

<p>DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENCINË KOSOVARE TË MIRËBESIMIT</p>	<p>SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON KOSOVO TRUST AGENCY RELATED MATTERS</p>	<p>POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODNOSI NA KOSOVSKU POVERENIÇKU AGENCIJU</p>
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**ASC-09-0020**

In the lawsuit of

1. [REDACTED]

2. [REDACTED]

Both [REDACTED], Prishtinë/Priština,

Represented by attorney-at-law [REDACTED]

[REDACTED], Prishtinë/Priština

Claimants

Vs

**Privatisation Agency of Kosovo**

8 Ilir Konushevci Street, Prishtinë/Priština

Respondent/Appellant

The Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (SCSC) composed of Richard Winkelhofer, President of the SCSC, as Presiding Judge, Torsten Frank Koschinka and Eija-Liisa Helin, Judges, on the appeal of the Respondent/Appellant against the decision of the SCSC of 15 May 2009, SCC-09-0056, after deliberations held on 20 April 2010, delivers the following

### **DECISION**

**The appeal is rejected as ungrounded. The decision of the Trial Panel (SCC-09-0056) dating 15 May 2009 is upheld.**

Factual and procedural background:

On 22 April 2009, the Claimants filed a claim at the SCSC seeking the right to use a part of cadastral parcel [REDACTED], registered in the Possession List UL-[REDACTED], location "[REDACTED]", Cadastral Zone of Prishtinë/Priština, for

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access to their (adjacent) residential property. The Claimants also requested the SCSC to enjoin the Privatization Agency of Kosovo (PAK) from privatising the fore mentioned parcel advertised as property of the NewCo ██████████ ██████████ LLC at the 34<sup>th</sup> privatisation wave. On 15 May 2009, the Trial Panel of the SCSC granted the preliminary injunction enjoining the Respondent from carrying on any procedure, of whatsoever nature, related to the privatization of the NewCo ██████████ ██████████ LLC until the final judgment in the case SCC-09-0056. Additionally, the Claimants were obliged to file within 3 (three) days from the service of the decision a bank undertaking in the amount of 500,-- Euros to indemnify the PAK for any damages should the claim not be substantiated. After the service of the decision the Claimants filed within the deadline the bank guarantee with the SCSC.

On 10 June 2009, the Respondent (hereinafter the Appellant) filed an appeal requesting the Appellate Panel of the SCSC to overturn the decision granting the preliminary injunction. The Appellant maintained that the decision was based on wrong certification of the factual situation and wrong implementation of the material law.

By order of 8 February 2010, the appeal and supporting documents were served on the Claimants for response to the appeal within 30 (thirty) days from acknowledgment of its service.

On 8 March 2010, the Claimants filed a response to the appeal requesting the Appellate Panel of the SCSC to reject the appeal as ungrounded. The Claimants maintained that the decision granting the preliminary injunction is grounded because it is a guarantee for their rights to use their residential property. The Claimants maintained that the Appellant had previously denied their access to their property and never offered them a confirmation in writing of their rights. If the Appellant be allowed to carry on with the privatisation of the NewCo ██████████ ██████████ LLC they would be deprived from their property rights.

By SCSC order of 19 March 2010 the response to the appeal was served on the Appellant and the parties were informed of Sections 62.1 and 62.3 of UNMIK

### III

AD 2008/6. No request has been filed with the SCSC by the parties in terms of the fore mentioned provisions.

#### Legal reasoning:

The appeal is admissible, but ungrounded. Based on Section 63.2 of UNMIK AD 2008/6 the Appellate Panel decided to dispense with the oral part of the proceedings.

Section 55.1 of UNMIK AD 2008/6 stipulates that upon application by a party, the SCSC may issue a preliminary injunction, provided that the applicant gives credible evidence that immediate and irreparable injury, loss or damage will result to the party if no preliminary injunction is granted. The request for a preliminary injunction is to be submitted together with the claim or if submitted subsequent to a claim that has been filed, shall refer to that claim.

In the case at hand the requirements of Section 55 of UNMIK AD 2008/6 are met. Correctly the Trial Panel has taken into consideration that the Claimants would suffer immediate harm since the Privatization Agency of Kosovo had already advertised the property for privatisation and that such harm would be irreparable since the Claimants might lose their rights to access their residential property if the privatisation would be ongoing. The Appellant has not presented facts or evidence that any property rights of the Claimants would be guaranteed should the preliminary injunction be revoked. In fact, the Appellant stated that the potential investors would be "informed" of such rights. Therefore, the preliminary injunction shall remain effective until final determination of the claim.

In analogy to Article 12 paragraph 1 of the Law on Court Fees (Official Gazette of the Socialist Autonomous Province of Kosovo, 03 October 1987) the Appellant is exempt from court fees. Thus, a decision on court fees was not to be taken.

Richard Winkelhofer, EULEX Presiding Judge                      \_\_\_signature\_\_\_\_\_

Torsten Frank Koschinka, EULEX Judge                              \_\_\_signature\_\_\_\_\_

Eija-Liisa Helin, EULEX Judge

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Tobias Lapke, EULEX Registrar

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