ilmi Bajrami, Judge

Tobias Lapke, Registrar
EULEX