

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 ODOSE NA KOSOVSKU AGENCIJU ZA PRIVATIZACIJU
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C-I.-12-0056

Claimants

1. M.C., seated in X and
2. SOE "X", seated in X, owner Mrs N.E.
Represented by B.M., Lawyer from X

Vs

Respondent

Privatization Agency of Kosovo, "Ilir Konushevci", Street, no. 8, Prishtinë/Pristina

The Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (Special Chamber), the Specialized Panel I, composed of Esma Erterzi, Presiding Judge, Shkelzen Sylaj and Hysen Gashi, Judges, after deliberations held on this 15.05. 2013, issues the following:

D E C I S I O N

The claim is dismissed as inadmissible

Procedural and factual backgrounds:

On 23/11/2012, the Claimants filed a claim, seeking to annul the preliminary Decision issued by the Respondent on 16.12.2011, and the final one on 31 May 2012, for the the withdrawal of stocks on the assets of the New Enterprise G.H., Sh.p.k, which was privatized by the Kosovo Trust Agency "in special spin-off" on 10 August 2006. The Claimants claimed that their property rights are fully damaged to the New Enterprise G.H. as they have jointly paid 60% of the bid price (the amount of € 5.003.800, 00, out from the total amount of € 8.160.000, 00) for the privatization of this enterprise. They added that they gained the right of property in this enterprise under the memorandum of understanding dated 22 and 28.12.2006, respectively in January 2007 (regarding the purchaser of the New Enterprise U.C.).

The Claimant pointed out that upon the request with no. 01/12, on 03.01.2012, requested from PAK, respectively PAK Board to reconsider and annul the decision dated 16.12.2011, on withdrawal of the shares, but the PAK disregarded their request for reasons unknown to the Claimants.

The Claimants declared that, the recognition of property rights for them is their legal interest as a shareholder of New Enterprise H.G. SH.P.K, as the Respondent did not acknowledge the Claimants' shareholder status in this enterprise.

For other details the reference is made in the case file in SC.

Legal reasoning

The claim had to be dismissed as inadmissible

Article 6 of the Law on Special Chamber stipulates:

- 1. Any person challenging a decision or action of the Agency that was taken prior to the effective date of the present law must file the concerned claim or complaint with the Special Chamber no later than nine (9) months after the date that such person knew or with reasonable diligence should have known of such decision or action. Any such claim or complaint must be accompanied by evidence that the person filing such claim or complaint has provided a written notice to the Chairman of the Board of the Agency, at least sixty (60) days prior to the date of filing, of such person's intention to file such claim or complaint. The Special Chamber shall not accept any such claim or complaint that is not accompanied by such evidence or that is filed after the referenced nine (9) month period has expired.*
- 2. Any person challenging a decision or action of the Agency taken on or after the effective date of the present law must file the concerned claim or complaint with the Special Chamber no later than one hundred and twenty (120) days after the date on which the decision or action has been served on the concerned person or, if no such service is required by law or if such service has not been practicable or possible after a reasonable good faith attempt by the Agency, fully published in accordance with the Agency's operational policies and the requirements of Article 10.3 of the PAK Law. The Special Chamber shall not accept, and shall reject, any such challenge that is submitted after the expiration of the referenced one hundred and twenty (120) day period.*

The Claimants' claim for the annulment of the preliminary Decision issued by the Respondent on 16.12.2011, and the final one dated 31 May 2012, for the withdrawal of stocks on the assets of New Enterprise G.H., LLC, which was privatized by the Kosovo Trust Agency "in special spin-off" on 10 August 2006, is untimely.

Upon the claims of the Claimants and their documents of the date 03.01.2012, 11.06.2012, 14.06.2012, filed to PAK and as well as the PAK's response dated 22.06.2012, which was addressed to the representative of the Claimants, the court found that the Claimants knew about the decisions and actions of the PAK, regarding the withdrawal of the shares on assets of New Enterprise G.H., L.L.C.

The final decision of the Agency is dated 31.05.2012. The Claimants had to submit an objection against it with SC within time limit foreseen by the Article 6 paragraph 2 of the Law on Special Chamber. The claim had to be filed within 120 days starting from 14.06.2012 when the Claimants, by the latest, became aware of the PAK's decision.

Since the Claimants failed to comply with the deadline for filing an opposition against the decision of PAK, the Court decided as to the enacting clause.

Court's costs

The court does not impose court fees to the Appellant, because the Presidium of the Court so far has not issued any written schedule adopted by the Kosovo Judicial Council (Article 57.2 of the Annex of the Law on the Special Chamber) This means that up to now there is no sufficient legal ground to impose the court's costs.

Legal Advice

Against this decision, within 21 days, an Appeal can be submitted to the Appellate Panel of the Special Chamber. The Appeal shall also be served to the other party and submitted to the Trial Panel **by the Appellant**, all within 21 days. The Appellant shall submit to the Appeals Panel a proof that he/she has served the Appeal also to the other party.

The prescribed time limit begins at midnight of the day on which the Appellant has been served with the decision in writing.

The Appellate Panel shall reject the Appeal as inadmissible if the Appellant has failed to file it within the prescribed period.

The other party may file a response with the Appellate panel within 21 days from the date he/she has been served with the appeal, submitting the response also to the appellant and other parties.

The appellant then has 21 days after being served with the response to the appeal, to submit to the Appellate panel and to serve the other party a response. The other party then has 21 days after being served with the appellant's response to submit to the Appellant and to the Appellate panel a counter-response.

Esma Erterzi, Presiding Judge

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