

<p>DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENCINË KOSOVARE TË MIRËBESIMIT</p>	<p>SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON KOSOVO TRUST AGENCY RELATED MATTERS</p>	<p>POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODNOSE NA KOSOVSKU POVERENIÇKU AGENCIJU</p>
---	--	---

ASC-09-0073

In the lawsuit of

██████████
from Prizren,
"██████████",
represented by attorney
██████████, from Prizren
██████████

Claimant/Appellant

Vs

SOE ██████████
from Prizren

Respondent

The Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (SCSC), composed of Richard Winkelhofer, President of the SCSC, as Presiding Judge, Torsten Frank Koschinka and Eija-Liisa Helin, Judges, on the appeal of the Claimant against the decision of the Trial Panel of the SCSC of 17 September 2009, SCC-08-0210, after deliberation held on 29 April 2010, delivers the following

DECISION

The appeal is rejected as inadmissible.

The Appellant is obliged to pay court fees in an amount of 37,50 Euros for the appeals proceedings.

Procedural and factual background:

On 17 September 2009 the Trial Panel of the SCSC rejected the claim of the Claimant regarding the recognition of ownership rights as inadmissible. The decision was served on the Claimant on 28 September 2009. He timely filed an appeal against the decision, registered at the Special Chamber on 2 November 2009.

On 12 November 2009 the Appellate Panel ordered the Claimant to provide an English translation of the appeal and all supporting documents, a copy of the decision against which the appeal is brought, a statement of the date on which the decision was served on the Claimant and a power of attorney granted to its lawyer including explicitly the power of attorney for the appeals procedure before the Appellate Panel as well as an English translation of this document.

The Order was served to the Claimants' representative on 18 November 2009 and the Claimant with regard to the order submitted the power of attorney including its English translation and the English translation of the appeal. The Claimants' representative with his submission alleged that the decision of the Trial Panel was served on the Claimant on 28 September 2009.

The Claimants representative did not provide the copy of the decision of the Trial Panel against which the appeal is brought.

Reasons at Law:

The Appellate Panel has examined the appeal in terms of Section 61.4 UNMIK AD 2008/6 and concludes that the appeal is inadmissible.

Section 60.2 UNMIK AD 2008/6 states:

"The decision of the Trial panel or the court against the decision of which the appeal is brought shall be attached to the appeal....."

Section 28.2 UNMIK AD 2008/6 reads as follows:

"(...) The Claim is admissible if

III

(f) The pleadings submitted conform to the requirements of sections 25 and 27 of the present Administrative Direction."

Section 58.2 of the UNMIK Administrative Direction 2008/6 states:

"The rules of procedure and evidence that govern proceedings in the Trial Panels shall apply mutatis mutandis to proceedings in the Appellate Panel".

The appeal fails to meet the admissibility requirements set out in Section 60 and Section 28.2 in conjunction with Section 58.2 UNMIK AD 2008/6.

By the order of 12 November 2009 the Claimant was advised by the Appellate Panel that if he fails to submit a completed or corrected appeal which meets the requirements set forth in section 28.2 (f) UNMIK AD 2008/6 or to produce the required documents within 14 (fourteen) days from acknowledgement of the service, the Appellate Panel shall reject the appeal on the grounds of inadmissibility.

The Claimant did not comply with this order, since he did not provide the copy of the decision against which the appeal is brought. Thus the appeal had to be dismissed as inadmissible.

According to Section 11 REG 2008/4 and Section 66 AD 2008/6, the Trial Panel has to decide on the allocation of costs of the proceedings in first instance, and the Appellate Panel – when deciding a case finally - on the allocation of costs of the proceedings in both instances.

Based on Section 57.2 of UNMIK AD 2008/6 the Special Chamber issued Additional Procedural Rules regarding Court Fees, in force from 10 March 2010. They read as follows:

'Section 10 of Administrative Instruction No. 2008/2 on Unification of Court Fees of the Kosovo Judicial Council of 27.11.2008, concerning "The Court Fee Tariffs", is hereby – with the following specifications - declared to be applicable for the court proceedings in front of the SCSC.

IV

Section 10.9 till Section 10.23 are – mutatis mutandis – applicable for the appeals procedure in front of the Trial Panel and in front of the Appellate Panel.

As a clarification, Section 10.11 is also applicable for the procedure governing the appeal against 2nd instance decisions of the Trial Panel.

(...)

These Additional Procedural Rules enter into force on 10 March 2010 and are valid until 31 December 2010.'

The court fees in both instances consist on the one hand of a fee for the filing of submission(s), on the other hand of a fee for the issuance of (a) decision(s).

As the decision in first instance was rendered before the day of entry into force of the above mentioned rules, only court fees for the appeals procedure are to be dealt with here:

The amount of the fee for the filing of the appeal as governed by Section 10.11 of the Administrative Direction of the Kosovo Judicial Council No.2008/2 on Unification of the Court Fees ("ADJ") is 30,-- Euros.

Section 10.15 ADJ determines that for decisions dismissing claims (as inadmissible) only half the amount of the fee as ruled in Section 10.1 ADJ (which on principle bases the court fees on the value of the claim) has to be paid, up to a maximum of 30,-- Euros. This applies to decisions in second instance, too (Section 10.21 ADJ refers to Sections 10.12 to 10.18 ADJ). Section 10.15 in conjunction with Section 10.21 covers decisions in second instance dismissing appeals as inadmissible, as well as decisions on appeals against first instance decisions that do not touch upon the merits of the case.

Unless the value of the claim is proven less (in first instance by the claimant, in second instance by the appellant), according to Section 10.1 in conjunction with Sections 10.15 and 10.21, the court fee is 30,-- Euros.

In the case at hand, the matter in dispute regards ownership of real estate. Therefore, Article 30 of the Law on Court Fees (Official Gazette of the Socialist Autonomous Province of Kosovo, 03 October 1987) is applicable. The Claimant indicated the value of the very small parcel of land with 950,-- Euros, which seems reasonable to the Appellate Panel. Thus, the value of the claim and of the appeal is determined to be 950,-- Euros.

The fee for the issuance of the decision on the appeal thus amounts 7,50 Euros.

In total, the following court fees for the appeals proceedings apply:

Court Fee Tariff Section 10.11 (filing of the appeal)	30 Euros
Court Fee Tariff Section 10.15 in conjunction with 10.21 and 10.1 (decision in second instance)	7,50 Euros
Total	37,50 Euros

These court fees are to be borne by the Appellant.

Richard Winkelhofer, EULEX Presiding Judge	signature
Torsten Koschinka, EULEX Judge	signature
Eija-Liisa Helin, EULEX Judge	signature
Tobias Lapke, EULEX Registrar	signature