



REPUBLIKA E KOSOVËS / REPUBLIKA KOSOVA / REPUBLIC OF KOSOVO

DHOMA E POSAÇME E GJYKATËS SUPREME / SPECIJALNA KOMORA VRHOVNOG SUDA / SPECIAL CHAMBER OF THE SUPREME COURT

Bruga Hazim Gafuri 31, 10000 Prishtinë, Kosovo / Ulica Hazim Gafuri 31, 10000 Prishtina, Kosovo



VËRTETIMI MBI DORËZIMIN E DOKUMENTIT

Duke u bazuar në Ligjin nr. 04/L-033 për Dhomën e Posaçme të Gjykatës Supreme të Kosovës për çështjet në lidhje me Agjencinë Kosovare të Privatizimit, pala e nënshkruar më poshtë vërteton pranimin e dokumentit:

POTVRDA O DOSTAVI DOKUMENTA

Na osnovu Zakona br. 04/L-033 o Specijalnoj komori Vrhovnog suda Kosova za pitanja koja se odnose na Kosovsku agenciju za privatizaciju, dole potpisana stranka potvrđuje dostavu dokumenta navedenog dole:

ACKNOWLEDGEMENT OF RECEIPT OF A DOCUMENT

Pursuant to Law no 04/L-033 on Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo-Related Matters, the below signed party acknowledges receipt of the document described below:

Numëri i lëndës: Broj predmeta: Case Number:

**C-V.-15-0002**

Data e regjistrimit: Datum registrovanja: Date registered:

**23/02/2014**

Paditës  
Tužilac  
Claimant

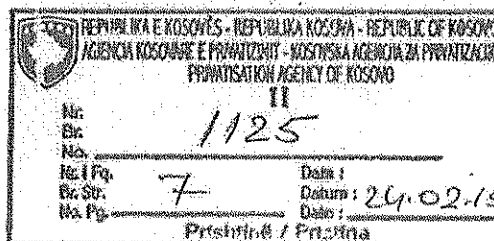
I paditur  
Tuženi  
Respondent

Përfaqësues  
Punomočnik  
Representative

Përfaqësues  
Punomočnik  
Representative

*ENG*

#	Titulli i Dokumentit:	Naziv dokumenta:	Document Name:	Datë Datum Dated
1	Aktvendim nga Dhoma	Rešenje komore	Decision of the Chamber	23/02/2015



Pala: Stranka: Party: **1. Agjencia Kosovare e Privatizimit**  
Authority • Privatization • Ilir Koriushevcí 8, Prishtinë

Pranuar nga: Primio: Received by: \_\_\_\_\_

Titulli: Zvanje: Title: \_\_\_\_\_

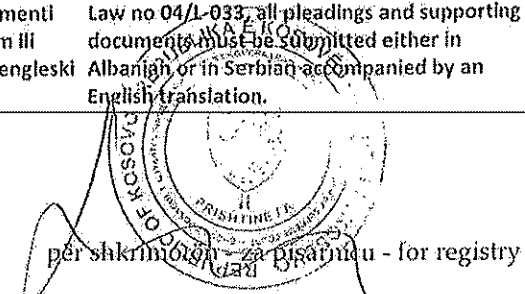
Data: Datum: Date: 24 FEB 2015

Nënshkrimi Potpis: Signature: \_\_\_\_\_

Në bazë të nenit 25.8 të Shtojcës së Ligjit nr. 04/L-033, të gjitha parashtrësit dhe dokumentet mbështetëse duhet të paraqiten ose në gjuhën shqipe ose në gjuhën serbe dhe të shoqërohen edhe me përkthimin në gjuhën angleze.

Na osnovu člana 25.8 Dodatka Zakona br. 04/L-033, svi podnesci i prateći dokumenti moraju da budu podneseni na albanskom ili srpskom jeziku zajedno s prevodom na engleski jezik.

Pursuant to Section 25.8 of the Annex of the Law no 04/L-033, all pleadings and supporting documents must be submitted either in Albanian or in Serbian accompanied by an English translation.



VK C-V.-

DHOMA E POSAÇME E  
GJYKATËS SUPREME TË  
KOSOVËS PËR ÇËSHITJE 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

C-V-15-0002

*Applicant*

Privatization Agency of Kosovo (PAK), acting in capacity of administrator to the Social Owned Enterprises "Trepça" under administration of PAK

Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters, Specialized Panel, composed by judges Hysen Gashi, presiding judge, Vladimir Kanev, EULEX judge and Teuta Ibrahim, judge, after the deliberation held on 23 February 2015 issues the following:

#### DECISION

1. PAK request filed in the capacity of "Trepça Enterprises Under Reorganization" Administrator for extension of the legal dead-line to submit Reorganization Plan is fully granted. The new dead-line is 1<sup>st</sup> of November 2016.
2. PAK is advised to immediately notify Kosovo Assembly for the need to appoint members of Agency's Board of Directors.
3. PAK is advised to immediately notify competent Kosovo authority for the need of financial means to employ Professional Service Provider in Trepça reorganization procedure.
4. PAK is advised to file at the Special Chamber reports on the course of Reorganization every three months.
5. PAK is advised to announce this decision on its official web-site.

#### Factual and procedural background

Upon entry into force of the New Law No. 05/L-08 on Amendment and Supplement of the Law on Reorganization of Certain Entities and Their Assets No. 04/L-0035 (hereinafter Law on Reorganization), based on Article 2 of this law and acting in compliance with Art. 7.1 of this Law, the Privatization Agency of Kosovo (hereinafter PAK) in capacity of the Administrator of SOE "Trepça" in conjunction with article 2 of the Law No. 05/L-08, and articles 42.1, 42.2, 42.3, 42.4 and 42.5 of the Law on Reorganization the PAK on 30 January 2015 submitted with the

Special Chamber a request asking the Special Chamber to extend the deadline for submission of the reorganization plan for SOE "Trepca". The request is for granting maximum extension of 36 months – that means until 1<sup>st</sup> of November 2016.

The request/proposal on extension of the deadline for submission of the proposed reorganization plan as per the Administrator is grounded, because is based on general interest of the "Trepca" Enterprise and in compliance with the mandate of the Administrator to preserve and enhance the value of the Enterprise.

Through this request the Administrator also informed the court that the Board of Directors of PAK is not completed with all members as foreseen by PAK Law and at the moment the Board of Directors of PAK has only three members whose mandate is until 20 February 2015.

Furthermore, the requester has drawn attention to Article 15.2.10 of PAK Law that foresees the exclusive authority of the Board of Directors with regard to the approval of plans for reorganization or restructuring of an Enterprise. Therefore, due to incomplete composition of the PAK Board of Directors the capability of the Administrator (Agency) to carry out their duties as defined under the PAK Law are heavily limited.

In addition PAK underlines that the Agency needs Professional Service Provider to assess Enterprises' assets and claimant's claims but has no financial means to employ a Provider

Having in consideration all abovementioned, based on the Law No. 05/L-08 on Amendment and Supplement of the Law on Reorganization of Certain Entities and Their Assets, and based on Article 10.10 and Article 11 of the Law on Special Chamber, the Administrator proposes to the Specialized Panel of the Special Chamber to render a decision by which is approved the PAK request as following:

The request of the PAK (Administrator) for extension of the deadline for submission of SOE "Trepca" Reorganization Plan, until a maximum deadline as determined under article 2 of the Law No. 05/L-08 on Amendment and Supplement of the Law on Reorganization of Certain Entities and Their Assets is approved and

The agency is obliged to make the publication of this decision in the PAK official webpage, in local written media and in region in compliance with article 43 of the Law on Reorganization.

#### **Legal Reasoning**

The court finds that little has been done in Trepca Enterprises Reorganization ever since Privatization Agency assumed capacity of the Administrator in 2011. The only completed procedure is collection and cursory-check of claims and execution of complete list of Enterprises' assets is under construction. Initial Creditors' Meeting has not been held and no Creditor's' Committee appointed. In 2014 the tender for choosing Professional Service Provider was canceled. Therefore even the basic data and resources for preparation of the Reorganization Plan are not in place.

In fact- many lateral factors contributed to the present state of affairs – ranging from outside influence over the Agency (see case C-V-13-0011) to lack of manpower and insufficient funding. Currently Privatization Agency has no Board of Directors as all the mandates expire without any clearance when new appointments will take place. Agency is still to find funds and organize a tender to employ Professional Service Provider.

In these circumstances the court finds it appropriate to extend the dead-line for submission of the reorganization Plan until for the maximum period available. Since announcement of the Claims dead-line notice was published on 01<sup>st</sup> of November 2013, thirty-six months expire on 1<sup>st</sup> of November 2016. In order for the court to keep control over proceedings Agency shall file reports on the current state of affairs every three months.

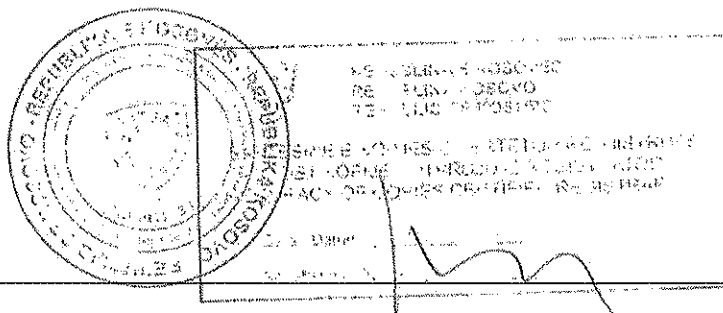
Legal remedy

Against this decision may be filed a written complaint to the Appeal Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters within twenty one (21) days from the receipt day of this decision, pursuant to the article 10.6 of the Law on Special Chamber.

Hysen Gashi, presiding judge, \_\_\_\_\_

Vladimir Kanev, EULEX judge, \_\_\_\_\_

Teuta Ibrahim, judge, \_\_\_\_\_



### Dissenting opinion of a Panel member in case C-V-15-0002

I disagree with the majority in respect to granting full 18 months extension available in the current circumstances. I agree that little has been done in Trepcha Enterprises reorganization and there is no any clearance for the future commitments. However, in my view this situation is not a grounds to grant the maximum extension. Having in mind that "Trepcha Enterprises" are under Moratorium since 2006 and that the original legal dead-line for the submission of official Reorganization Plan was 9 months, any further extension of the dead- line should be considered with utmost caution and granted only against clear-cut plan for execution of respective duties. No such a plan exists and Agency provides no guidelines for the future.

Indeed Privatization Agency at present is blocked by expiry of mandates of all members of the Board of Directors and lack of financial means to launch tender for employing of Professional Service Provider. It is also true, that this problems are due to other institutions – Kosovo Assembly has not appointed Board members and financial authorities has not provided financing for the needs. These institutions are beyond the scope of Reorganization procedure and competence of Special Chamber. Nevertheless their acts and omissions shall be taken into account when they directly affect the ability of Kosovo Privatization Agency to perform reorganization duties for "Trepcha Enterprises". This Agency shall be fully staffed and supported in the course of their duties.

In my view the most appropriate court decision in the situation was to suspend the dead-line for submission of Reorganization Plan until the new Board of Directors of PAK becomes effective. Thus, the time that would eventually pass from the announcement of the decision until the Board gets composed will not be counted within the 36 months period set forth in Art. 2 of the Law 05/L-008 on amending and supplementing the Law No 04/L-035. Therefore, the dead-line will only start counting again when Agency has full administrative capacity. Such approach is legally available under Art. 42.3 of the Law No 04/L-035 which provides the court with maximum flexibility in support of Privatization Agency and Reorganization procedure. Similar procedure is also available under Art. 8.4 of the Law 04/L-035 on the reorganization of certain enterprises and their assets. Indeed, this provision is dedicated to the situation when a person in charge with reorganization is removed from duties by the court. But the basic issue is the same – lack of essential staff members, therefore application by analogy is admissible.

Alternatively, the court could have extended to dead-line with couple of months, just enough for appointment of PAK Board members and launching a new tender for Professional Service Provider.

The dead-line extension is an important tool for the court to control the course of proceedings in the Reorganization and granting the full extension in the above explained circumstances may



not contribute to the timely execution of the process. Three-monthly reports could only partially provide substantive control.

And finally – a condition to be taken into account is that in the lack of Creditors' Committee, creditors could not have their say in regard to the extension granted. Granting shorter extension will not negatively affect Agency, because Agency can file unlimited number of extension requests within the 36 month period. But the 18 months period granted by the decision without clear plans for the future commitments can affect creditors who have been waiting since 2006 to have their claim considered.