



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO  
GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT

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Pristine, 15 march 2012  
Ref. No.: RMP-HKL206/12

## **DECISION REJECTING INTERIM MEASURES AND STRIKING OUT THE REFERRAL**

In

**Case No. KI122/11**

The applicant

**Reka Bujar owner of INTER STEEL LLC**

**Constitutional Review of the Judgment of the Special Chamber of the  
Supreme Court of Kosovo  
SSC-11-0148, dated 15 June 2011.**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Enver Hasani, President  
Kadri Kryeziu, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Ivan Čukalović, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge.

#### **The Applicant**

1. The Applicant is Reka Bujar of Pristina, owner of INTER STEEL LLC represented by Interlex Associates l.l.c.

## **Challenged Decision**

2. Judgment of the Special Chamber of the Supreme Court of Kosovo SSC-11-0148, dated 15 June 2011.

## **Subject Matter**

3. The Referral concerns the decision of the Privatisation Agency of Kosovo (hereinafter "PAK") to proceed with the sale of NewCo LLamkos Steel Assets (hereinafter "Llamkos") by way of tender to another bidder in the privatization process.
4. The Applicant requested the Constitutional Court to grant an interim measure restraining PAK from concluding the sale of Llamkos as it would cause irreparable and irreversible harm to the Applicant. In the alternative, the Applicant requests the Court to oblige the Agency for Registration of Businesses in Kosovo to record a *lis pendens* note on the shares of Llamkos.

## **Legal Basis**

5. Article 113.7 and 116.2 of the Constitution of the Republic of Kosovo (hereinafter referred to as "the Constitution"); Articles 20 and 27 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Law"), and Rules 32, 55 and 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules").

## **Proceedings before the Court**

6. On 14 September 2011, the Applicant filed a Referral with the Secretariat of the Constitutional Court.
7. By order of the President dated 19 September 2011, Judge Snezhana Botusharova was appointed as Judge Rapporteur. On the same date, the President appointed the Review Panel composed of Judge Robert Carolan presiding and Judges Kadri Kryeziu and Iliriana Islami.
8. By letter dated 7 December 2011 the Court informed the Special Chamber of the Supreme Court of Kosovo of the making of the Referral and, *inter alia*, requested a response.
9. The request for interim measures and the request for the registration of a *lis pendens* were considered by the full Court on 12 December 2011.
10. The Special Chamber subsequently responded to the correspondence of the Court on 14 December 2011.

## **Summary of the facts**

11. Llamkos was a Socially Owned Enterprise sold by the Kosovo Trust Agency however the arranged sale fell through. On 3 February 2011, PAK decided to sell the assets again. The Applicant's company placed a bid of €5,345,000 and was the second highest bidder. The first bidder did not complete the sale. The Applicant was informed of this and that he could qualify as the successful bidder following discussions with a representative of PAK.

12. However, following brief communication between the Applicant and PAK, the Applicant was informed by letter dated 27 April 2011, that PAK decided not to complete the sale of Llamkos to the Applicant. Subsequently, the third highest bidder made a public statement that it had won the bid. PAK later announced on 3 August 2011 that it had sold the enterprise to a third party.
13. On 17 May 2011, the Applicant filed a request for an injunction with the Special Chamber of the Supreme Court of Kosovo and also challenged the PAK decision not to complete the sale to the Applicant. The Trial Panel of the Special Chamber denied the request for an injunction by its decision dated 15 June 2011, served on the Applicant on 16 June 2011.
14. Prior to the decision of the Special Chamber, PAK wrote to the Applicant, by letter dated 1 June 2011, stating that "*The Liquidation Committee has communicated with the [Applicant's] bank and has gained the confidence that Inter Steel sh.p.k. in reality does not dispose with sufficient deposited or other funds for the payment of the bid price and satisfying the investment commitment*".
15. The Applicant denies the above and states that Raiffeisen Bank gave no specific information to anyone regarding the amount of funds deposited in the bank. The Applicant maintains that Raiffeisen Bank gave a standard guarantee form that it had used previously for hundreds of KTA and PAK tenders.
16. On 29 June 2011, the Applicant filed an Appeal to the Appeal Panel of the Special Chamber seeking a reversal of the decision of the Special Chamber.
17. On 11 January 2012 the lawyers for the Applicant wrote to the Court informing it that because a Decision had, by then, been issued by the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo the issue was now moot.

### **The Applicant's allegations**

18. The allegations of the Applicant are as set out in the facts above, namely that
  - i) the privatization process for Llamkos was conducted improperly;
  - ii) a decision was made on erroneous facts; and
  - iii) there has been a violation of Article 32 [RIGHT TO LEGAL REMEDIES] and Article 46 [PROTECTION OF PROPERTY] of the Constitution read in conjunction with Article Protocol 1 and Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms because the Applicant's right to have a decision within a reasonable time by the Special Chamber was denied.

### **Assessment of the request for interim measures**

19. The Applicant requested an interim measure to be issued by the Constitutional Court in order to restrain PAK from concluding the sale of Llamkos on the basis that it would cause irreparable and irreversible harm to the Applicant.
20. One of the tests for the granting of interim measures is whether unrecoverable and irreparable damages will be suffered.
21. Article 116.2 of the Constitution provides:

*“While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages”.*

22. Article 27 of the Law on the Constitutional Court provides:

*“1. The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest.*

*2. The duration of the interim measures shall be reasonable and proportionate”.*

23. If a violation of a constitutional right were to be found then it may be the case that an action in damages could be a possible remedy.

24. However, as there was an Appeal still pending to the Appeal Panel of the Special Chamber of the Supreme Court, there was a possibility that the dispute could have been resolved in the Applicant’s favour.

### **FOR THESE REASONS**

The Constitutional Court therefore, pursuant to Articles 20 and 27 of the Law and Rules 32, 55 and 56 of the Rules, unanimously

### **DECIDES**

- I. TO REJECT the request for interim measures;
- II. TO REJECT the request to grant a *lis pendens*;
- III. TO STRIKE OUT the Referral and to take no further steps in relation thereto;
- IV. This Decision shall be notified to the parties and published in the Official Gazette, in accordance with Article 20(4) of the Law; and
- V. This Decision is effective immediately.

**Judge Rapporteur**



Snezhana Botusharova

**President of the Constitutional Court**



Prof. Dr. Enver Hasani