

**ASC-09-0021**

In the lawsuit of

██████████, private company,

Pristhinë/Priština,

represented by ██████████

and ██████████

lawyers in Pristhinë/Priština

*Claimant / Appellant*

vs

**SOE "██████████",**

Pristhinë/Priština, represented by

the Privatization Agency of Kosovo

*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 Mr.sc.Sahit Sylejmani, Judges, on the appeal of the Claimant/Appellant against the decision of the Trial Panel of the SCSC of 18 March 2009, SCA-08-0068, after deliberation held on 11 October 2010, delivers the following

## **DECISION**

- 1. The appeal is dismissed as inadmissible.**
- 2. On the occasion of the appeal, point II of the decision of the Trial Panel of 18 March 2009, SCA-08-0068, is eliminated.**

**3. The Appellant is obliged to pay court fees in the amount of 60,-- Euros to the Special Chamber.**

**Reasons at Law:**

The SCSC on 20 November 2007, SCC-07-0424, referred the Claimant's ownership claim, filed on 18 October 2007, to the Municipal Court Pristhinë/Priština.

By its decision of 16 April 2008, Cr.88/08, the Municipal Court Pristhinë/Priština suspended the proceedings, referring to a notice of the Kosovo Trust Agency (KTA) of 7 September 2007, reading that the liquidation of the Respondent had been commenced on 25 July 2007.

With the attacked decision of 18 March 2009, SCA-08-0068, the Trial Panel of the SCSC rejected the Claimant's appeal and upheld the Municipal Court Pristhinë/Priština's decision of 16 April 2008, Cr.88/08 (point I), further indicating that an appeal (to the Appellate Panel of the SCSC) may be filed 'within one month' (point II). The decision was served on 29 April 2009 on lawyer [REDACTED], and on 7 May 2009 on lawyer [REDACTED].

In his appeal, submitted on 11 June 2010 (by lawyer [REDACTED]) the Claimant/Appellant requests to revoke this decision.

The appeal has to be dismissed as inadmissible.

Pursuant to Section 9.5 UNMIK REG 2008/4 a decision of the Trial Panel of the SCSC may be appealed with the Appellate Panel of the SCSC within 30 (thirty) days from the receipt of the decision.

Contrary to this provision, Section 59.1 UNMIK AD 2008/6 determines that 'an appeal shall be filed with the Special Chamber within two months of the service of the judgment on the party appealing'. However, Section 9.5 UNMIK REG 2008/4 supersedes as the higher ranking (and more particular) norm. Therefore,

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the scope of application of Section 59.1 UNMIK AD 2008/6 is restricted to cases not covered by Section 9.5 UNMIK REG.

Section 20.1 UNMIK AD 2008/6 provides that a period of time prescribed by UNMIK REG 2008/4 shall be calculated as follows: Where a period is expressed in days, it is to be calculated from the moment at which an event takes place (here: the service of the decision), while the day during which that event takes place shall not be counted as falling within the period in question (compare Article 112 [1] of the Code of Civil Procedure, Official Gazette 4/77-1478 et al of the SFRY, which follows the same pattern).

If a party opts to be represented by more than one representative, the first service on one of them is decisive as to the calculation of the period to file an appeal.

The attacked decision was served on lawyer [REDACTED] on 29 April 2009, and on lawyer [REDACTED] on 7 May 2009. This means that the period of 30 (thirty) days ended on 29 May 2009. The appeal was filed on 11 June 2010, thus too late (see ASC-09-0096, ASC-10-0012 et al). Besides, even calculated from the date of service on lawyer [REDACTED] the appeal would be untimely.

As a consequence, the untimely appeal has to be rejected as inadmissible, without dealing with its merits.

Point II of the appealed decision has to be omitted on the occasion of the appeal, as instructions to file an appeal by quoting the law, without any discretion on the side of the court, are no decisions to be taken in the enacting clause. Such information may be given within the legal reasoning or – rather – to be attached to a decision only, but cannot be a part of it (see ASC-09-0075, ASC-09-0108, ASC-10-0023, ASC-10-0036, et al). In addition, it was already stated the time limit to file an appeal is 30 (thirty) days, and not one month, as incorrectly noted in the attacked decision.

According to Section 11 UNMIK REG 2008/4 and Section 66 UNMIK 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 UNMIK AD 2008/6 the Special Chamber issued Additional Procedural Rules regarding Court Fees. 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.

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 2<sup>nd</sup> instance decisions of the Trial Panel.

(...)

These rules enter into force on 30 June 2010, amending the Additional Procedural Rules regarding Court Fees as of 10 March 2010.

They also cover and apply to all operations of the SCSC from 1 January 2010, as appropriate, 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, neither in first nor in second instance the value of the claim was proven less. The court fee for the decision in second instance therefore is set to 30,-- 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)	30 Euros
Total	60 Euros

These court fees are to be borne by the Appellant.

Richard Winkelhofer, EULEX Presiding Judge

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Torsten Koschinka, EULEX Judge

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Mr.sc.Sahit Sylejmani, Judge

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Tobias Lapke, EULEX Registrar

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