

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
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ASC-09-0038

In the lawsuit of

[REDACTED] *Claimant*
[REDACTED], Ferizaj/Uroševac
 Represented by lawyer [REDACTED], Ferizaj/Uroševac

vs.

[REDACTED] *Respondent/Appellant*
 Ferizaj/Uroševac
 Represented by Privatization Agency of Kosovo
 Ilir Konushevci 8, Prishtinë/Priština

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, after deliberation held on 4 February 2010, delivers the following

DECISION

- 1. Point 5 of the Trial Panel decision dating 19 January 2009 (SCC-05-0518) is changed and the amount of court fees is reduced from € 1000 to € 857,58.**
- 2. Apart from that the appeal against the decision of the Trial Panel is rejected as ungrounded.**

Factual and Procedural Background:

On 11 November 2005 the Claimant filed a claim against SOE ██████████ in Ferizaj/Uroševac, requesting the recognition of ownership rights of the certain cadastral parcels. Later in the proceedings he alternatively requested monetary compensation for losses.

With the judgment of 19 January 2009, SCC-05-0518, the Trial Panel approved the Claimant's claim for the recognition of ownership rights of those parcels as grounded, but only parcel 477/3 of 11 acres lying outside ██████████ boundary fence was declared to be the property of the Claimant; other parcels, as well as another portion of parcel 477/3, were transferred to the name of the Respondent and were to be compensated to the Claimant in the amount of € 152.895. In the point 5 of the enacting clause of the judgment, the Trial Panel obliged the Respondent to pay the Claimant's attorney fees in amount of € 280,80, court costs in amount of € 1000 and expertise fees in amount of € 210.

The judgment was served on the Respondent on 10 February 2009.

On 24 February 2009 the Respondent filed an appeal against point 5 of this judgment in regard to the court expenses, claiming it were the result of a wrong application of substantial law. The Respondent/Appellant requests its appeal to be approved and to discharge it from the obligation of paying the court fees in the amount of € 1000, as well as from the other costs.

The Claimant has not submitted a response to the appeal.

Legal Reasoning:

The appeal is to be partly approved as grounded.

Before dealing with the contents of the appeal, one preliminary remark has to be made as regards the representation of the Appellant:

The Kosovo Trust Agency (KTA), established in November 2002 by UNMIK REG 2002/13, as amended by UNMIK REG 2005/18, ceased its operations in June

2008. Its activities, including the representation of Socially Owned Enterprises (SOEs) before the Special Chamber, were then factually taken over by the Privatization Agency of Kosovo (PAK).

Taking into consideration the factual situation on the ground in Kosovo with the KTA not any more exercising its duties and powers as defined in UNMIK REG 2002/13, as amended, further taking into account that there is an imminent need for SOEs being duly represented before the Special Chamber, and considering that as a basic principle legal systems following the rule of law do not allow for legal vacuums, the representation of SOEs by the PAK for the time being will be accepted.

The Appellant is therefore considered duly represented by the PAK.

The Appellant claims that it has not been the only unsuccessful party in the procedure; the Claimant has been unsuccessful as well, as he acquired property rights only for a portion of the parcel 477/3; the SCSC has incorrectly applied Section 56.2 UNMIK Administrative Direction (AD) 2008/6, to the disadvantage of the Appellant.

This has to be answered as follows:

Section 56.2 of UNMIK AD 2008/6 stipulates that the unsuccessful party shall be ordered to pay costs as determined in the final judgment. According to section 56.3 of the mentioned AD, where each party succeeds on some claims and fails on others, or in exceptional circumstances, the SCSC may order that the costs be shared or that the parties bear their own costs.

The Claimant's claim for recognition of ownership rights of all the parcels mentioned in the claim was accepted as grounded. The Claimant has therefore been the only successful party in first instance. The fact that the Claimant and the Respondent agreed on, during the proceedings, which parcels would be transferred to the Respondent and which would be compensated, does not establish that kind of exceptional circumstances which are meant in section 56.3 of the AD. For that reason the Appellant is obliged to reimburse the Claimant's attorney's fees, court costs and expertise fee.

In its appeal, the Appellant has also submitted that the court fees were wrongly calculated. According to the appeal the right amount of court fees in this case should be € 295,79.

According to the applicable table of the court tax amount on claims in the SCSC the amount of court fees is calculated from the value of the claim. The total amount of court fees is two times the amount, which is calculated according to that table. In the case at hand the value of the claim is € 169.395. For claims with a value exceeding € 5000, the court fee equals € 100 plus 0.2 per cent of the amount that exceeds € 5000. The right amount of the court fees here is thus € 857,58 Therefore the amount of the court fees is reduced from € 1000 to € 857,58.

For these reasons it is decided as in the enacting clause of this decision. Court costs are not requested in the appeals proceedings.

Richard Winkelhofer, EULEX Presiding Judge _____ signed _____

Torsten Frank Koschinka, EULEX Judge _____ signed _____

Eija- Liisa Helin, EULEX Judge _____ signed _____

Tobias Lapke, EULEX Registrar _____ signed _____