

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 ODNOSI NA KOSOVSKU POVERENIÇKU AGENCIJU
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ASC-09-0048

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 Bërnica e Ultë/Donja Brnjica, Prishtinë/Priština

Represented by ██████████ Lawyer from Prishtinë/Priština

Claimant/Appellant

vs

Kosovo Trust Agency ,

represented by UNMIK Office of Legal Affairs,

TSS, 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 against the decision of the SCSC of 9 July 2009, SCC-08-0308, after deliberation held on 12 January 2010, delivers the following

DECISION

The appeal is rejected as ungrounded. The decision of the SCSC of 9 July 2009, SCC-08-0308, is upheld.

Reasons at Law:

In his claim, filed with the Trial Panel of the Special Chamber of the Supreme Court of Kosovo (SCSC) on 29 December 2008, the Claimant strives for the

payment of monthly salaries from 1 March 2000 until 27 June 2006 in the total amount of EUR 21.500,00, plus interest.

With decision of 9 July 2009, SCC-08-0308, the Trial Panel rejected the claim as inadmissible, on the grounds that the Claimant had not given notice to the respondent as foreseen in Section 28.2 paragraph (e) of UNMIK AD 2008/6.

In his appeal the Claimant requests to amend the first instance decision as to "approve the claim as grounded". The Appellant states that the main reason for dismissing the Claim was based on the fact that he failed to notify the Respondent of his intention to file a claim against them. He maintains that the Respondent has been aware of all relevant circumstances which made the notification obsolete; the court should therefore have gone into the merits of the case.

In its response to the appeal, the Respondent requests to uphold the attacked decision.

The appeal has to be rejected as ungrounded.

As already outlined in the attacked decision, the Appellant failed to submit the notification to the Respondent KTA on his intention to file a Claim against them within the prescribed time limit as foreseen in Section 28.2 paragraph (e) UNMIK AD 2008/6, in connection with Section 30.2 of UNMIK REG 2002/12. His claim therefore did not meet the admissibility criteria as set forth in Section 28.3 of UNMIK AD 2008/6. Thus the rejection of the Claim as inadmissible was in line with the mentioned provision (see Section 28.4 of UNMIK AD 2008/6).

In opposition to the Appellant's arguments, it is irrelevant if the Respondent was aware of his working relationship with the SOE "Prishtina" (see pp 11, 15 of the first instance file), and that the enterprise was being liquidated. Even if it were the case that the Respondent promised to contact the Appellant on the issue of proceedings before the Municipal Court Prishtinë/Priština (between the Appellant and the SOE), as stated in the appeal, and allegedly did never make such a contact, this would not waive the necessity of the notification as foreseen in Section 28.2 paragraph (e), in connection with

Section 30.2 of UNMIK REG 2002/12. Lately, it is of no relevance if the notification "would have changed anything".

The Appellate Panel can neither follow the Claimant's further argument that the Trial Panel should have entered into the merits of the case, to give him the opportunity "to provide supplementary arguments in order to support his claim". To the contrary, the admissibility of the claim is a prerequisite to enter into the merits.

Finally, it is of no influence to the decision, provided the truth of the Appellant's respective argument, if the Municipal Court Prishtinë/Priština wrongly assumed jurisdiction over respondents in similar cases. This fact could never serve as a justification to follow the same - wrong - path in other cases, only for the sake of treating similar cases the same way, as the Appellant submits. In addition, this could the less help overcome the lack of formal requirements for the admissibility of a claim. As pointed out repeatedly, these are missing here.

The attacked decision therefore has to be upheld.

A decision concerning costs was not to be taken.

As the Trial Panel could not go into the merits of the case, the Appellant may file a new claim, after having duly notified the Respondent (compare Section 24.6 UNMIK AD 2008/6). To be complete, such a Claim would have to detail as to why the Appellant is of the opinion that the Respondent could be legally held liable for alleged obligations of the SOE (Section 27.2 [e] UNMIK AD 2008/6), deriving from the employment contract between him and the SOE (see the Trial Panel's order of 30 March 2009, pp 20 of the first instance file). The current claim misses any legal reasoning in this respect.

Richard Winkelhofer, EULEX Presiding Judge signed

Torsten Koschinka, EULEX Judge signed

Eija -Liisa Helin, EULEX Judge signed

Tobias Lapke, EULEX Registrar signed