

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-09-0098

In the lawsuit of

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]
13. [REDACTED]

Complainants

vs.

Privatisation Agency of Kosovo

Respondent

[REDACTED]

Appellant

The Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (SCSC), Appellate Panel, composed of Richard Winkelhofer, President of the SCSC, as Presiding Judge, Torsten Frank Koschinka and Eija-Liisa Helin, Judges, after deliberations held on this 09 March 2010 issues the following

D E C I S I O N :

The appeal is dismissed as inadmissible.

Factual and Procedural Background:

On 05 November 2009 the Trial Panel issued a decision extending the time period in the case SCEL-09-0025, as prescribed by Section 67.12 UNMIK AD 2008/6 for another time period of 90 days from 11 November 2009, basing this decision on Section 21.1 UNMIK AD 2008/6.

The decision was served on the Appellant on 18 November 2009. On 01 December 2009 the Appellant lodged his appeal with the Appellate Panel of the SCSC. He claims that the taken decision is not in accordance with the law.

Legal Reasoning:

The appeal is, though timely, inadmissible.

An appeal can only be admissible, if there is a legal or factual gravamen for the Appellant arising from the attacked decision. This can only be the fact, if the challenged decision has any legal effect. The decision of the Trial Panel of the SCSC dating 05 November 2009 lacks this legal effect.

Section 67.12 UNMIK AD 2008/6 states that the (final) decision of the Trial Panel in a so called Workers List Case shall be served on the complainant(s) and the Agency in any event not later than 90 days of the date on which the complaint was filed with the Registry. The quoted provision does not foresee any consequence if the Trial Panel does not comply with it. Section 67.12 UNMIK AD 2008/6 is thus a *lex imperfecta*, a legal provision from which in case of its infringement no legal effect arises. It is, in other words, only a provision which states a desirable, but not binding result, the – according to the factual situation of the SCSC with regard to staffing and workload – fastest possible handling of Workers List Cases within the first instance.

Section 67.12 UNMIK AD 2008/6 does not even prescribe a time period in the sense of Section 21.1 UNMIK AD 2008/6, as the second clause of this provision clarifies that time periods prescribed by law in the meaning of this norm are only time periods valid for the parties, but not such given to the court.

III

Taking this into consideration the challenged decision of the Trial Panel has no legal substance which could have any legal or factual effect on the Appellant. It is from its content nothing else than a notification to the parties that the court is not in a position to finalize the proceedings within the desirable time limit, which was – wrongfully – given the form of a decision.

A decision concerning costs was not to be taken.

Richard Winkelhofer, EULEX Presiding Judge signature

Torsten Frank Koschinka, EULEX Judge signature

Eija-Liisa Helin, EULEX Judge signature

Tobias Lapke, EULEX Registrar signature