

DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENSINË 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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Decision of 4 December 2014 – AC-II.-14-0015

Factual and Procedural Background:[1] On 25 March 2008 the Claimant filed a claim with the Municipal Court of P., claiming from the Respondent recognition of the ownership right over the cadastral parcel no. ..., registered with the possession list no. ..., CZ – P., at the place called “V. A.”.

[2] On 11 September 2009, the Municipal Court in P. rendered Judgment C.nr. ... whereby the claim of the Claimant was granted, with reasoning that the Claimant acquired this right by adverse possession, because the Claimant is in possession of this property with no interference since 1972. This Decision was rendered by the Court upon examination of numerous proofs which were not contested by anyone.

[3] On 04 May 2009, the Respondent filed an Appeal with the District Court in P. through the Municipal Court of P.

[4] On 11 September 2009, the District Court in P., issued Judgment Ac. no. ..., whereby has rejected the aforementioned Appeal as ungrounded. Pursuant to the reasoning of this Judgment, no breach of provisions of the contested procedure was ascertained, as alleged by the Appellant.

[5] On 06 October 2009, on the Respondent ..., was served the Judgment of the District Court in P.

[6] On 20 October 2009, the PAK as administrator of the SOE, filed an appeal with the SCSC, claiming annulment of the Judgments of regular courts, because they were rendered by incompetent bodies.

[7] In the Appeal it is stated that with their Decision the Municipal Court and District Court in P. decided in [correct: despite] the lack of jurisdiction and as a consequence have breached Art 17, 18, 19 and Art 182.2, point (f) of the LCP, as well as provisions of Sec 4 of UNMIK Reg 2008/4. These courts were obliged *ex officio* to announce themselves incompetent to adjudicate this matter.

[8] On 19 November 2009, the Presiding Judge of the SCSC Trial Panel issued an order to request from the Municipal Court in P. case file C. no. ... and on 3 December 2009, the Municipal Court in P. submitted the case file C. no. ... to the SCSC.

[9] On 5 March 2010, the Claimant submitted the response against the appeal considering it as ungrounded.

[10] The Specialized Panel, upon examination of the documents, provisions of the LSC and the Decisions of the SCSC Presidium for this particular case rendered to close the case file and refer the case to the Appellate Panel by giving a new number to the case.

[11] On 6 August 2014, the Appellate Panel served the PAK's Appeal on the Claimant for response. The Claimant responded to the Order [serving the Appeal] on 26 August, and stated that the PAK's Appeal is based only on paraphrasing but not on legal grounds. According to the Claimant, the PAK was part of the Court hearings together with the Respondent and have [correct: it has] used all legal challenging remedies permitted by law. However, it has failed to exercise extraordinary legal remedies within the legal timeframe. As a consequence, according to the Claimant, the Judgment is now in force and due to legal security matter [correct: legal certainty], this Judgment cannot be quashed, because the SCSC has this kind of approach, by paraphrasing Decision SCA-10-0036. The Claimant notifies the Court once more that his family uninterruptedly used the property since 1971, which is subject to this matter, on which their family house was constructed. The Claimant states that registration of the property in the name of the SOE does not itself determine the ownership.

[12] The Claimant has attached to this response some photos of the house and fence of the house, which is an old house, as well as statement of *R K* who testifies that his father has purchased this property from *N (I) M*, who later on has sold it to *H (S) K*. A copy of a contract drafted in the Serbian language to confirm the statement of the witness is also attached.

[13] On 6 August 2014, the Appellate Panel submitted an Order also to the PAK, whereby it is requested confirmation of the date when the PAK was called to take part in the court hearing summoned by the Municipal Court in P. and when it has received the objected judgment of the District Court in P.

[14] The PAK on 20 August 2014 submitted a response, stating that the PAK and the Respondent in the proceeding with the Municipal Court of P. has never been duly summoned. In addition, pursuant to legal provisions applicable at the time when the decision was rendered, no regular court had an authority (jurisdiction) to decide related to disputes on socially-owned properties, without having the case preliminarily referred by the SCSC.

[15] Concerning the request of the Appellate Panel on the time when the PAK received the objected Judgment, the answer is as follows: "...the judgment bears the receipt stamp of 09 October 2009, but this is unimportant because the PAK's Response of 20 October 2009, is related to jurisdiction of the courts who decided for the case", and suggests the SCSC to apply Art 4.5.1 of LSC.

Legal Reasoning:[16] The Appeal is inadmissible.

[17] Pursuant to Art 64.1 of Annex, the Appellate Panel decided to dispense with the oral part of the procedure.

[18] The PAK's "Appeal" to set aside the final judgment is inadmissible because the appeal was filed against a final judgment before the regular courts. Pursuant to applicable law, the final judgments may be challenged by extraordinary legal remedies only. In the case at hand, the PAK's Appeal cannot be interpreted according to its content as any extraordinary legal remedy as it does not contain the necessary elements required for such challenging remedy. It may not be considered as a request for protection of legality because such request shall only be filed by the State Prosecutor (Art 245 of LCP). It cannot be considered as a request for re-opening of the proceedings because of lack of any ground set out in Art 232 of LCP. Finally the submission of the PAK cannot be considered as a revision with any chance to success, because the grounds set in the Art 214.4 of LCP are not given. It is due to the fact that the Respondent neither raised the question of missing jurisdiction in his appeal to the District court of P. nor is the jurisdiction a legal question which is examined ex officio by the court of second instance (see the Art 194 [of the LCP] where the jurisdiction according to the Art 182.2, point(f) [of the LCP] is not mentioned).

[19] Therefore in line with Art 10.10 of LSC, it is decided as in the enacting clause of this Decision.