

<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 KOSOVSKE POVERENIÇKU AGENCIJU</p>
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ASC-09-0041

In the lawsuit of

[REDACTED] *Claimant/Appellant*
 represented by lawyer [REDACTED] from Glogovac/Glogovac

vs.

1) Agricultural and Social Owned Enterprise [REDACTED] *Respondents*
 Glogovac/ Glogovac

2) Kosovo Trust Agency
 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, on the appeal of the Claimant/Appellant against the decision of the SCSC of 23 July 2009, SCC-08-0257, after deliberation held on 17 August 2010, delivers the following

DECISION

- 1. The application for assistance in translations is rejected.**
- 2. The appeal is dismissed as inadmissible.**
- 3. The Appellant is obliged to pay court fees in an amount of 60 Euros for the appeals proceedings to the Special Chamber.**

Procedural background:

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On 15 September 2008 the Claimant filed a claim with the SCSC requesting the recognition of ownership rights over immovable property.

The Claimant is represented by a duly authorized lawyer.

On 23 July 2009 the Trial Panel of the SCSC issued a decision in the matter, dismissing the claim as inadmissible pursuant to Sections 28.3 and 28.4 of UNMIK Administrative Direction (AD) 2008/6, arguing that the Claimant did not fully comply with the order of the Judge Rapporteur requesting certain documents from the Claimant.

On 4 August 2009 the Claimant (hereinafter the Appellant) filed an appeal against the mentioned decision of the Trial Panel requesting to set aside the decision and to return the case to the Trial Panel for continuing the proceedings.

The Appellate Panel ordered the Appellant to supplement her appeal by requesting her pursuant to Section 60.2 of UNMIK AD 2008/6 to submit a copy of the decision against which the appeal is brought and to submit pursuant to Section 25.7 of the same AD an English translation of the appeal and the supporting documents. The order warned the Appellant that if she fails to comply with it the Appellate Panel shall reject the appeal on the grounds of inadmissibility. Furthermore, the Appellant was advised of Section 25.8 of UNMIK AD 2008/6 according to which a natural party may submit an application to the Presiding Judge for assistance in translation of pleadings and supporting documents. Failure with filing the form will lead to the rejection of the request. The order, its translation and the application form for requesting assistance for translation were served on the Appellant's lawyer on 30 December 2009.

The Appellant timely filed a submission, but she did not submit a copy of the decision against which the appeal is brought and the requested English translation of the appeal. She neither submitted an application on the official template (ZPF 1) requesting assistance in translation. Instead, she replied that in the case files there is already an English translation of the claim and of all other needed documents. If there were a need for translation, the Appellant asks the

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SCSC to assign "an official translator" for the reason that the Appellant does not have the means for paying the costs of translation. According to the reply the Appellant lives on social assistance without any other income or any property.

By the order of the Appellate Panel dated 21 April 2010 the Appellant was requested to submit competent and clear evidence that she is entitled to receive social assistance and once more a copy of the decision against which the appeal is brought. The Appellant was also once more reminded of the legal consequences of not complying with the order. On 23 April 2010 the Appellant filed a submission, but did neither submit any evidence that the Appellant lives on social assistance nor a copy of the decision of the Trial Panel against which the appeal is brought.

Legal Reasoning:

The appeal is timely filed, but inadmissible.

The appeal does not meet the requirements set out in Sections 60.2 and 25.7 of UNMIK AD 2008/6 and it was not supplemented by the Appellant as requested:

Uncompleted appeal

Section 60.2 of UNMIK AD 2008/6 stipulates that the decision of the Trial Panel shall be attached to the appeal. The decision of the Trial Panel against which the appeal is brought was not attached to the appeal. Thus, the appeal does not meet the requirement provided by the explained Section 60.2 of UNMIK AD 2008/6.

Furthermore according to Section 25.7 of UNMIK AD 2008/6 pleadings and supporting documents may be submitted in Albanian, Serbian or English. However, if submitted in Albanian or Serbian, an English translation of all pleadings and supporting documents shall be provided together with the pleadings. Such translations shall be at the party's expense. The appeal was submitted in Albanian, but no English translation of the appeal was provided.

Failure to supplement the appeal

Section 61.4 of UNMIK AD 2008/6 stipulates that upon receipt of the appeal the SCSC shall review it to determine whether it conforms to the requirements of the AD. If the SCSC decides that the appeal does not satisfy these requirements, it shall order the appellant forthwith to supplement its appeal accordingly and within reasonable time, failing which the appeal shall be rejected.

The appeal has to be supplemented at the latest following a respective clarification order of the court. Although the Appellant was warned about the consequences of not fulfilling the requirements, she has failed to supplement her appeal, which thus does not meet the admissibility criteria of an appeal.

Application for assistance in translation

Though the Appellant did not use the required template for an application for help in assistance in translation, her submission has to be interpreted as such an application. This application has to be rejected, as the Appellant did not provide the court with the necessary evidence to prove the correctness of her statements concerning her financial situation.

Within the case files there is only an English translation of the claim and of some other documents, but not a translation of the appeal. The Appellant was given the opportunity to apply for assistance in translation by using the required application form (ZPF 1). The purpose of using the application form is to help to clarify the Appellant's overall economical situation to enable the court to take a decision on the application. The Appellant announced that she lives on social assistance and does not have any other income or any property. This announcement only without filling in and submitting the official application form and especially without offering (though explicitly requested) any supporting evidence is not sufficient to grant her assistance in translation pursuant to Section 25.8 of UNMIK AD 2008/6. The request thus had to be rejected.

Pursuant to Section 25.9 of UNMIK AD 2008/6 in cases like the one at hand the court has to provide translations ex officio, charging the Appellant afterwards for the costs arising from it. As this court pointed out clearly before (see ASC-10-0018), this provision's scope of applicability is strictly limited to cases in which

applications for assistance in translation have not been successful. Sentence 3 of the named provision clearly refers to sentence 2 ("such translations"). Section 25.9 of UNMIK AD 2008/6 is not meant to safeguard the procedural positions of those, who do not take care of their own procedural rights by requesting assistance in translation at all. For this reason the appeal would have had to be translated ex officio if it had met the other admissibility criteria of an appeal.

As it did not (see above), there was no reason for translating the submitted documents.

Court fees

The following court fees for the appeals proceedings apply (see ASC -09-0072 et al):

Court Fee Tariff Section 10.11 (filing the appeal)	30 Euros
Court Fee Tariff Section 10.15 in conjunction with 10.21 (decision on second instance)	30 Euros
<u>Total</u>	<u>60 Euros</u>

The court fees are to be borne by the Appellant, who is therefore obliged to pay the mentioned amount to the Special Chamber.

Richard Winkelhofer, EULEX Presiding Judge _____signed_____

Torsten Frank Koschinka, EULEX Judge _____signed_____

Eija- Liisa Helin, EULEX Judge _____signed_____

Tobias Lapke, EULEX Registrar _____signed_____