

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
POVERENIÇKU
AGENCIJU

ASC-09-0065

In the lawsuit of

1. [REDACTED], Skenderaj/Srbica
2. [REDACTED] village Baic, Drenas/Glogovac
3. [REDACTED] village Gadime e Eperme/Gornje Gadimlje, KK Lipjan/Lipljan,
Complainants/Appellants

Vs.

Privatization Agency of Kosovo
8 Ilir Konushevci, Prishtinë/Priština

Respondent

the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (SCSC), composed of Tapio Vanamo, President of the SCSC, Presiding Judge, Torsten Frank Koschinka and Mr.sc. Sahit Sylejmani, Judges, on the appeals of the Complainants filed in the case SCEL-09-0005 against the decisions of the Trial Panel of SCSC dated 17 September and 24 November 2009, after deliberation held on 03 March 2011, issues the following

DECISION

1. **The appeal of [REDACTED] is rejected as ungrounded.**
2. **The decision of the Trial Panel of the SCSC in the case SCEL-09-0005 dated 17 September 2009 is upheld.**
3. **The appeal of [REDACTED] against the decision of the Trial Panel of the SCSC in the case SCEL-09-0005 dated 24 November 2009 is rejected as inadmissible.**
4. **The appeal of [REDACTED] against the decision of the Trial Panel of the SCSC in the case SCEL-09-0005 dated 17 September 2009 is rejected as inadmissible.**
5. **On the occasion of the appeal, point 2 of the enacting clauses of the appealed decisions is eliminated.**

Factual and procedural background

On 17 September 2009 the Trial Panel of the SCSC issued a decision in the case SCEL-09-0005, based on which the complaint of [REDACTED] for inclusion in the list of eligible employees was rejected as inadmissible due to missing the legal deadline for filing the complaint. On the same date and in the same case the Trial Panel issued another decision, rejecting the complaint of [REDACTED] for inclusion in the named list as ungrounded.

On 24 November 2009 the Trial Panel of the SCSC issued a decision extending the time period for finalization of the decision (Section 67.12 UNMIK AD 2008/6) by 3 more months.

On 8 December 2009 [REDACTED] filed an appeal with the Appellate Panel of the SCSC against the decision of the Trial Panel dated 17 September 2009,

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stating that due to family obligations and economic crisis he had not been aware of the notification deadline for filing his complaint timely. He claims that he had requested a lawyer to prepare the relevant document and to submit it through mail.

On 8 December 2009 [REDACTED] filed an appeal with the Appellate Panel of the SCSC stating that he lives under hard social circumstances, that he had a sick child and no money to make the complaint in time.

On 18 December 2009 [REDACTED] filed an appeal with the Appellate Panel of the SCSC stating that the Trial Panel of the SCSC had incorrectly "suspended" the case. He requests to approve his claim as grounded and to annul the decision extending the period for rendering a decision.

Concerning the appeal of [REDACTED] the Appellate Panel on 7 September 2010 issued an order requesting the Appellant to submit within 14 days:

- the English translation of all the submissions attached to the appeal, except the appeal;
- pursuant to Section 60.2 UNMIK AD 2008/6 a copy of the decision against which the appeal is brought;
- the date when the decision of the Trial Panel was received by the appellant.

The order was served on the Appellant on 14 September 2010.

On 29 September 2010, [REDACTED] replied to the order stating that on 12 June 2010 he submitted the appeal by regular mail but not by registered mail. He asked the Appellate Panel of the SCSC to consider the appeal as timely. Furthermore, he attached to his reply English translations of a certificate issued by the Enterprise [REDACTED] Prishtina certifying that he is an employee of that enterprise as of 8 May 1979, of a decision dated 1 August 2003 on annual leave, and of a request dated 30 July 2003 addressed to the Enterprise [REDACTED] Prishtina to grant him annual leave. He did not attach the appealed decision.

On 7 October 2010, the Appellate Panel of SCSC issued an order to the Respondent serving the appeals and the supporting documents.

On 10 November 2010 the Respondent filed the response to the appeals asking to reject the appeals as ungrounded. The Respondent argued, [REDACTED] had neither submitted proof of an earlier complaint through his lawyer nor mentioned any reasons for filing the complaint late. The appeal of [REDACTED] was also ungrounded.

[REDACTED] had not even mentioned in the appeal any reasons for filing the complaint with the Trial Panel of SCSC after the deadline.

Legal Reasoning

[REDACTED]

The appeal of [REDACTED] is inadmissible. The Appellant failed to complete the appeal as requested by the Appellate Pane, as he did not submit a copy of the appealed decision and did not specify the date when he received it.

Pursuant to Section 60.2 UNMIK AD 2008/6 as read in conjunction with Sections 28.2 and 58.2 UNMIK AD 2008/6, the appeal thus had to be dismissed as it does not meet the requirements set by this provision.

Ratio legis of Section 60.2 UNMIK AD 2008/6 is to enable the Appellate Panel to, without asking for the case files from the Trial Panel, examine the admissibility criteria of an appeal at first glance and to assure that the Appellant is actually appealing the "right" decision. Therefore, the provision is not only a senseless procedural burden, but it has its own place within the admissibility criteria of an appeal.

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The appeal is admissible, but ungrounded. The appealed decision had to be upheld.

██████████ has submitted his complaint in the employee list case to the SCSC after the legal deadline. The Trial Panel rejected the complaint as inadmissible pursuant to section 28.3 UNMIK AD 2008/6 in accordance with the law.,.

Section 10.6 (a) UNMIK Regulation 2003/13, as amended, clearly sets the deadline for a complaint against a final list of eligible employees to 20 days after the final publication in the media by the Agency. ██████████ did not stick to this deadline and he did not provide any justifiable reasons in the sense of Article 117 paragraph 1 Law on Contested Procedure (Official Gazette of SFRY 4/77, 36/80, 69/82, "LCP"; for its applicability via Section 70.3 UNMIK AD 2008/6 see ASC-09-0103 et al.) as to why he missed it. Not having money to pay a lawyer cannot be accepted as such a justifiable reason as it is not necessary to task a lawyer with lodging the complaint. The complainant could have done this on his own. Also having a sick child and living in hard social circumstances cannot be accepted as justifiable reasons for missing the time limit. Therefore, the Trial Panel correctly rejected the complaint as inadmissible and the appeal has to be rejected as ungrounded while the appealed decision has to be upheld.

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The appeal of ██████████ is inadmissible.

An appeal can only be admissible, if there is a legal or factual gravamen for the Appellant arising from the attacked decision. This can only be the fact, if the challenged decision has any legal effect. The decision of the Trial Panel of the SCSC dating 05 November 2009 lacks this legal effect.

Section 67.12 UNMIK AD 2008/6 states that the (final) decision of the Trial Panel in a so called Workers List Case shall be served on the complainant(s) and the Agency in any event not later than 90 days of the date on which the complaint was filed with the Registry. The quoted provision does not foresee any consequence if the Trial Panel does not comply with it. Section 67.12 UNMIK AD 2008/6 is thus a *lex imperfecta*, a legal provision from which in case of its infringement no legal effect arises. It is, in other words, only a provision which states a desirable, but not binding result, the – according to the factual situation of the SCSC with regard to staffing and workload – fastest possible handling of Workers List Cases within the first instance.

Section 67.12 UNMIK AD 2008/6 does not even prescribe a time period in the sense of Section 21.1 UNMIK AD 2008/6, as the second clause of this provision clarifies that time periods prescribed by law in the meaning of this norm are only time periods valid for the parties, but not such given to the court.

Taking this into consideration the challenged decision of the Trial Panel has no legal substance which could have any legal or factual effect on the Appellant. It is from its content nothing else than a notification to the parties that the court is not in a position to finalize the proceedings within the desirable time limit, which was – wrongfully – given the form of a decision (ASC-09-0098).

As a logical consequence, also the advice on legal remedies given in the decision dating 5 November 2009 was wrong.

Advice on legal remedy

Point 2 of the enacting clause of the appealed decision has to be eliminated 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.

Court Fees

Pursuant to the SCSC's Additional Procedural Rules regarding Court Fees, the proceedings on cases related to the List of Eligible Employees (Section 67 of UNMIK AD 2008/6 and relevant appeals proceeding) are on principle free of charge, except for the court fees pursuant to Sections 10.27 to 10.41 of Administrative Direction No. 2008/02 on Unification of the Court Fees of the Kosovo Judicial Council of 27.11.2008. Based on these procedural rules, the complainants are exempted from the payment of court fees in the appeals procedure as well. Thus, a decision concerning costs was not to be taken

Issued by the Appellate Panel of the SCSC on this 3 March 2011:

Tapio Vanamo, Presiding Judge

EULEX

Torsten Frank Koschinka, Judge

EULEX

Mr.sc. Sahit Sylejmani, Judge

Tobias Lapke, Registrar EULEX

