

**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 ODOSE NA  
KOSOVSKU  
POVERENIÇKU  
AGENCIJU**

SCA-08-0065

██████████ Podujevë/Podujevo

Natural Person - represented by ██████████ lawyer in Prishtinë/Priština

*Claimant*

vs.

1. ██████████ Agricultural Combine

Sfeqel village, Podujevë/Podujevo

2. ██████████

Natural person

*Respondents*

**Kosovo Trust Agency - KTA,**

Represented by UNMIK

*Appellant*

The Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters, Sub-Panel composed of Piero Leanza, as Presiding Judge and Laura Plesa, Judge, in accordance with the decision of the Trial Panel on delegation of power pursuant to Section 8.2 of UNMIK Regulation 2008/4 and Section 11.1 - 11.4 of UNMIK AD 2008/6, on 25 June 2010 issues the following:

### JUDGMENT

1. The appeal of the Kosovo Trust Agency (KTA) is grounded.
2. The appealed Judgment of the Municipal Court of Podujevë/Podujevo, nr. 42/06, dated 17 May 2007, is annulled.

#### Procedural and factual background:

On 5 June 2008 the Kosovo Trust Agency filed an appeal against the Judgment of the Municipal Court of Podujevë/Podujevo (C. nr. 42/06), dated 17 May 2007, which

had certified that the Claimant [REDACTED] had acquired the right of ownership over an immovable property, composed by several cadastral parcels, and purchased from the Respondent [REDACTED] Agricultural Combine, through a sale contract concluded in 1997.

KTA in its appeal maintains that the Municipal Court did not have jurisdiction to hear and adjudicate the claim, since the subject matter falls under Section 4.1. (c) of UNMIK Regulation 2003/12 and thus was under Special Chamber's primary jurisdiction. Jurisdiction of the Municipal Court could only have been granted by a referral decision of the Special Chamber, pursuant to Section 4.2. of the above mentioned Regulation. Therefore, since Special Chamber never referred the case, the Municipal Court should have declared itself incompetent, according to Section 4.1 of UNMIK Regulation 2003/13 and article 15 of the Law on contested procedure. KTA, further, expressed its concern that the evidences submitted in the first instance trial in support of his claim were not authentic.

In its response to the appeal, Claimant ask to reject the appeal as ungrounded, since the judgment of the Municipal Court of Podujeva is it is grounded in the merit and it is not contrary to the provisions set by Section 4.1 of UNMIK Regulation 2003/13 and article 15 of the Law on contested procedure. According to the Claimant, the disputed contract is not related to a property under KTA's jurisdiction and it was signed before KTA had acquired its administrative authority. Therefore, the Municipal Court was competent to adjudicate the case.

With Decision dated 31 July 2008 the Special Chamber, considering that the KTA, which is directly or indirectly one of the principal parties in this case, had had its operations suspended, stayed the proceedings in this case.

With Decision on 21 January 2010 the suspension was lifted and with Order on 29 March 2010 the Special Chamber requested the Municipal Court of Podujevë/Podujevo to provide the Court with the complete original file C. nr. 42/06.

**Legal reasoning:**

The Appellant, KTA, was – at the time of the filing of the claim before the Municipal Court of Podujevë/Podujevo - the administrator of Socially Owned Enterprises and socially owned property. On 21 May 2008 the KTA received the Judgment of the Municipal Court of Podujevë/Podujevo. Therefore, KTA correctly filed the appeal with the Special Chamber on 5 June 2008 (within two months, as prescribed by UNMIK AD 2006/17), on behalf and in representation of the interests of [REDACTED] SOE, Podujevë/Podujevo.

The appeal has been filed with the Special Chamber in accordance with Sections 55 and 56 of UNMIK Administrative Direction 2006/17 (now see Sections 58 and 59 of

UNMIK AD 2008/6). The aforementioned Sections were in force at the time when the judgment of the Municipal Court was rendered and the appeal of the Respondent was filed (see on this point, for example, the Decision of Appellate Panel of the Special Chamber ASC-09-0013, dated 14 May 2010).

According to the Section 5.1 (a) (ii) of UNMIK Regulation 2005/18 amending UNMIK Regulation 2002/12 on establishment of Kosovo Trust Agency, the Agency shall have the authority to administer any assets located in the territory of Kosovo (whether organized into an entity or not), which comprised socially-owned property at 22 March 1989 or any subsequent date (whether or not the subject of a Transformation).

In this case, it is not contested that the property which is the object of the claim was registered in the name of SOE [REDACTED]

Section 4.1 (d) of UNMIK Regulation 2003/12 provided that the Special Chamber has primary jurisdiction on: *“claims involving recognition of a right, title or interest in property in the possession or control of an Enterprise or Corporation currently or formerly under the administrative authority of the Agency, where such claims arose during or prior to the time that such Enterprise or Corporation is or was subject to the administrative authority of the Agency”*.

It is not relevant, therefore, the circumstance that the contract was signed by the parties in 1997, before KTA was operative, because what is relevant in the subject matter, is the time when the claim arose, that in this case was in 2006.

Section 4.2 of the above mentioned Regulation reads as follows: *“Notwithstanding section 4.1 the Special Chamber may refer specific claims, categories of claims, or parts thereof, to any court having the required subject matter jurisdiction under applicable law. No court in Kosovo shall exercise jurisdiction over a claim involving the subject matter described in section 4.1 unless such claim has been referred to it in accordance with this section”*.

In the case at hand, the claim was never filed by the Claimant with the Special Chamber and the Special Chamber never referred the case to the Municipal Court of Podujevë/Podujevo.

The Municipal Court of Podujevë/Podujevo, issuing the appealed judgment, violated the rules set by Section 4.1 of UNMIK Regulation 2003/13 and also by Article 15 of the Law on contested procedure, which provides that *“immediately upon receiving receipt of the pleadings, the court shall ex officio assess whether it is competent to judge that particular case, and in which composition”*. Therefore, the Municipal Court should have declined its jurisdiction.

For the above mentioned reasons, it is decided as in the enacting clause of this Decision.

**Legal remedy:**

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

Piero Leanza, EULEX Presiding Judge

Laura Plesa, EULEX Judge

Tobias Lapke, EULEX Registrar