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 PRIVATISATION AGENCY OF KOSOVO RELATED MATTERS	SPECIJALNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODNOSE NA KOSOVSKU AGENCIJU ZA PRIVATIZACIJU

AC-I-12-0055

In the lawsuit of

Claimants

1. M.J.

2. B.J.

3. T.J.

4. R.J.

5. I.J. all from XX

Represented by M.G, str. XX, Prishtinë/Priština

Vs.

Respondent

XX, Fushë Kosovë/Kosovo Polje

Appellant before the Trial Panel

Kosovo Trust Agency (KTA), represented by UNMIK-u

TSS Compound, Prishtinë/Priština

Appellant before the Appellate Panel

Privatization Agency of Kosovo (PAK)

Str. ”Ilir Konushevci” no 8, Prishtinë/Priština

The Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (SCSC), composed of Mr.sc Sahit Sylejmani, Presiding Judge, Merja Halme-Korhonen, Cornelis Van Der Weide, David Wilcox and Sabri Halili, Judges, on the appeal of the PAK against the decision of the Trial Panel of 27 December 2011, SCA-08-0041, after deliberations held on 30 April 2013, issues the following

DECISION

1. The appeal of the Appellant is rejected as ungrounded.
2. The Decision of the Trial Panel of the SCSC dated 27 December 2011, SCA-08-0041, is upheld.
3. Court fees for the appeals proceedings are not to be imposed.

Procedural and Factual Background

On 20 July 2007, the President of the Municipal Court of Prishtinë/Priština allowed the renewal of the lost case file no.227/98 regarding the litigation between the Claimants and XX from LS, due to the fact that the case file was lost during the war in Kosovo and it was registered with a new number 1738/07 (the claim).

On 24 September 2007, Claimants filed a claim with the Municipal Court of Prishtinë/Priština requesting to certify them (as the inheritors of the late J.J.) as the co-owner of the cadastral parcel 1872/4 in LS and to allow the same be registered in the cadastral records. Claimants did not request the annulment of the sale contract between the late J.J. and the Respondent in relation to cadastral parcel 1872/4 in LS. The Claimants did not offer to return the purchase price to the Respondent. The Claimants asserted that their predecessor was forced to sell the cadastral parcel 1872/04 in LS to the Respondent in 1961 for 169,840 dinars. The Claimants asserted that by concluding this contract is violated Article 3 of the Law on Obligations and Article 4 of Law on Transfer of Immovable Property (Official Gazette of SRS No. 43). The Claimants submitted a partially readable contract which also contains cadastral parcels 567/1 and 258/3 in LS which are not subject of the claim. The Claimants further stated that the Regional Financial Secretariat in Prishtinë/Priština with its Decision no. 03/1894/62 dated 18 June 1962 expropriated cadastral parcel 1872/4 in LS.

On 19 November 2007, the Municipal Court of Prishtinë/Priština approved the claim of the Claimants and annulled the sale contract of immovable property

Vr.no.1804/61 of 28 July 1961 entered between J.J. from LS and the Respondent. The Court obliged the Respondent to hand over the ownership and possession to the Claimants as successors of the late J.J., cadastral parcel no.202/1 with a surface area of 0.54,95 ha, whereas the Claimants were obliged to reimburse the Respondent with the sum of 241,35 Euros. The Court found that the allegations of the Claimants were grounded because the contract was signed under direct pressure of the then regime.

The Judgment bears a legal advice that the appeal can be filed with the District Court of Prishtinë/Priština within 15 days from the service of the Judgment.

The Respondent received the Judgment C.no. 1738/07 on 26 November 2007, but it did not file an appeal.

On 13 March 2008, the KTA filed an appeal with the SCSC against the Judgment C.no. 1738/07 requesting to annul it as the Municipal Court of Prishtinë/Priština had no jurisdiction over the claim, whereas the KTA was not notified as required by Section 29 of the KTA Regulation. Therefore, the KTA in its appeal stated that there were breaches of Section 4.1 of KTA Regulation and of Sections 15 and 16 of LCP. The KTA submitted that the Municipal Court of Prishtinë/Priština in its contested judgment decided on the merits without verifying whether Claimants had notified the Agency.

On 27 December 2011, the Trial Panel of SCSC rejected the appeal of the KTA as inadmissible. The Trial Panel concluded that the appeal is untimely and as such it is inadmissible. The Trial Panel stated that as of 24 September 2007 the KTA was notified about the litigation and the date of the first hearing, however, it did not opt to represent the Respondent SOE. The Trial Panel in the contested decision recognizes that the notification was not done properly as required by Section 29.1 of UNMIK Regulation 2005/18, even though it was not contested the fact that the KTA was aware about the litigation. According to the Trial Panel, the KTA never submitted any document which would have indicated that I. H. was not properly authorized by law to represent the Respondent SOE. According to the Trial Panel, Section 29.3 of UNMIK Regulation 20015/18 only allows but not obliges the KTA to take over the representation of the SOE, if it is a

Respondent. The relation between the Agency and the Respondent SOE is an internal one and it solves the issue of who takes over the representation. It is true that the Agency was not notified properly before the claim was filed with the Municipal Court and the Trial Panel recognized that the Municipal Court did not comply with the above rule, but that does not mean that the KTA should not have investigated, as a prudent party and trustee, about the ongoing cases since the KTA obtained the information on the pending case before the Municipal Court in due time to be able to intervene as the administrator of the SOE. The Trial Panel states that since there is no proof at all that the sued socially owned enterprise was under the direct administration of the KTA there was no reason for the Court to notify KTA about its decision and to serve it directly. According to the Trial Panel this was the duty of the SOE if the internal relation between the Agency and Enterprise deemed it necessary. The Trial Panel in the contested decision asserts that it never examined the merits of the first instance judgment and considered only the procedural aspects while reaching its decision. The Trial Panel concluded that all the time limits for the appeal, even the ones for extraordinary remedies had already elapsed, therefore the appeal could not have been considered other than untimely and as such inadmissible.
The appealed decision of the Trial Panel was served on the KTA on 23 March 2012, and on the Respondent's representative on 22 March 2012. No appeal was filed by the Claimant or the Appellant before the Trial Panel – the KTA within the given time limit.

On 30 May 2012, the Judge in charge on the case SCA-08-0041 issued an order serving the appealed decision SCA-08-0041 on the PAK as well, and the PAK received this decision on 19 June 2012.

On 18 July 2012, the PAK filed an appeal against the decision of the Trial Panel, which was not an Appellant in the proceedings before the Trial Panel. The PAK contests the decision of the Trial Panel due to violations of the provisions of the contested procedure, erroneous and incomplete establishment of the state of facts and erroneous application of the substantive law. Furthermore, it is alleged in the appeal that there violation of Article 182.2 (n) of LCP, as according to the Appellant the enacting clause of the appealed decision is contradictory to the decision itself and to its reasoning, there is no reason at all for decisive facts or

those reasons are unclear and contradictory. The PAK claims that there is also violation of Article 182.1 as read in conjunction with Article 7.1.2.3 of the LCP because the Trial Panel did not verify the facts that the Claimants did not submit and it did not take into consideration the proposals of parties submitted in the proceedings. The Special Chamber examined only the timeliness of the appeal on the contested decision, whereas it did not examine some main facts, the issue of notification of the KTA as legal administrator of the Respondent and the issue of lack of jurisdiction of the Municipal Court to adjudicate the claim. The PAK requested to approve the appeal as grounded, to change the appealed decision of the Trial Panel and to reject the claim as ungrounded.

The Claimant in the response to the appeal of the PAK, in the submission filed with the Special Chamber on 31 July 2012, stated that the KTA was notified about the litigation and the date of the first hearing of the proceedings, therefore the KTA could have filed an appeal in time with the SCSC if it was not satisfied with the judgment or with the legal representation of the SOE. According to the Claimant, the Judgment of the Municipal Court of Prishtinë/Priština C.no. 1738/07, dated 19 November 2007, became final and effective on the date of its adoption. The Trial Panel of SCSC did not examine the merits of the first instance judgment, but it considered only the procedural aspects while reaching its decision, including the timelines of the appeal. The Claimant requested from the Appellate Panel to reject the appeal of the PAK as ungrounded and to uphold the appealed decision of the Trial Panel of SCSC.

On 16 November 2012, the Appellant PAK filed a submission with the SCSC counter-responding to the Claimant's response to the appeal. The Appellant alleges in the submission that the Municipal Court decided without having jurisdiction, this is an already adjudicated matter, two decisions of the same Court are effective at the same time, the appealed decision was rendered by making procedural violations, the legal status of the Agency was not respected and it requests to approve the appeal as grounded, to change the appealed decision of the Trial Panel and to reject the claim as ungrounded.

Legal reasoning

The appeal is admissible but ungrounded. According to Article 64.1 of the Annex to Law No. 04/L-033 of SCSC the Appellate Panel decided to dispense with the oral part of the proceedings.

The admissibility of the appeal and the assessment of the Appellate Panel

The appealed decision of the Trial Panel shall be upheld since it is correct in the conclusion and legal reasoning.

Notification of the Agency

The Section 29.1 of UNMIK Regulation No. 2002/12 dated 13 June 2002, as amended, provides the notification of the Agency of intention to file a claim, which notification is made by the Claimant, pursuant to Section 30.2, within 60 days prior to the filing of the claim with the Court. The notification's aim is to inform the Agency about potential claims and to provide them with the opportunity to take the matter up on behalf of the SOE.

It is not contested the fact that the KTA was notified of the claim filed against the respondent at least as of 24 September 2007, when the first hearing of the proceedings was held, which means almost two months prior to issuance of the judgment by the Municipal Court which remained not appealed by the litigants within the legal time limit. Even though the KTA was notified within the legal time limit, as required by Section 30.2 of UNMIK Regulation 2002/12, that does not justify the KTA's allegation stated in the appeal against the judgment of the Municipal Court that the Agency was not notified properly. Although the Agency was notified at a later procedural stage, prior to deciding on the merits of the claim, the KTA still had the opportunity but it did not decide yet to represent the Respondent and it never contested the fact whether the Respondent's authorized person was the proper and legitimate person to represent the Respondent. The

question of improper and illegitimate representation of the SOE cannot be raised after the judgment becomes final.

Did the KTA put the Respondent SOE under its administrative authority?

The UNMIK Regulation No. 2002/12 of 13 June 2002 gave to the KTA the authority to put under administrative authority and to administer all the SOEs in the territory of Kosovo. This Regulation entered into force on 13 June 2002, and on that day the KTA could not actually put under administration all the SOEs, including the Respondent. The process of putting under administration and taking over responsibilities (including the representation) was, as a matter of course, long and at the same time it is certain that the KTA could not extend the administrative authority over all the SOEs. Therefore, in the case at hand the KTA did not provide any proof to the Court that the KTA had administrative authority over the Respondent SOE at the time the claim was filed and that it was the only legal representative that should have represented it. For this reason the burden of proof falls on the KTA.

The UNMIK Regulation No. 2002/12 provided KTA with the legal basis to put the SOEs under its administrative authority, whereas the KTA should have completed the operative procedures to realize the vested authority towards the SOEs, which in this case it is not known when the KTA started taking over the legal responsibilities over the Respondent SOE (including the representation). Given that the KTA had never contested the representation by the Respondent's authorized person in the proceedings before the Municipal Court, it cannot claim anymore, at this late procedural stage, that the representation was not a proper one.

Service of the Judgment of Municipal Court

Since the parties in the proceedings before the Municipal Court of Prishtinë/Priština were only the Claimant and the Respondent, whereas the KTA

did not choose to be included in the proceedings and represent the Respondent, the Municipal Court carried out its legal duty when it served the contested judgment only on the parties included in the proceedings. The service of the contested judgment to the Respondent is an uncontested fact. The Respondent did not choose to file an appeal within the legal time limit and it never filed an appeal at a later stage.

The KTA, as it alleges, was notified about the contested judgment of the Municipal Court only on 11 January 2008 according to the letter of the President of the Municipal Court of Prishtinë/Priština, wherein he requested to allow the registration of the property based on the said judgment. This letter of the President of the Municipal Court of Prishtinë/Priština sent to the KTA is not and cannot be interpreted as a letter through which the Court, at that time, was serving the judgment to a party that was not included in the proceedings, because the legal nature of the letter is a request to allow the registration of the property and not to serve the judgment which sets the new legal time limit for filing an appeal. From this consideration of facts, the Appellate Panel does not consider the date 11 January 2008 as the date for service of judgment from which the time limit starts running for filing an appeal accordingly, because even though it was notified about the claim the KTA was not included in the proceedings before the Municipal Court.

Untimeliness of the appeal of the KTA

From the above reasons, the Appellate Panel concludes that the KTA did not file a timely appeal, and as such it had to be dismissed as inadmissible. The Appellate Panel considers as correct the reasoning of the Trial Panel provided in the decision. The principal of legal certainty of the parties is of the most fundamental principles of any procedural law. Parties should be certain that the final decisions cannot be contested by any party after the legal time limit to contest it expired. The Appellate Panel agrees with the conclusion of the Trial Panel that the judgment of the Municipal Court was not examined in the merits, and that it did not take a legal stance on whether the judgment of the Municipal

Court was rendered without having jurisdiction. The procedural flaws of the appeal of the Appellant KTA prevented the Trial Panel to go further on examination of the merits of the Judgment of Municipal Court because if the procedural respect of the claim is not in line with the law there is no legal possibility to examine its merits, and to conclude accordingly whether the appealed judgment of the Municipal Court was grounded or not.

From the abovementioned reasons, the Appellate Panel assesses that the appeal of the PAK, as successor of the former KTA, filed to the Appellate Panel in the appeals proceeding could not be approved as grounded because the appealed judgment of the Trial Panel is based on the correct legal reasoning.

Therefore, based on Article 10, paragraph 10, of the LSC it is decided as in the enacting clause.

Costs/Court fees:

The court does not assign costs to the Appellant as the court's presidium till now did not issue a written schedule which is approved by the Kosovo Judicial Council (Article 57 paragraph 2 of the Annex of the Law on the Special Chamber). This means that till now there is no sufficient legal base to impose costs.

Decided by the Appellate Panel of SCSC on 30 April 2013.

Mr.sc. Sahit Sylejmani, Presiding Judge _____

ORDER TO THE REGISTRY:

Please serve this decision on:

- Appellant (including the English translation of the decision)
- Claimants and Respondent
- Presiding Judge of the Trial Panel in the case number SCA-08-0041.

Mr. sc Sahit Sylejmani
Presiding Judge