

<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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In the lawsuit of

ASC-09-0053

Socially Owned Enterprise [REDACTED]

Claimant

[REDACTED]
represented by the Privatization Agency of Kosovo
Illir Konushevci 8, Prishtinë/Priština

vs.

[REDACTED]

Respondent/Appellant

represented by [REDACTED] lawyer in Prishtinë/Priština
[REDACTED]

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 Respondent/Appellant against the decision of the SCSC of 14 August 2009, SCC-09-0154, after deliberations held on 4 February 2010, delivers the following

DECISION

The appeal is rejected as ungrounded. The decision of the SCSC of 14 August 2009, SCC-09-0154, is upheld.

The Trial Panel shall decide on the Respondent's/Appellant's request for litigation expenses in the appeals proceedings.

Factual and procedural background:

On 7 August 2009 the Claimant filed a claim with the SCSC to order the Respondent to stop any action changing the last factual possession status regarding the immovable property registered as the cadastral plots number 7155/1 and 7154/1 situated on "Railway Road" / Železnička Street no.24-26 in Prishtinë/Priština (case number SCC-09-0154).

Following the Claimant's request for temporary security measures and the request for a preliminary injunction, on 14 August 2009 the Trial Panel of the SCSC issued a preliminary injunction ordering the Respondent/Appellant to stop any action regarding these 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. Lately, the Claimant was ordered to file a bank undertaking in the amount of 3.000 Euro within 3 days to indemnify the Respondent for any damage if the Claimant's claim should not be substantiated.

After the service of the fore mentioned decision the Claimant filed within three banking days a bank guarantee with the SCSC in the amount of 3.000 Euro.

On 27 August 2009 the Respondent filed an appeal requesting the Appellate Panel of the SCSC to annul the granted preliminary injunction and compensate it for costs and attorney's fees in the amount of 2.000 Euro. The Respondent submits that the Claimant is not under administration of the Privatization Agency of Kosovo (PAK), but is a private company. The PAK has no authority either to administer the property of the private company "Izomili" nor to represent it in front of the court. According to the appeal the

other parcel, parcel number 7154/1, adjacent to the hotel and where the demolition occurred, has never been in social ownership. The Respondent does not own nor have any other interest in either of the parcels and has not engaged in any activity on the property in question. Even if there had been a legal basis for the claim, no claim has been filed before or with the application for a preliminary injunction of the Claimant. The application has been made after the demolition was completed and no other activities seemed to be imminent. Furthermore there have not been such exceptional circumstances that the SCSC could have decided on the application for a preliminary injunction without serving it on the other party.

On 13 October 2009 the Claimant filed a response to the appeal requesting the Appellate Panel of the SCSC to dismiss the appeal as ungrounded and the preliminary injunction to stay in force until the final decision on the merits is taken by the Trial Panel. The Claimant submits that on 21 May 1997 it was registered as a socially owned enterprise and its offices were established on the disputed property. The property of the Claimant was later usurped and the offices of the Claimant were ruined. The parcels number 7155/1 and 7154/1 have been registered in the Cadastral Register in Prishtinë/Priština in the Claimant's name until they were illegally exchanged by [REDACTED], the owner of [REDACTED]

The response of the Claimant was served on the Respondent/Appellant on 9 December 2009.

Legal reasoning

The Appellate Panel has examined the appeal in terms of Section 61.4 of UNMIK AD 2008/6 and concludes that the appeal is admissible. Based on Section 63.2 of UNMIK AD 2008/6 the Appellate Panel decided to dispense with the oral part of the proceedings.

Before dealing with the contents of the appeal, one preliminary remark has to be made as regards the 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.

The appeal is ungrounded.

Section 55.1 of UNMIK AD 2008/6 stipulates that upon application by a party, the SCSC may issue a preliminary injunction, provided that the applicant gives credible evidence that immediate and irreparable injury, loss, or damage will result to the party if no preliminary injunction is granted. The request for a preliminary injunction is to be submitted together with the claim, or if submitted subsequent to a claim that has been filed, shall refer to that claim. Furthermore Section 55.2 of UNMIK AD 2008/6 stipulates that in exceptional circumstances the SCSC may decide on the application for a preliminary injunction without serving the application to the other party.

The purpose of a preliminary injunction is to protect a claimant from suffering immediate and irreparable injury, loss or damage caused by a respondent whose acts may be considered illegal in later proceedings. For

having this kind of preliminary measures taken the possible economic losses of a respondent are guaranteed by a claimant in the case the claimant's claim is later dismissed. For these reasons the preconditions for granting a preliminary injunction taking also into account the special need of speedy proceedings cannot be especially strict.

The Claimant's application for a preliminary injunction is connected with the already filed claim against the Respondent to stop any action changing the last factual possession status regarding the immovable property registered as the cadastral plots number 7155/1 and 7154/1 situated on "Railway Road" / Železnička Street no.24-26 in Prishtinë/Priština. The claim has been filed on 7 August 2009 and it has the same subject matter as the application for a preliminary injunction (SCC-09-0154).

Furthermore the Appellate Panel considers that the particular circumstances, under which a preliminary injunction can be granted without serving the application to the other party, prevail in the case at hand. The Claimant has submitted that the demolition work on the mentioned parcels was still ongoing when filing the application for the preliminary injunction with the SCSC. For preventing more damage it has been necessary to issue the decision in the matter without serving the application to the Respondent.

The Respondent/Appellant has submitted that the Claimant is a private company and that at least the other parcel, number 7154/1, has never been socially owned. Anyhow the Respondent/Appellant has not at least so far contested the Claimant's former actual possession or its right of possession of those parcels. The Respondent/Appellant has neither contested that the demolition work occurred on those parcels, but has explained that it has not engaged in any activity on the property in question.

The Claimant has submitted to the Trial Panel the decision of the Economic Court in Prishtinë/Priština dated 21 May 1997. According to that evidence the

SOE [REDACTED]" is registered in the register of the fore mentioned Court with the name [REDACTED] located at [REDACTED] Prishtinë/Priština. The Claimant has also submitted to the Trial Panel a photography of the demolition work.

The Claimant has proved with sufficient probability for granting a preliminary injunction that its legal status is that of a socially owned enterprise and that its offices were located on the disputed parcels or on the one of them at "Railway Road"/Zelevnicka Street no 24-26 in Prishtinë/Priština. The Claimant has not provided any evidence about the matter that the demolition work has been done by the Respondent/Appellant. However, this lack of (full) proof did not lead to the result that the preliminary injunction was to be denied. The Trial Panel was right in assuming that such a (full) proof – within the proceedings concerning a preliminary injunction – was not necessary. Under the circumstances in the case at hand, the plausible allegation that the demolition work was done by the Respondent/Appellant, in connection with the picture submitted, was sufficient. If the Claimant's allegation that the Respondent was acting in the described way cannot be proved in the later proceedings, the Claimant is obliged to indemnify the Respondent for any damage caused by a – then without justification - granted preliminary injunction. This does not overburden a Respondent who by the preliminary injunction is only prohibited to do what he has alleged that he does not want to do or has not done. It is, in relation to the possible damage that without preliminary injunction might be suffered by the Claimant, perfectly in line with the principle of proportionality.

The Appellate Panel concludes that the legal requirements set out in Section 55 of UNMIK AD 2008/6 for granting a preliminary injunction are met.

The Trial Panel shall decide on the Respondent's/Appellant's request for the litigation expenses in appeals proceedings when it is resolving the claim of the Claimant.

For these reasons it is decided as in the enacting clause.

Richard Winkelhofer, EULEX Judge

signature

Torsten Koschinka, EULEX Judge

signature

Eija-Liisa Helin, EULEX Judge

signature

Tobias Lapke, EULEX Registrar

signature