

SCC – 08 – 0091

**Municipality of Pejë/Peć**

Represented by [REDACTED], Pejë/Peć

*Claimant*

vs.

**Kosovo Trust Agency**, represented by UNMIK, TSS, Prishtinë/Priština

*Respondent*

To: Claimant, claimant's representative, UNMIK

The Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (the "Special Chamber"), the Trial Panel, composed of Laura Pleša as Presiding Judge, Anna Bednarek and Sabri Halili Judges, after deliberation held on 24 January 2011, issues the following

### DEFAULT JUDGMENT

**The claim of the Municipality of Pejë/Peć against the Kosovo Trust Agency is dismissed.**

#### Procedural background

On 14 April 2008 the claimant: Municipality of Pejë/Peć filed a claim to the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters against the Kosovo Trust Agency requesting to certify that the claimant is the owner of the cadastral plots with the numbers: 1014, 1076, 1077, 1078, 1127, 4098, 4099, 4100/1, 4100/2, 4420, 4422/11, 4428/3, 4444/3, 4475/8, 4498/3, 4498/64502/1, 4502/2, 4558/2, 4559/3, 4560/2, 4560/4, 4565/1, 4569, 4570/4, 4571/1, 4618/1, 4618/2, 4624/4, 4626/5, all covered by the possession list No 21, cadastral zone in Pejë/Peć, of the total surface of 39.51,54 ha. The claimant explained that it was the owner of the real estate, which was recorded as a socially owned, under the name of the Basic Organization of Associated Labour [REDACTED] (OTHPB [REDACTED]) with its seat in Pejë/Peć. The Municipality explained that the social or public enterprises had the right to use those parcels. One of them was also the Sugar Factory. The claimant underlined that the latter Organization went bankrupted on 15 December 1997 and the bankruptcy procedure was

conducted by the District Commercial Court in Prishtinë/Priština under the case number St. 142/1993. As a result of this procedure, the claimant stated, the Sugar Factory was cancelled from the registry of juridical persons. In the opinion of the Municipality, the respondent cannot administer the property of the non-existing juridical person and cannot be treated as the owner of the property registered before under the name of the former Organization. The claimant stated also that according to Article 206 para 3 of the Law on associated labour (O.G. of the SFRY No 53/76 and No 85/87), if the land is not under the administration of the workers or is not the property of natural persons, that land is to be administered by the Municipalities, in the territory of which the land is situated. That provision is applicable in the present case on the basis of Article 197 of the Law on enterprises (O.G. of the SFRY No 77/88).

At the same time the claimant requested that the preliminary injunction be issued and the Kosovo Trust Agency be banned from privatizing the parcels describe din the claim.

The Municipality attached to the claim:

1. power of attorney granted to lawyer [REDACTED] + translation into English translation;
2. notice to the Agency about the intention of filing a claim dated 1.04.2008 + translation into English;
3. letter from the President of the DCC in Prishtinë/Priština dated 7.09.2007 + translation into English.

On 17 April 2008 the Special Chamber served the claim and the request for preliminary injunction on the respondent. The KTA received the order on the same day.

The Kosovo Trust Agency filed a response to the request for preliminary injunction on 18 April 2008. According to the respondent the claimant failed to provide the facts and reasons that would justify the perception that the Municipality could win the claim. The KTA indicated moreover that the Municipalities did not enjoy “all the elements of the right of ownership over the socially owned property”. It stressed that the rights of the municipalities over the socially owned property were limited to the right of use, even when the municipalities acquired such properties for their own needs. On the basis of the law of that time, the municipalities were the administrative authorities that decided on the reallocation of the right of use over the socially owned property. In the opinion of the KTA the claimant did not submit any evidence that it will suffer an immediate and irreparable injury, loss or damage if the preliminary injunction is not granted. In the event the claimant won, it could claim the adequate compensation. Concluding the KTA requested that the request be denied.

On 22 April 2008 the Special Chamber issued a decision on the basis of which the request for the preliminary injunction was rejected as inadmissible.

The respondent submitted a defence on 16 May 2008. The KTA requested the Special Chamber to dismiss the claim as it has no legal basis. It argued that the Agency has the authority to administer the assets of the Sugar Factory on the basis of Section 5.1 (a) i and ii and Section 6 of UNMIK Regulation 2005/18. It added that in fact, after 1989, as a result of lack of financial investments and also due to security situation in Kosovo, the Sugar Factory

hasn't commenced the production again. The KTA admitted that it had the evidence that in 1993 the Sugar Factory was put into liquidation and that some form of liquidation of the enterprise was carried out. With regard to the actual liquidation, the respondent explained, it had very few documents. Moreover the KTA submitted a copy of the contract signed on 10 August 1999 in Pejë/Pec, on the basis of which the assets of the SOE ██████████ were transferred into NP "██████████" in Pejë/Pec.

On 22 May 2008 the Special Chamber served the defence on the claimant, who received it on 26.05.2008.

On 20 June 2008 the claimant submitted a reply with the attachment constituting the notification about the liquidation of the SOE ██████████.

Due to the fact that the Kosovo Trust Agency suspended its operations, on 31 July 2008, the Special Chamber stayed the proceedings in the present case.

With the decision of the Special Chamber of 4 February 2010 the suspension of the proceedings was lifted.

On the same day the Special Chamber issued an order requesting the claimant to submit a competent translation into English of the reply and of the supporting documents.

On 3 March 2010 the claimant responded to the order and submitted the requested translation and attached the notification to the Municipal Court in Pejë/Pec about the liquidation of the SOE "██████████".

On 2 December 2010 the Special Chamber served the reply and the submission of the claimant dated 8 March 2010 together with supporting documents on the respondent.

The Special Chamber fixed the hearing for 9 December 2010. The claimant's representative was properly served with the summons on 4 November 2010, but did not appear. The respondent was present at the hearing and filed an application for a default judgment.

Legal reasoning:

Section 52.2 of UNMIK AD 2008/6 states: "If a duly summoned claimant fails to appear at a hearing or otherwise abandons the proceedings, the Special Chamber upon application of the respondent may render a default judgment dismissing the claim and ordering the claimant to pay all costs of the proceedings".

Taking into consideration that the claimant duly summoned for the scheduled hearing did not appear before the Court, nor informed the Special Chamber in advance about the circumstances which would make his presence at the hearing impossible, and considering the application of the respondent to render a default judgment, the Special Chamber assessed that the requirements of Section 52.2 quoted above are met.

The Court by inference concluded that the attitude of the party which does not appear at the hearing fixed for the examination of the submitted claim should be understood as the expression of the intention to abandon the proceedings.

Since the provision quoted above indicated that the Special Chamber in such a case renders a default judgment dismissing the claim, it was decided as in the enacting clause of this Judgment.

Costs:

On the basis of Article 12 of Law on Court Fees the claimant is exempted from paying the court fees.

Legal advice:

According to Section 53.1 of UNMIK AD 2008/6 “Any party against whom a default judgment was entered by the Special Chamber may file an application with the Special Chamber to set aside the default judgment”. Such an application pursuant to Section 53.2 must be made within one month of the date of service of the default judgment on the respondent.

Laura Plesa  
Presiding Judge EULEX

Anna Bednarek  
Judge EULEX

Sabri Halili  
Judge

Tobias Lapke  
Registrar EULEX