

DHOMA E POSAÇME E  
GJYKATËS SUPREME TË  
KOSOVËS PËR ÇËSHTJE QË  
LIDHEN ME AGJENCINË  
KOSOVARE TË  
MIRËBESIMIT

SPECIAL CHAMBER OF THE  
SUPREME COURT OF KOSOVO  
ON KOSOVO TRUST AGENCY  
RELATED MATTERS

POSEBNA KOMORA  
VRHOVNOG SUDA  
KOSOVA ZA PITANJA  
KOJA SE ODNOSE NA  
KOSOVSKU  
POVERENIČKU AGENCIJU

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File Number: SCR-05-001-R008, R009 and R011

19 May 2011

Privatization Agency of Kosovo (PAK)

*Applicant*

SOE Trepça  
Mitrovicë/Mitrovica

*Enterprise*

The Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters, Trial Panel, composed of Anna Bednarek, Presiding Judge, Alexey Ivanov and Ilmi Bajrami, Judges, after deliberation held on 19 May 2011, issued the following:

#### DECISION

**The request of the Privatization Agency of Kosovo (PAK) for postponement of the appointment of an administrator of the Moratorium of MMCC Trepça for 9 (nine) months from the date of issuance of the Decision of the Special Chamber dated 26 January 2011 hereby is granted.**

**Procedural and factual background:**

On 26 January 2011 the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (Special Chamber) issued a decision, whereby in point 6 of this Decision the PAK was requested within 3 months from the notification of the decision, to comply with Section 7 of UNMIK Regulation 2005/48 related to the appointment of an administrator of the Moratorium of MMCC Trepça, as defined in the Moratorium Decision issued by the Special Chamber on 9 March 2006.

On 11 February 2011, the PAK filed with the Special Chamber a request for postponement of appointment of an administrator of the Moratorium of the MMCC Trepça for 9 (nine) months from the date of issuance of the Decision of the Special Chamber dated 26 January 2011.

On 19 April 2011, the Special Chamber issued an order by which the PAK was requested to submit all relevant material facts, legal arguments and necessary evidences, if needed to

clarify and amend its request for postponement of the appointment of an administrator of the Moratorium of the MMCC Trepça, dated 11 February 2011 in compliance with application of section 21.1 of UNMIK Administrative Direction 2008/6.

In its response submitted on 4 May 2011 the PAK stated that it acknowledged and respected the Decision of the Special Chamber “on appointment of an administrator for MMCC Trepça” and was willing to carry out such an appointment. However, it considered that all preliminary measures should be undertaken in order to ensure a correct and successful process. The PAK stated that the request on extending of the time period for the appointment of the administrator of the Moratorium of MMCC Trepça is grounded on section 21.1 of UNMIK Administrative Direction 2008/6, which provides that the Special Chamber may in exceptional cases and in the interest of justice so requires, extend a time period prescribed by law; if it determines that it is not reasonably practicable for a party or the Special Chamber to dispose of the matter at hand within the time period prescribed by law.

The PAK further explained that the strategic importance of Trepça, as well as its complexity presented the need for selecting an administrator with high credentials, with an experience of international level on cases of payment incapability of entities with debts and assets of similar value and type as Trepça, as it is provided by UNMIK Regulation 2008/48. Therefore it is considered that the provided 3 (three) months time period does not guarantee the success for attracting experienced applicants considering the required prearrangements, which consist of preparing working conditions for the administrator, working standard, qualification criteria.

The PAK also stated that it is an independent public institution and its activities are financed by the Budget of the Republic of Kosovo, including here also the legal representation of Trepça as a special budgetary line of the Legal Department. Currently the Agency does not have a planned budget for payment and expenses of the administrator of Trepça. Provided that section 9 of the UNMIK Regulation 2005/48 prescribes that the Agency may agree with the Government of Kosovo to pay the administrator's remuneration and expenses in full or in part, the PAK intended to do so, i.e. to enter into an agreement with the Government to pay the administrator's remuneration and expenses.

The PAK added that since with the Kosovo Budget currently there are no means allocated for the administrator's remuneration and expenses, and the Budget review will take place in June 2011, the PAK intends to rise and reallocate sufficient financial means to pay the administrator's remuneration and expenses. After the Budget review, the PAK will need 3 (three) months to appoint the administrator in compliance with the time periods provided by the Law on Public Procurement (Law No.03/L-241).

The PAK considered that section 21.1 applies at the matter at hand, given that lack of financial means hinders the appointment of the administrator at this stage, since in order to attract competent and qualified applicants as it is also provided by UNMIK Regulation 2005/48, sufficient financial means are needed.

## Legal reasoning:

Section 21.1 of UNMIK Administrative Direction 2008/6 states:

*"Without prejudice to its responsibility to handle matters before it expeditiously, the Special Chamber may in exceptional cases, and if the interest of justice so requires, extend a time period prescribed by law; if it determines that it is not reasonably practicable for a party or the Special Chamber to dispose of the matter at hand within the time period prescribed by law."*

The Special Chamber recognizes the importance of a thorough and careful tendering process to select the best and most competent administrator stated by the PAK in its request. The present case is exceptional due to the size of the property of the estate (property of the estate includes the assets of MMCC Trepça), complexity of the economic and political situation in the country, and the importance of MMCC Trepça for the Republic of Kosovo. It is in the interest of Justice to give yet another chance to reorganize the Enterprise of MMCC Trepça. In general terms reorganization is the only and best way to recover the business viability of the debtor Enterprise and to satisfy competing interests of all creditors, owners and other stakeholders, and to benefit the whole economy of Kosovo. That is why the Court applies the provision of the Section 21 of UNMIK Administrative Direction 2008/6 and on these grounds approves the request of the PAK for postponement of appointment of the administrator of the Moratorium of MMCC Trepça for nine months from the date of issuance of the Decision on 26 January, 2011.

### **Legal remedy:**

Pursuant to Section 9.5 of UNMIK Regulation 2008/4 an appeal against this decision can be submitted in writing to the Appellate Panel of the Special Chamber within thirty (30) days from the receipt of this decision.

Consequently it is decided as in the enacting clause of this Decision.

Anna Bednarek, Presiding Judge  
EULEX signed

Alexey Ivanov, Judge  
EULEX signed

Ilmi Bajrami, Judge signed

Tobias Lapke, Registrar  
EULEX signed

