

<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 ODNOSE NA KOSOVSKU POVERENIÇKU AGENCIJU</p>
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ASC – 09 – 0100

In the lawsuit of

████████████████████

Claimant/Appellant

████████████████████ Prishtinë/Priština

represented by ██████████,

Lawyer in ██████████ Prishtinë/Priština

vs

1. ██████████

Respondents

████████████████████, Prishtinë/Priština

2. Privatisation Agency of Kosovo

Str. Ilir Konushevci No.8,
10 000 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 12 November 2009, SCC – 09 – 0136, after deliberation held on 3 June 2010, delivers the following

DECISION

- 1. The appeal is grounded.**
- 2. The decision of the Trial Panel of the SCSC of 12 November 2009 in case number SCC-09-0136 is set aside and the case is returned to the Trial Panel of the SCSC for retrial.**

- 3. The Appellant is preliminary obliged to pay court fees in an amount of 60 Euros for the appeals proceedings to the Special Chamber.**
- 4. The Trial Panel will have to decide on the allocation of the costs of the appeals proceedings.**

Procedural and factual background:

On 21 July 2009 the Claimant filed a claim requesting the Trial Panel of the SCSC to oblige the first Respondent to pay "the debt from rental charge of building wherein the Claimant has been working", "the sum and the date of which will be determined in the main session". Furthermore, the Claimant requested the first Respondent to be obliged to pay legal interest on the claimed amount of money and the first Respondent to reimburse all costs of proceedings.

According to the claim the Claimant is an employee of the first Respondent and has been working in the post "accountant of personal incomes". After the conflict the first Respondent has entered into a tenancy agreement and carried out other works. Since 1999 the employees of the first Respondent have received monthly as the share of the rent payments and are still receiving payments from incomes of the first Respondent. The Claimant claims that she is also entitled to receive the same monthly payment as other employees of the first Respondent.

With an order dated 14 October 2009, the Trial Panel requested the Claimant to submit within 14 days from acknowledgment of the service of the order: 1.) "the address of the Claimant and the address of service of the Respondent"; 2.) "the legal arguments on which the claim is based, with their translation into English"; 3.) "detail of the amount of relief sought and a clarification of whom the relief is sought from"; 4.) "the basis under which the Special Chamber of the Supreme Court of Kosovo on KTA Related Matters has jurisdiction over the claim"; 5.) "the proof that the written notice of the Claimant's intention to file a claim against the Enterprise to the agency within the prescribed period with translation into English" pursuant to section 29.1 and 30.2 of UNMIK Regulation (REG) 2002/12. On 27 October 2009, within the time frame provided, the Claimant answered the Trial Panel's order submitting her address and the Respondent's address of service. She also stated that her relationship with the First Respondent is based

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on the Law on Labour Relationships, being her condition of former employee of the bank neither ever contested, nor from the Respondent itself. The Claimant also stated that the current Managing Board of the bank, which took over the management of it after the conflict, since the year 1999 is renting out the premises to various international organisations and companies and then sharing the revenue with the former employees of the bank, except for herself. She is not, however in the position to provide the detail of the amount of money collected and shared, since she was never granted access to the Managing Board.

As for the jurisdiction of the SCSC, the Claimant asserted that the Respondent is a socially owned enterprise under the administration of the Kosovo Trust Agency, and that this is confirmed by the fact that she initially lodged the claim at the Municipal Court of Pristhinë/Priština (case C 1332/07), which declared itself incompetent to adjudicate the case and advised the Claimant to file a claim at the SCSC.

Finally, answering the question of the notice to the Agency, the Claimant asserts that the Agency was aware of the claim, being even present in a hearing at the Municipal Court and during which the representative of the Agency raised the issue of jurisdiction leading to the decision of the Municipal Court about its incompetence. The Claimant attached a copy of the minutes of the hearing held at the Municipal Court dated 19 June 2009.

On 12 November 2009 the Trial Panel of the SCSC rejected the claim on the grounds of inadmissibility. According to the legal reasoning of the decision, the Claimant submitted the clarification required by the order of the SCSC dated 14 October 2009, however incompletely. The Claimant failed to indicate the amount of the relief sought as required by Section 27.2 (d) of UNMIK Administrative Direction (AD) 2008/6 and failed to provide the Agency, "applied by analogy to the second Respondent, with the written notice of her intention to file a claim against the Enterprise sixty (60) days prior to the actual filing of the claim, as required by Section 28.2 (e) of UNMIK AD 2008/6 and Sections 29.1 and 30.2 of UNMIK REG 2002/12 as amended. The written notice to the Second Respondent notifying it of her intention of initiating a suit against the enterprise and the

second Respondent is dated 23 October 2009, submitted after the filing of the actual claim on 21 July 2009 and this not in due time”.

With the appeal, timely filed by the Claimant (herein after the Appellant) the Appellate Panel of the Special Chamber is requested to set aside the decision of the Trial Panel and to remand the case for retrial. The Appellant submits that with her answer of 27 October 2009 to the order of the Special Chamber she fulfilled all the requirements. In particular, she asserted that for her it was not possible to know the amount of the relief sought because she was never able to get into contact with the Managing Board of the bank; therefore she is not aware of the amount of the accumulated revenue so far from the year 1999, and the amount that has been distributed amongst the other employees. For that reason the Appellant in her claim requested an expertise to calculate such an amount, in accordance with Article 36 of the Law on Contested Procedure.

As regard to the notice to the Agency, the Appellant maintains that the Privatisation Agency of Kosovo (the PAK) was well informed about the claim, since its representative was present, as results from the minutes, at the hearing in front of the Municipal Court on 2 July 2009, and it is evident from those minutes that the Privatisation Agency of Kosovo requested the Municipal Court to declare itself incompetent because of the lack of jurisdiction, and to advise the Claimant to file a new claim at the Special Chamber.

The Privatisation Agency of Kosovo filed its defence timely, on behalf also of the first Respondent, whereby the PAK requests to reject the appeal of the Appellant on the grounds that she did not provide any new facts or evidence that would lead to the annulment of the Trial Panel decision. She did not indicate the amount of the monthly instalment she is claiming as a former employee of the bank.

Legal Reasoning:*Relief sought by the Claimant*

Section 27.2 (d) of UNMIK AD 2008/6 requires that a claim in order to be brought before the Special Chamber shall state (...) the relief sought by the Claimant. Section 28.2 (f) of the AD states that a claim shall only be admissible if (...) "the pleadings submitted [...] conform to the requirements of sections 25 and 27 of the present Administrative Direction".

Section 27.2 (d) of UNMIK AD 2008/6, according to its wording does not require an indication of the *amount* of such a relief.

Section 70.3 (a) of UNMIK AD 2008/6 stipulates that in interpreting the AD, or in considering any question which is not, in its judgment, answered sufficiently by the AD, the SCSC may have regard, with such modifications or qualifications as it considers necessary or appropriate in the circumstances, to any provision of the Law on Contested Procedure applicable in Kosovo. According to Article 253 of the Law on Contested Procedure of the Republic of Kosovo (hereinafter the NLCP, Law No.03/L-006), a claim consists of a request set in accordance with the main issue and accessing requests, proofs upon which the plaintiff based the request, proof that certify the facts, value of the contest and judicial base and other data that should be part of each submission (Article 99). To the contrary, Article 186 of the applicable Law on Contested Procedure (herein after the LCP, Official Gazette of SFRY 4/77-1478, 36/80-1182, 69/82-1596) stipulates that the claim should contain a specific claim indicating the principal issue and ancillary claims, facts on which the plaintiff grounds his/her claim, evidence proving those facts and all other information that every application must contain (Article 106). As shown, under the LCP the amount of the claim need not necessarily be announced in the claim.

In the case at hand, the Claimant indicated in the claim - and also in the response to the court order - that she is seeking the payment of monthly instalments as monthly salary, in her capacity as a former employee of the bank, as it is happening for other former employees, since the year 1999. The Claimant

also stated that she is not in the position to provide an indication for such an amount, due to the fact that she was never allowed to get into contact with the Managing Board allegedly in charge of collecting and distributing the money. The Claimant is on the contrary requesting the court to carry out an expertise in order to establish such an amount.

Pursuant to the wording of Section 27.2 (d) of UNMIK AD 2008/6 and Article 186 of the LCP the claim is not inadmissible due to the reason that it does not contain the amount of the relief sought. In the case at hand the amount of the relief sought may only be defined based on the information that the first Respondent may possess and might be obliged to provide.

Notification to the Agency

According to Section 29.1 of UNMIK REG 2002/12 in conjunction with Section 28.2 (e) of UNMIK AD 2008/6 a written notice of the intention to file action against a socially owned enterprise has to be given to the Agency (prior – “intention to file a claim”) to the submission of the claim. The notice to the Agency about the intention to file a claim against the socially owned enterprise is among the admissibility criteria as set forth in Section 28.3 of UNMIK AD 2008/6.

Furthermore, according to Section 30.2 of UNMIK REG 2002/12 the SCSC shall not admit any suit against the Agency unless the claimant submits evidence of having notified the Chairman of the Board of his intention of filing such suit at least sixty days prior to actual filing. As well the notice to the Agency about the intention to file a claim against the Agency is among the admissible criteria as set forth in Section 28.3 of UNMIK AD 2008/6.

The Claimant with the answer to the order of the Trial Panel submitted a copy of the written notification to the PAK dated 23 October 2009, which has been received by the PAK on 26 October 2009. This has thus been done after filing the claim with the SCSC.

According to the appeal and the response to the appeal the same claim has anyhow been earlier dealt with by the Municipal Court in Prishtinë/Priština. At the Municipal Court the claim was dismissed as inadmissible due to the lacking

competence of the court. According to the Claimant's statements, which the Respondents have not denied, the claim against the first Respondent has been extended against the second Respondent, the PAK, on 19 June 2009 at the Municipal Court. Furthermore, according to the Municipal Court's minutes of the main hearing of 2 July 2009 the Respondents' representative proposed to the court that the Claimant should address this issue to the Special Chamber. On 21 July 2009 the Claimant filed the claim with the SCSC.

The second Respondent has been aware of the Claimant's claim already at the latest in June 2009; on 2 July 2009 the second Respondent's representative referred the Claimant to the SCSC. Under these particular circumstances, there was no need for a separate written notification before filing the same claim again at the Special Chamber. The aim of the notification is to inform the Agency about (potential) claims, and to provide them with the opportunity to take the matter up, and if possible to reach an amicable settlement in the matter before starting proceedings at the court. Thus this ratio of law had no significance any more. In addition it has to be taken into consideration that the duty of a claimant to notify the agency in advance, and in certain cases against the Agency prior 60 days in advance, adds extra burden to her access to justice and must therefore be interpreted in a restrictive way.

As a consequence, the claim cannot be considered inadmissible on the grounds of an untimely notification.

Return of the case to the Trial Panel

Thus the Trial Panel dismissed the claim as inadmissible on invalid grounds. The attacked decision therefore has to be set aside and returned to the Trial Panel for retrial. Under these circumstances, the Appellate Panel is not able to consider the merits of the claim as a first instance and cannot take stand on the legal basis of the claim. .

Costs / Court fees

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

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

These court fees are to be preliminary born by the Appellant, who is therefore obliged to pay the mentioned amount to the Special Chamber.

It will rest with the Trial Panel to allocate these costs of the appeals proceedings among the parties.

Richard Winkelhofer, EULEX Presiding Judge signed

Torsten Koschinka, EULEX Judge signed

Eija-Liisa Helin, EULEX Judge signed

Tobias Lapke, EULEX Registrar signed