



REPUBLIKA E KOSOVËS / REPUBLIKA KOSOVA / REPUBLIC OF KOSOVO

DHOMA E POSAÇME E GJYKATËS SUPREME / SPECIALNA KOMORA VRHOVNOG SUDA / SPECIAL CHAMBER OF THE SUPREME COURT
 Rruga Nazim Gafurri 31, 10000 Prishtinë, Kosovë / Ulica Nazim Gafurri 31, 10000 Priština, Kosovo / Nazim Gafurri 31, 10000 Prishtina, Kosovo



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:

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:

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 liëndës: Broj predmeta: Case Number:

C-V.-14-0007

Data e regjistrimit: Datum registrovanja: Date registered:

01/08/2014

Paditës
Tužilac
Claimant

I paditur
Tuženi
Respondent

Përfaqësues
Punomočnik
Representative

Përfaqësues
Punomočnik
Representative

#	Titulli i Dokumentit:	Naziv dokumenta:	Document Name:	Datë Datum Dated
1	Aktivendim nga Dhoma	Rešenje komore	Decision of the Chamber	29/07/2014

REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVA - REPUBLIC OF KOSOVO
 AGENCIJA KOSOVARE E PRIVATIZIMIT - KOSOVSKA AGENCIJA ZA PRIVATIZACIJU
 PRIVATIZATION AGENCY OF KOSOVO

Nr. II
 Br. 8143
 No. _____
 Nr. i Fg. _____ Date: _____
 Br. Str. 15 Datum: 01.08.2014
 No. Pg. _____ Date: _____
 Prishtinë / Pristina

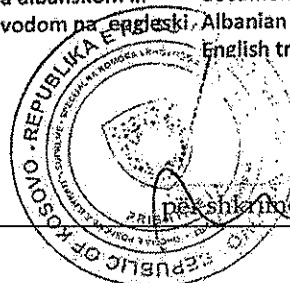
Pala: Stranka: Party: **1. Agjencia Kosovare e Privatizimit**
 Authority • Privatization • Rruga Ilir Konushevcii 8, Prishtinë

Pranuar nga: Primio: Received by: _____
 Titulli: Zvanje: Title: _____
 Data: Datum: Date: **01 AUG 2014**
 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.



Përkthimorë - za pisarnicu - for registry

<p style="text-align: center;">DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHITJE QË LIDHEN ME AGJENCINË KOSOVARE TË PRIVATIZIMIT</p>	<p style="text-align: center;">SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY OF KOSOVO RELATED MATTERS</p>	<p style="text-align: center;">POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODNOSE NA KOSOVSKU AGENCIJU ZA PRIVATIZACIJU</p>
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C-V-14-0007

Applicant

Privatization Agency of Kosovo (PAK), acting in capacity of the Administrator of Socially owned Enterprise "Trepça" under PAK Administration

The Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, Specialized Panel, composed by Sylejman Shumolli, Presiding Judge, Cerim Fazliji Judge and Vladimir Kanev Judge, after the deliberation held on 31st July 2014 issues the following

DECISION

1. Motion of Privatization Agency of Kosovo filed in the capacity of "Trepça Enterprises" Administrator to extend the dead-line for convening Initial Creditors' Meeting is hereby dismissed as inadmissible.
2. Motion of PAK filed in the same capacity to extend the dead-line for submission of Reorganization Plan for "Trepça Enterprises" is hereby granted until 2nd of April 2015.
3. PAK is hereby advised to submit at Special Chamber of the Supreme Court of Kosovo a brief report on their future plans on Reorganization not later than 30 days after notification on this decision.
4. This decision should be published on the Agency's web-site.
5. Notification on extension of the reorganization Plan dead-line should be notified through newspapers as provided for in Art. 43 of Law 04/L 035.
6. Privatization Agency of Kosovo has to pay 100 euro court fee.

Procedural and factual background:

On 10 July 2014 the Privatization Agency of Kosovo (acting as Administrator of SOE "Trepça") filed with Special Chamber of the Supreme Court of Kosovo a motion in compliance with Art. 7.1 and in conjunction with article 42.1, 42.3, 42.4 and 42.5 of the Law on Reorganization of

Certain Entities and Their Assets (Law on Reorganization) asking the Special Chamber to issue an Order to approve the proposal to extend the deadline for arranging the First Creditor Meeting not later than 30th of June 2015 and submission of the Reorganization Proposed Plan to postpone until 31st of December 2015. The requester also proposed to oblige the Administrator to publish the formal notice for extension of the deadline in question as provided under the item 1 and 2 of the proposal, within 15 days from the day of receiving of the court decision; then to oblige the administrator to send separate information letters to all known creditors who filed creditor claims, notifying them for extension of the deadline as provided under the item 1 and 2 of the proposal within 30 days from the day of receiving of the court decision and also to oblige the Administrator to publish the decision of the court at the official web page of the Agency.

The Administrator confirms that the abovementioned legal provisions are in compliance with general obligations and duties foreseen by the Law on Reorganization and Law on PAK.

The request/proposal on extension of deadline on arranging the First Creditor Meeting and extension of the deadline for submission of the Reorganization Proposed Plan as per the Administrator 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 Article 12 of the PAK Law. 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.

At the mean time the Administrator raised another problematic situation or better to say configuration of the PAK Board of Directors after the expire of mandate of the international Board members on 31st August 2014 and appointment of local members at the PAK Board of Directors. On the other hand, PAK suggested to the court also considering the insecurity in relation to the abovementioned appointments by the Kosovo Assembly, having in mind that the Kosovo Assembly is not functional since June parliamentary elections. 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.

Having in consideration all abovementioned, the requester in this case has come to the conclusion that an order issued by the Special Chamber which approves the request of the Administrator to extend the deadline on arranging the First Creditor Meeting and the Reorganization Plan, is on interest of the reorganization of the Enterprise and on interest of Owners and Creditors of the Enterprise itself for the following reasons:

- PAK Board of Directors shall be established and operational.
- The Administrator shall be in position to protect interests of the Owners and Creditors as well as protection and enhancement of the value of the Enterprise.

- The Administrator shall be able to meet requirements as provided with the Law on Reorganization and
- Extension of deadline in question will not impose any specific limitations towards the authority of the Special Chamber.

Based on request of the Administrator the Special Chamber on 24th of October 2013 has issued directions under case no.C-V-13-0011 in relation to selection of the professional service provider.

By decision C-V-13-0012 the Special Chamber approved the request of the Administrator to extend the deadline for 30 more days on arranging the First Creditor Meeting.

It should be noted that the Special Chamber is aware of the failure of the process to choose the professional service provider for SOE "Trepca" by the Administrator. The Special Chamber is also aware about the initiative of the legislator (Assembly of Republic of Kosovo) to amend the Law on Public Enterprises and put "Trepca" under this law as Public Enterprise.

Legal reasoning:

The Essence of requests:

In the capacity of "Trepca Enterprises" Administrator Privatization Agency has requested the court to extend two legally fixed dead-lines:

-/ The dead-line for holding Initial Creditors' Meeting (Art. 19.1 Law 04/L-035). This expired in early May 2014.

-/ The dead-line for submitting Reorganization Plan (Art. 22.1 Law 04/L-035). This is to expire in the end of July 2014.

General Legal Consideration:

According to the Law 04/L-035 Special chamber is the supreme supervisor of reorganization proceedings and in that capacity has power to extend dead-lines, having considered interests of the entity under reorganization and its creditors. However, this power is limited by the provision of Art. 42.4 of the same law. This provision stipulates that all dead-lines could be extended except those where a specific provision puts a limit to court authority to extend. Therefore, requests at hand shall be considered in the following sequence:

1. Is the extension requested legally available – meaning no specific limit to court power to extend is in place;
2. Is the available extension in the interests of both entity and its creditors;
3. If the first two questions are positively answered, than the time-line and prospective conditions to extension should be decided over.

Request for extension of the dead-line for Initial Creditors' Meeting:

According to Art.19 Law on Reorganization (Law 04/L-035) PAK has to fix a date for convening this meeting not later than 90 days after Claims Deadline. Claims Deadline Notice was announced on 1st of November 2013 and expired on 2nd of January 2014. Meeting should have taken place in early April 2014.

On 12th of December 2013 PAK submitted for 30 days extension of this dead-line in line with the option provided in Art. 19.1 of the Law. With decision in case C-V-13-0012 Court granted this request on the basis that PAK was still to employ Professional Service Provider in reorganization procedure.

Now court is dealing with second request for such extension, this time until 30th of June 2015.

The exact wording of Art.19.1 is: "The court may extend the time period for holding Initial Creditors' Meeting by 30 days additional"

Court understands this wording in the sense that extension by 30 days can only be granted once. Such interpretation is logical having in mind that dead-line at hand is counted by adding calendar days to the day of the Claim deadline ("90 days after") since addition available is provided for in the provision, no further extension can be granted.

Therefore, extension for Initial Creditors' Meeting is not available and the request is to be dismissed as inadmissible. Of course, this does not mean PAK can skip this meeting. Agency shall do their best to hold it as soon as possible.

Request to extend Reorganization Plan deadline

According to Art.22 Law on reorganization PAK is to prepare and submit at Special Chamber Reorganization Plan within 9 months after the Claims deadline – it means late July 2014. The same provision authorises the Chamber to extend this period by 6 months to the totality of 15 months. Therefore, extension is legally available and court shall consider if the request is grounded and how will it affect interests of the Entity and creditors.

It is very clear that Privatization Agency is totally unprepared to even start with Plan drafting. In the submission agency provided explanation of the reasons why they are not ready. These reasons could be divided in the following groups:

1. Lack of administrative capacity because PAK managing bodies are incomplete.
2. Lack of professional capacity – PAK needs Professional service Provider to assess claims and draft Reorganization Plan to revive Enterprises as viable economic entities.
3. Lack of coordination with and interference by other interested institutions.
4. Uncertainty as to the legislation and future competencies over Trepca Enterprises.

Court shall consider all these facts and their influence on Enterprises and creditors. All the alleged facts are officially known to the court from previous proceedings (see decisions in cases: C-V-13-0011; C-V-13-0012; C-V-14-004). And some of the facts – like incomplete composition of PAK Board of Directors are of common knowledge. Court is also aware that “Trepca Enterprises” reorganization is now heavily overdue. Originally, Claims Deadline Notice was to be announced on 1st of November 2012. On court’s approval this was postponed until 1st of November 2013. From 2nd of January 2014 Agency had to start assessment of registered claims and preparation for Initial Creditors Meeting. For this purpose Agency needs Professional Service Provider. But only in October 2013 did PAK start tender procedure to hire such a Provider. Tender procedure went on for many months and was finally annulled in May 2014. According to the submission only one of the nine bidders in tender procedure put up “responsive offer”, thus procedure was to be annulled. PAK did not specify what a “responsive offer” means.

Apart from all other obstacles lack of Professional Service Provider is enough to prevent reorganization procedure from advancing.

From other hand, court finds it already proven, that some governmental bodies intervened with the Agency and tried to stop or suspend reorganization procedure. The main reason for outside intervention was the draft law that would allegedly transfer some competencies over Trepca enterprises from PAK to the Government. On this occasion Special Chamber issued decision C-V-13-0011 by which Agency was advised that they retain exclusive competence and liability over reorganization process and must take into account only the law and court advises. PAK was also advised that draft laws are not reason to suspend reorganization activities.

Finally court is to consider existing problems with PAK Managing Bodies. It is common knowledge that 3 out of 8 members of Board of Directors resigned long ago and vacancies are not yet filled. Since April 2013 the Board operates with only 5 Directors. Furthermore – on 31st of August 2014 the mandate of the two International Board members expires and unless Kosovo Assembly appoints replacements Board will go completely non-functional. Having in mind pending constitution of both Assembly and Government it is fairly possible that replacements will not be appointed for months. In addition, since February 2014 Agency has no titular Managing Director. These circumstances have and/or will negatively affect administrative capacity of the Agency. This is why court decides to extend the dead-line for Reorganization Plan to the maximum limit admissible – 2nd of February 2015 which will total to 15 months. This is the maximum extension that could be granted under applicable Law 04/L-035.

The extension granted shall be used by the Agency to conduct procedure in the circumstances and Special Chamber will go on with close supervision. To this ends Agency shall file a summary report on their plans on reorganization not later than 30 days after this decision is served to them.

This decision should be published on the Agency's web-site. Notification on extension of the reorganization Plan dead-line should be notified through newspapers as provided for in Art.43 of Law 04/L 035.

Court fees:

In accordance to KJC decision on the court fees at Special Chamber, published on 27th of March this year and the decision of Presidium of the Special Chamber dated 08 April this year, applicant shall pay €100 fee for the court proceedings.

Legal Advice

An appeal against this decision can be submitted in writing to the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters within twenty-one (21) days from the receipt of this decision, pursuant to Article 10.6 of the Special Chamber Law.

Sylejman Shumolli, Presiding Judge

