

<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 ODMOSE NA KOSOVSKU POVERENIÇKU AGENCIJU</p>
---	--	---

**SCC-R-07-0490**

In the lawsuit of

- 1) [REDACTED], [REDACTED], Gjakova/Đakovica  
Represented by [REDACTED], lawyer from Gjakova/ Đakovica
- 2) [REDACTED], [REDACTED], Gjakova/ Đakovica
- 3) [REDACTED] street N/N, Gjakova/  
Đakovica
- 4) [REDACTED] street N/N, Gjakova/  
Đakovica

Claimants

vs

**SOE** "[REDACTED]", Gjakova/Đakovica

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 Claimant's appeal and request for review of the decision of the SCSC of 23 April 2008, SCC-07-0490, after deliberation on 17 August 2010, delivers the following

## **DECISION**

The request for review and the appeal, both filed by the 1<sup>st</sup> Claimant, [REDACTED], are dismissed.

### **Reasons at Law:**

On 23 April 2008, the SCSC dismissed the co-ownership claim of the Claimants, in which they were requesting the confirmation of their co-ownership over the immovable properties concerned, as inadmissible. The decision was served on the 1<sup>st</sup> Claimant on 09 May 2008.

In the request for review, submitted by the 1<sup>st</sup> Claimant to the SCSC on 17 June 2008, the Claimant requests to review this decision, to quash it and to continue with the proceeding by issuing the decision on merits.

The request for review is inadmissible and thus to be rejected.

The legal remedy of the review of decisions taken by sub-panels of judges of the SCSC by the full panel of judges as foreseen in Section 13.4 of UNMIK AD 2006/17, applicable at the date of lodging the request, is no longer foreseen by UNMIK REG 2008/4 and AD 2008/6 as in force as of 1 January 2009 (and not from 31 May 2008, as claimed in the request for review). Namely, neither UNMIK REG 2008/4 nor UNMIK AD 2008/6 contains a transitional provision as to how already pending requests for review should be dealt with. It should be emphasised that after the entering into force of the above mentioned legal instruments now there is no more legal organ existent which would be entitled to deal with such a legal remedy as the review. As a principle rule of European legal systems, rules of procedure contained in new legislation enter directly into force even as regards pending cases, as long as there are no transitional provisions stating otherwise (SCC-R-08-0006; SCC-R-08-0028 et al.). The review of decisions taken even before 31 December 2008 is

therefore not possible any more. As a consequence, the Claimant's request has to be dismissed.

Lately, even under the assumption that the old law were still applicable, the conclusion would be the same:

*Section 13.4 UNMIK AD 2006/17 stated: "A judgment or decision made by a panel of judges may also be reviewed by the Special Chamber if a party applies for such review. Any judgment or decision made by the Special Chamber following such review shall confirm or set aside the judgment or decision made by the panel of judges. Such application shall be made within 1 (one) month from the date of service of the panel's judgment or decision."*

The request for review had, however, been filed untimely and therefore did not fulfil the formal requirements set out in this provision. The time period to file a request for review expired on 10 June 2008 (see Section 10.1 [b] UNMIK AD 2006/17), whereas the request for review was filed on 17 June 2008.

Together with the request for review the Claimant filed an appeal challenging the mentioned decision of the SCSC, based on the alleged violation of provisions of the Law on Contested Procedure, an alleged wrong ascertainment or only partial ascertainment of the facts, and on an alleged wrong application of provisions of the substantive law.

The appeal is inadmissible.

UNMIK REG 2002/13 and UNMIK AD 2006/17, both applicable until 31 December 2008, do not foresee the right to appeal against decisions of the SCSC. Therefore, decisions of the SCSC issued before 31 December 2008 cannot be appealed since the applicable law did not foresee such a legal remedy, and, in addition, there was no such legal authority existent at this

time that would be entitled to decide on the appeals. Eventually, there is no "inalienable right to appeal to the first step organ". In particular, Art 6 and Art 13 European Convention on Human Rights, to be observed by the SCSC according to UNMIK REG 1999/24 "On the Law applicable in Kosovo", Section 1.3.(b), do not grant a right to appeal any first instance decision in civil cases (SCC-R-05-0004 et al.).

A decision on the costs had not to be taken.

Richard Winkelhofer, EULEX Presiding Judge

signature

Torsten Koschinka, EULEX Judge

signature

Eija-Liisa Helin, EULEX Judge

signature

Tobias Lapke, EULEX Interim Registrar

signature