

DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHITJE 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 ODNOSE NA KOSOVSKU AGENCIJU ZA PRIVATIZACIJU
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20 March 2013

SCC-11-0226

Claimant

1. M.D.D., XX
2. M.D.D., XX

Both represented by lawyer XX, XX

vs.

Respondent

1. Supreme Court of Kosovo, Pristina
2. M.P.M., XX
3. SOE XX, XX

The Specialised Panel composed by Alfred Graf von Keyserlingk, Presiding Judge, Shkelzen Sylaj and Çerim Fazliji, Judges, issues the following

D E C I S I O N

The Claim and Request for Preliminary Injunction are dismissed as inadmissible

Factual and Procedural Background

On 04 December 2006 the Claimants filed a property claim, SCC-06-0498, with the Special Chamber seeking restitution of immovable property, cadastral plot 1536/1, Possession List 4011, which was nationalized for the founding of Agricultural Cooperative Kosova based in Uglar/Ugljare, Fushë Kosovë/Kosovo Polje. On 31 January 2007 the Special Chamber referred the case for adjudication to the Prishtinë/Priština Municipal Court retaining jurisdiction over any appeal against its judgment or decision. On 16 April 2007 the Prishtinë/Priština Municipal Court rendered Judgment P.236/97. On 13 December 2007 on Request for Protection of Legality the Supreme Court, Cml-Gzz.no.36/2007, ruled that the Prishtinë/Priština Municipal Court Judgment of 16 April 2007 is annulled and the case is returned for retrial to the Prishtinë/ Priština Municipal Court. On 22 June 2012 the Prishtinë/Priština Municipal Court File P.3/08 (repeated proceedings of P.236/97) was forwarded to the Special Chamber (Art.4.4 of the SCL) and registered under C-III-12-1095.

On 3 October 2011 the Claimants filed a claim, SCC-11-0226, seeking that the Prishtinë/Priština Municipal Court Judgment P.236/97 of 16 April 2007 is confirmed by the Special Chamber. The Claimants submit that this judgment had not been appealed and therefore it became final on 5 May 2007. The Claimants also request that the Supreme Court Decision Cml-Gzz.no.36/2007 is declared null and void. They argue that the Supreme Court did not

have jurisdiction to review the Municipal Court Judgment P.236/97 because pursuant to the Referral Decision SCC-06-0498 the Special Chamber retained exclusive jurisdiction over any appeal against the decision or judgment of the first instance court.

On 4 March 2013 the Claimants filed a request for Preliminary Injunction against the Respondent 2 and Respondent 3 and for merging case files C-III-12-1095 and C-III-12-1100 (claim for part of the contested parcel) with SCC-11-0226.

Regarding further details of the claim reference is made to the case file of the Special Chamber.

Legal Reasoning

The Claim and the Request for Preliminary Injunction are inadmissible because the Special Chamber has no jurisdiction on this case.

Inadmissibility regarding Respondents 1 and 2:

Art 5.2 Law 04/L-033 on the Special Chamber (SCL) states:

2. Respondents in proceedings before the Special Chamber shall be:

2.1. with respect to a claim described in subparagraph 1.1, 1.2, 1.3, 1.6 or 1.7 of Article 4 of this law: the Agency.

2.2. with respect to a claim described in subparagraph 1.4 or 1.5 of Article 4 of the present law: at the choice of the Agency, the concerned Enterprise/Corporation or the Agency acting on behalf of the concerned Enterprise/ Corporation;

2.3. with respect to a voidance application made or submitted by the Agency and described in subparagraph 1.8 of Article 4 of this law: the person(s) having a material interest in the transaction that is the subject of such application;

2.4. with respect to an enforcement application submitted by the Agency and described in subparagraph 1.9 of Article 4 of this law: the person(s) who are the subject of such application; and

2.5. with respect to any case or issue before it: any person that the Special Chamber or any panel thereof deems necessary or appropriate to name or admit as a Respondent in order to ensure the full and complete adjudication of such case or issue.

Respondents 1 and 2 are not possible Respondents before the Special Chamber and they can also not be admitted according to Art 5.2.5.SCL. This provision applies only when at least one admissible respondent takes part in the procedure. This is not the case because while Respondent 3 is an admissible respondent, the claim against it is inadmissible.

Inadmissibility regarding Respondent 3:

The court finds that the claim initially filed on 4 December 2006, SCC-06-0498, with the Special Chamber, as referred to the Prishtinë/ Priština Municipal Court, is still pending, because it has not been decided with a final court judgment. Pursuant to Article 4.4 of the SCL the case was returned to the Special Chamber by the Prishtinë/ Priština Municipal Court

and is currently pending under the case number C-III-12-1095. Two of the Claimants of the this case had filed the claim at hand requesting from the Special Chamber to confirm the Prishtinë/ Priština Municipal Court Judgment that had been overturned by the Supreme Court upon request for protection of legality. However, since the initial case is still pending and it is filed prior to the case at hand, the latter case had to be dismissed pursuant to Article 262.3 and 262.4 of the Law No.03/L-006 on Contested Procedure, which states:

“262.3 During the existence of lis pendence no new proceedings may be initiated involving the same subject-matter and parties. If such proceedings are nevertheless initiated, the court shall dismiss the claim.

262.4 During the entire course of the proceedings, the court shall consider ex officio whether another proceeding on the same subject-matter and between the same parties is on-going.”

The claim therefore fails to meet the admissibility requirements of Section 28.2 of the SCL and is rejected as inadmissible. Accordingly, also the Request for Preliminary Injunction is inadmissible.

Costs

The court does not impose costs to the Claimant as the Court’s Presidium till now did not issue a written schedule which is approved by the Kosovo Judicial Council (Art.57 Paragraph 2 of the Special Chamber Law). This means that till now there is no sufficient legal basis to impose 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 parties 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 has served the Appeal also to the other parties.

The prescribed time limit begins at midnight of the day, when 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 Respondent may file a response with the Appellate panel within 21 days from the date he was served with the appeal, serving the response also to the appellant and the other parties.

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

Alfred Graf von Keyserlingk, Presiding Judge

[signed]