

<b>DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHITJE QË LIDHEN ME AGJENCINË KOSOVARE TË MIRËBESIMIT</b>	<b>SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON KOSOVO TRUST AGENCY RELATED MATTERS</b>	<b>POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODNOSE NA KOSOVSKU POVERENIÇKU AGENCIJU</b>
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**ASC-10-0040**

In the lawsuit of

**██████████ and others, former employees of Socially  
Owned Enterprise ██████████**

all represented by ██████████, President of the Trade Union Association

██████████, Prishtinë/Priština

*Claimants/Appellants*

vs.

**1. ██████████, Socially Owned Enterprise  
Malishevë/Mališevo**

**2. Privatisation Agency of Kosovo (PAK)**

Ilir Konushevc, 8, Prishtinë/Priština

*Respondents*

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 Claimants against the decision of the Trial Panel of the SCSC of 16 December 2009, SCA-09-0027, after deliberation held on 17 August 2010 delivers the following

### D E C I S I O N

- 1. The appeal is dismissed as inadmissible.**
- 2. The Appellants are obliged to pay court fees in an amount of 90 Euros for the appeals proceedings to the Special Chamber.**

**Procedural and factual background:**

On 16 December 2009 the Trial Panel of the SCSC rejected the appeal of the Claimants/Appellants which was filed against the decision of the Municipal Court of Malishevë/Mališevo, C.no. 290/06 issued on 13 December 2008.

The Registry of the SCSC served the aforementioned decision of the Trial Panel on the Claimants'/Appellants' representative on 19 December 2009. The Claimants/Appellants filed the appeal on 22 April 2010.

On 4 May 2010 the Appellate Panel ordered the Claimants/Appellants to clarify, among other matters, when their representative received the decision of the Trial Panel. In their response to the order the Claimants/Appellants announced that they received the mentioned decision on 22 March 2010.

On 8 June 2010 the Appellate Panel ordered the Claimants/Appellants to clarify as to why it is claimed that they have received the appealed decision (SCA-09-0027, 16 December 2009) on 22 March 2010, although the acknowledgment receipt indicates that it was received on 19 December 2009. Also the copy of the aforementioned acknowledgment of receipt was served with the order to the Claimants'/Appellants' representative. By the same order the Claimants/Appellants were asked to present evidence that they have received the decision of the Trial Panel only on 22 March 2010. The Claimants/Appellants responded to the order by reiterating that they received the mentioned decision on 22 March 2010. They also submitted a copy of an acknowledgement of receipt issued by the Municipal Court of Malishevë/Mališevo and dated 22 March 2010. In their response no statement was given regarding the copy of the acknowledgement of receipt issued by the Registry of the SCSC and submitted to them with the order.

**Legal reasoning:**

The appeal is untimely and thus had to be dismissed as inadmissible.

According to Section 9.5 of UNMIK Regulation (REG) 2008/4 the parties may appeal against the decisions/judgments of the Trial Panel to the Appellate Panel of the SCSC within 30 days from the service of the decision/judgment.

In the appealed decision the Trial Panel has announced that the aggrieved party may file an appeal against the decision within one month's time limit from the day of its service. Although according to the aforementioned Section 9.5 of UNMIK REG 2008/4 the time limit for filing an appeal is 30 days the Claimants/Appellants are entitled to file an appeal within a time limit of one month, as they are to be treated as if the advice given by the Trial Panel were correct.

According to the acknowledgment of receipt in the file SCA-09-0027 and the receipt issued by the Municipal Court submitted by the Claimants/Appellants on 6 July 2010 it has to be concluded that the decision of the Trial Panel was served twice on the Claimants'/Appellants' representative. First it was served by the Registry of the SCSC on 19 December 2009 and then for the second time by the Municipal Court of Malishevë/Mališevo on 22 March 2010. The representative of the Claimants/Appellants has not given any statement concerning the copy of the acknowledgement of receipt issued by the Registry of the SCSC which was served on him with the SCSC's order. The acknowledgement of receipt issued by the Registry of the SCSC proves that the decision of the Trial Panel was served on the Claimants'/Appellants' representative on the date which is marked on it, namely 19 December 2010. The service of the decision of the Trial Panel to the Claimants'/Appellants' representative by the Municipal Court later on 22 March 2010 has no legal relevance. The time period for filing an appeal is counted from the first service of the decision by the competent body for serving decisions on the respective party. In their two responses to the Appellate Panel the Claimants/Appellants have not provided any acceptable legal explanation why they did not file their appeal in the time period stipulated in Section 9.5 of UNMIK REG 2008/4, counting from the first service of the decision.

Even if the more favorable time limit of one month as stated in the decision of the Trial Panel, was applied here, the time limit for lodging the appeal in this case ended on 19 January 2010 (Tuesday) at 24:00 hours. While the appeal was

filed on 22 April 2010, using the regular postal service, the appeal is untimely and consequently had to be dismissed as inadmissible.

*Court fees:*

Based on Section 57.2 of UNMIK Administrative Direction 2008/6 the SCSC 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 2<sup>nd</sup> 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 of ADJ determines that for the decision for 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 in principle also to decisions of the third instance too, but according to Section 10.22 of ADJ the fee shall be double. The maximum court fee regarding decisions of the third instance dismissing claims as inadmissible is thus 60 Euros.

The value of the Claimants'/Appellants' claim is over 10,000 Euros. The court fee for the decision in third instance therefore is set to 60 Euros.

As a consequence, the following court fees for the appeals proceedings finally apply:

Court Fee Tariff Section 10.11 (filing of the appeal)	30 Euros
Court Fee Tariff Section 10.15 in conjunction with 10.22 and 10.1 (decision in third instance)	60 Euros
Total	90 Euros

These court fees are to be borne by the Appellants.

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