

<p>DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE NË LIDHJE ME AGJENCINË KOSOVARE TË PRIVATIZIMIT</p>	<p>SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY OF KOSOVO RELATED MATTERS</p>	<p>POSEBNA KOMORA VRHOVNOG SUDA KOSOVA O PITANJIMA KOJA SE ODNOSE NA KOSOVSKU AGENCIJU ZA PRIVATIZACIJU</p>
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AC-II-12-0139

In the lawsuit of

Claimant/Appellant

1. H.S. XX

vs.

The Respondent

**1. E "U.C." Hereq,
Represented by the Privatization Agency of Kosovo,
"Ilir Konushevc" str. No. 8, Prishtinë**

The Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (SCSC), composed of Mr.sc. Sahit Sylejmani, presiding judge, Merja Halme-Korhonen, , Cornelis Van Der Weide, David Wilcoxand Sabri Halili, judges, on the appeal of the Claimant filed against Decision of the Municipal Court of Gjakovë//Đakovica C.nr 337/2007 dated 10.08.2010, after deliberation held on 30 April 2013delivers the following:

D E C I S I O N

1. The appeal of the Claimant against the Decision of the Municipal Court of Gjakova C.nr. 337/2007 dated 10.08.2012 is hereby dismissed as inadmissible.

2. No court fees shall be assigned for the appellate proceedings.

Factual and procedural background:

On 08 February 2007, the Claimant submitted a claim with the SCSC requesting the SCSC to oblige the Kosovo Trust Agency to suspend the sales procedures of the real estates, not specifying any concrete parcel but as a complex of cadastral parcels which is located on the left side of the v.Rastavicë - Junik road and v.Rastavicë - Gjakovë road on the left side of this road. The Claimant declares to be representing 73 real estates` owners whose properties were nationalized, identified and used without any compensation by the Respondent until 1999, and after this year, the owners themselves are using these parcels.

The Claimant requests a preliminary injunction for the suspension of sales of the above mentioned real estates.

The Trial Panel of the SCSC, on 24 April 2007, by Decision SCC-07-0060 dismissed as inadmissible the request for the preliminary injunction, while referred the claim to the Municipal Court of Gjakova, and ruled that if there will be an appeal against the Decision of this Court, it shall be filed with the SCSC.

The Municipal Court of Gjakova, on 10 August 2010, by Decision C.nr 337/2007, dismissed the claim for lacking the subject matter. The court, in the appealed Decision submits that, after the examination of the case files, it has concluded that the Claimant filed his sole request, the suspension of the sales of real estates, without cadastral numbers, and with no other essential request such as: verification of the ownership right or handing in possession of the "subjected "real estate, and this Court concludes that there is no subject matter to decide upon.

On 27 September 2010, the Claimant (hereinafter the Appellant), provided the appeal, against the Decision of the Municipal Court due to the essential violation of the legal provisions, erroneous and incomplete determination of factual situation and erroneous application of the substantive law, only in Albanian language. Further, the Appellant

considers that there is a violation of Article 121 item (a) and (c) in conjunction with Article 13.2 item (iii) of UNMIK AD 2008/6, and it is alleged that the appealed Decision is inaccurate and as a result, it cannot be examined, the enacting clause is meaningless and contradicts itself and the reasoning of the Decision. This Decision contains no justifications at all or the reasoning on essential facts for issuing the above are not presented or they are unclear and contradictory. According to the Claimant, the factual situation was not correctly verified and the dismissal of the claim for lacking the subject matter was done unlawfully and without legal grounds. On 05 October 2010, the Claimant submitted a claim with the SCSC, including its English translation.

On 03 May 2012, the Specialized Panel on ownership claims of the SCSC, by an internal order, ordered the Registry to register the case SCA-10-0071 with Appellate Panel, thus the filed appeal was registered under the number AC- II-12-0139.

On 22 May 2012, the Appellate Panel of the SCSC requested the Appellant to declare on which date it was served with the appealed Decision and to submit a copy of this Decision, he was further requested to submit the English translation of the appealed Decision, or pursuant to the Article 25.9 of the Annex of the SCL, a natural person may submit an application to the Presiding Judge for assistance in developing the English translation of pleadings and supporting documents. In the order, it was reminded of the procedural consequences that may arise on the appeal, if the requirements stated in the order are not met.

The Appellant was served with the order on 28 May 2012, while it failed to comply with the requirements of the order.

Legal Reasoning

The admissibility of the claim and the assessment of the Appellate Panel

The appeal is inadmissible. Pursuant to the Article 64.1 of the Annex of the Special Chamber Law No. 04/L-033 of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Annex), the Appellate Panel decided to dispense with the oral part of the proceedings.

The Appellant failed to comply with the order dated 22 May 2012, since it did not submit a copy of the appealed Decision and a submission specifying the date of its service and also the English translation of the appealed Decision is not submitted nor the request for assistance in translation.

Ratio legis (i.e the reasoning) of Article 60.1 (sub-item, 4 and 6) of the Annex of the SCL is to enable the Appellate Panel to review the admissibility criteria of an appeal at first glance, without having requested the case file from the court of first instance and to clarify that the Appellant is actually appealing the right Decision and that the appeal is submitted on time. Therefore, the provision is not just a meaningless procedural burden, but it has its part within the admissibility criteria of an appeal (see, *ex multis*, ASC-09-0065).

Since the Appellant did not comply with the order, the appeal does not meet the admissibility requirements set out in Article 60. 1 subparagraph 1.4 and 1.6 and Article 28.2 (6), in conjunction with Article 58.2 of the Annex of the LSC.

For the above reasons, it is decided as in the enacting clause.

Court fees/costs:

The court does not assign costs to the Appellant as the Presidium of the court till now has not issued a written schedule which is approved by the Kosovo Judicial Council, Article 57.2 of the Annex to the Law No. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters. Therefore till now there is no legal basis to impose costs.

Decided by the Appellate Panel of the SCSC on 30 April 2013:

Mr.sc. Sahit Sylejmani, Presiding Judge _____

ORDER TO THE REGISTRY:

Please serve the Decision on the:

1. Claimant/Appellant (including English translation).
2. The Respondent (including English translation).
3. Municipal Court of Gjakova, C.nr 337/2007

Mr.sc. Sahit Sylejmani, Presiding Judge,

[signed]