

<p style="text-align: center;">DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENCINË KOSOVARE TË MIRËBESIMIT</p>	<p style="text-align: center;">SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON KOSOVO TRUST AGENCY RELATED MATTERS</p>	<p style="text-align: center;">POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODNOSE NA KOSOVSKU POVERENIÇKU AGENCIJU</p>
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ASC-10-0012

In the lawsuit of

██████████ natural person

██████████ Prishtinë/Priština

Represented by ██████████ lawyer in Prishtinë/Priština

██████████

Claimant / Appellant

vs

Municipality of 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 Richard Winkelhofer, President of the SCSC, as Presiding Judge, Torsten Frank Koschinka and Eija-Liisa Helin, Judges, on the appeal of the Claimant/Appellant against the decision of the SCSC of 17 December 2009, SCC-09-0128, after deliberation held on 29 April 2010, delivers the following

DECISION

The appeal is dismissed as inadmissible.

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

Reasons at Law:

Pursuant to the appealed decision dated 17 December 2009, SCC-09-0128, the Trial Panel of the SCSC dismissed the Claimant/Appellant's claim.

In his appeal, the Claimant/Appellant requests to revoke this decision.

The appeal has to be dismissed as inadmissible.

The decision appealed by the Claimant/Appellant indicates correctly that pursuant to Section 9.5 of UNMIK REG 2008/4 an appeal against it can be submitted in writing to the Appellate Panel of the Special Chamber within 30 (thirty) days from the receipt of the decision.

Section 20.1 of 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).

The attacked decision was served on the Claimant/Appellant on 22 December 2009, as proven by the acknowledgement of receipt to the Claimant's representative. This means that the period of 30 (thirty) days ended on 21 January 2010. The Claimant/Appellant filed his appeal on 23 January 2010 (postage stamp date), therefore 32 (thirty-two) days from the receipt of the Trial Panel decision, which is two days too late (see ASC-09-0096).

Contrary to the Claimant's/Appellant's opinion as laid down in his appeal ("...counting the official holidays of the RK it [the appeal] is submitted within the legal time of 30 days and as such is timely") all periods include Saturdays, Sundays and official holidays (Section 20.1 [d] AD 2008/6). Therefore the fact that the service was effectuated during the Christmas season, is without any relevance.

As a consequence, the untimely appeal must be rejected 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

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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.

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

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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 statements as to the value of the claim have been made. 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	signed
Torsten Koschinka, EULEX Judge	signed
Eija-Liisa Helin, EULEX Judge	signed
Tobias Lapke, EULEX Registrar	signed