



VËRTETIMI MBI DORËZIMIN E DOKUMENTIT

POTVRDA O DOSTAVI DOKUMENTA

ACKNOWLEDGEMENT OF RECEIPT OF A DOCUMENT

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:

Në 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:

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:

Ndërmarrja: Preduzeće: Enterprise:

Numëri i lëndës: Broj predmeta: Case Number:

Data e regjistrimit: Datum registrovanja: Date registered:

1. Trepça

AC-I.-12-0131

12/02/2013

Socially Owned Enterprise • Mining and Metallurgy-Chemical Combine

Paditës
Tužilac
Claimant

Përfaqësues
Punomočnik
Representative

I paditur
Tuženi
Respondent

Përfaqësues
Punomočnik
Representative

#	Titulli i Dokumentit:	Naziv dokumenta:	Document Name:	Datë Datum Dated
1	Aktvendim nga Dhoma	Rešenje komore	Decision of the Chamber	07/02/2013

1036
4726/2006
13 13.02.13

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

Pranuar nga: Primio: Received by: _____

Titulli: Zvanje: Title: _____

Data: Datum: Date: _____

Nënshkrimi Potpis: Signature: _____

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

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.



[Signature]
për shkrimorën - za pisarnicu - for registry

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

POSEBNA KOMORA
VRHOVNOG SUDA KOSOVA ZA
PITANJA KOJA SE ODOSE NA
KOSOVSKU AGENCIJU ZA
PRIVATIZACIJU

AC-I-12-0131

In the lawsuit of

Privatization Agency of Kosovo – PAK

Appellant

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, as Presiding Judge, Merja Halme-Korhonen, Alfred Keyserlingk, Sabri Halili and Esmâ Erterzi, Judges, on the appeal of the PAK against the Decision of the Specialized Panel on 08 November 2012, C-V-12-0003, after deliberation held on 7 February 2013 delivers the following:

DECISION

1. The appeal of the PAK is grounded.
2. The decision of the Specialized Panel dated 08 November 2012, C-V-12-0003, is annulled.
3. The extension of the deadline for "the publication of the Claims Deadline Notice" is approved till 1 November 2013.
4. Court fees are not to be imposed for the appeals proceedings.

Factual and procedural background

On 19 October 2012, the Appellant submitted a request to the SCSC for the extension of "the deadline for the publication of the Claims Deadline Notice". According to the reasoning of this request, on 9 March 2006 the SCSC issued the Moratorium Decision

(SCR-05-001) on Reorganization of a Socially-owned Enterprise "Trepça" in accordance with the provisions of UNMIK Regulation 2005/48. The decision was made upon the request of former KTA. The Agency published the decision, pursuant to the law, in national and international media in Albanian, Serbian and English language.

The PAK provided other arguments with regard to this request: a) that the extension of such deadline was to be approved by the court and it is in the general interest of the enterprise and in accordance with the legal mandate of the PAK, to maintain and increase the value and success of the enterprise.

b) after publication of the Moratorium Notice, the mandate of the Agency's Board of Directors expired and the PAK is currently operating in absence of the main decision-making body.

For this specific, and other reasons, the PAK requests the approval of the request for extension of the deadline for the publication of the Claims Deadline Notice, proposing the date 1 November 2013 as the expiration date of the extended deadline.. Until that time, the PAK foresees the establishment and functionalization of the PAK's Board of Directors, as an executive decision-making body and that afterwards the PAK will be able to act in protection of interests of the enterprise's owners and creditors and will accomplish the requirements set forth in Article 21 and 22 of the Law on Reorganization.

On 08 November 2012, the Specialized Panel of SCSC issued the decision C-V-12-0003 dismissing the request of the PAK for extension of the deadline for publication of "The deadline on submitting the requests" as inadmissible.

In the reasoning of the Specialized Panel it is stated that according to the Article 17, paragraph 1, of the Law on the Reorganization of Certain Enterprises it is stated that "No later than three hundred and sixty (360) days after the first publication of the notice of moratorium in the manner specified by the provisions of the notifications, the administrator will publish another notice called "Notification on the Claims deadline".

According to the Specialized Panel, since the first publication of the notification was made on 08 November 2011, until the day of delivery the deadline of 360 days has not passed, which means that the PAK had made an early request. The Specialized Panel

considered that this request is an imperceptible request, that the PAK has already published the notification for which it requested the extension of deadline and that there is no legal interest for the court to deal with this issue as there is no subject to review.

On 31 November 2012, the PAK filed an appeal with the SCSC objecting entirely the appealed Decision, because according to it, the legal provisions were wrongly applied and the factual situation was incompletely and erroneously verified.

The PAK requests to approve the appeal as grounded, to annul the appealed decision and to approve the request for extension of the said deadline, because the request is made within the legal deadline and conditions.

Legal reasoning

The appeal is admissible and grounded.

Based on Article 64.1 of the Annex of the Law No.04/033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Matters (hereinafter: the Annex), 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 PAK states in its appeal that the Appellate Panel has wrongly applied the substantive law with regard to the publication of the " Claims Deadline Notice " on 1 November 2012 by the Agency. Pursuant to Article 42.1 of the Law on the Reorganization of Certain Enterprises and their Assets (Law on the Reorganization) it is foreseen that *"At any time during the reorganization procedure the Administrator or any Qualifying Creditor may submit a written request to the Court seeking direction concerning an issue on compliance with this law or interpretation of the Confirmed Reorganization Plan."* According to the PAK, this provision allows the Court to take into consideration the admissibility, the need and/or the adequacy of the proposed manner of action during adjudication.

Meanwhile, according to Article 42.4 *"The Court may extend any of the time limits established by a provision of this law, except to the extent that the concerned provision*

imposes a specific restriction on the Court's authority to extend the concerned time limit." This provision, according to the PAK, should be interpreted in conjunction with Article 42 paragraph 3 of this law, which allows the Court at any time during the reorganization process, if evaluated as reasonable, necessary or appropriate to extend each deadline foreseen by the Law on the Reorganization.

Meanwhile, Article 17, paragraph 1, of this Law obliges PAK to publish the "Claims Deadline Notice" no later than 360 days after the Moratorium Decision is first published. The Agency made the publication in accordance with this requirement, the PAK considers and states that the publication of the notice is not in contrary to the request of PAK for extension of that deadline, it is just pursuant to the legal requirement.

After analysing the allegations raised in the appeal and the challenged decision, the Appellate Panel established that the appeal is admissible and grounded and that the appealed decision should be annulled, because it is not correct in the result and in the legal reasoning.

The reasoning of the Specialized Panel that *"the PAK's request is imperceptible and there is nothing to be considered"*, has no legal support, because the Article 42.4 states that *"The Court may extend any of the time limits established by a provision of this law, except to the extent that the concerned provision imposes a specific restriction on the Court's authority to extend the concerned time limit"* and this is connected to the provision of Article 42.3 of the Law on the Reorganization which reads that *"The Court may issue any order, process, or judgment that is reasonable and necessary or appropriate to carry out the provisions of this law or to further the Reorganization or liquidation of an Enterprise."* Given that this Socially- owned Enterprise is in a delicate stage and the detailed reorganization and registration of assets is not completed yet, the court should have taken into consideration if the enterprise, in such situation, would be able to accomplish the creditors' requests in a creative, qualitative and complete manner. The challenged decision should therefore be annulled.

With regard to the solution the law provides on this issue, the Court had no reason to dismiss the request of PAK as inadmissible, because the PAK made the notification before the legal foreseen deadline expired, in order not to miss the deadline within

which the law requires this notification to be made. Also according to the law, the PAK filed a request to the Court to officially allow the extension of the deadline. Thus, at the time this request was being examined by the court, the deadline of 360 days was already reached; therefore there was no "imperceptible request", as the Specialized Panel unjustly established .

Therefore, the decision of the Specialized Panel dated 08 November 2012, C-V-12-0003, is annulled and pursuant to Article 42, paragraph 4, as read in conjunction with paragraph 3 of the Law on the Reorganization of Certain Enterprises and their Assets, the PAK is allowed the extension of the deadline for "The Deadline on submitting requests" for 12-month period, as requested, respectively until 1 November 2013.

The appellate panel requests from the PAK to undertake the following steps within the most reasonable time limit:

- a) In accordance with provisions of Article 43 of the Law on the Reorganization to publish a formal notice on this extension.
- b) To send the notice to each individual creditor who already submitted his/her request, or to those who will submit the requests during the current deadline for submitting complaints, informing them on this extension.
- c) To include in the notice the wording that "to all the creditors who submitted their requests earlier, such requests shall be considered as timely, and they may supplement their previous requests."

For the above reasons, and pursuant to article 10.10 of the Law No. 04/L-033 on Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, it is decided as in the enacting clause of this Decision.

Costs/Court fees:

The court has not set court fees to the Appellant because the Presidium of the Court so far has not issued any written tariff plan adopted by the Kosovo Judicial Council (Article 57, paragraph 2 of the LSCSC). This means that up to now there is no sufficient legal basis to impose the costs.

Decided by the Appellate Panel of SCSC on 7 February, 2013:

Mr.sc.Sahit Sylejmani, Presiding Judge

