

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 ODMOSE NA KOSOVSKU POVERENIÇKU AGENCIJU
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ASC-10-0014

In the lawsuit of

██████████, Attorney-at-law

N.Tesla 7, Zvecan/Zveçan

on behalf of late ██████████

██████████

formerly Belgrade / Republic of Serbia

Claimant/Appellant

vs

1. Privatization Agency of Kosovo

8 Ilir Konuchevci Street, Prishtinë/Priština

2. ██████████

Vustrri/Vucitrn

Respondents

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 ██████████ against the decision of the Trial Panel of 24 November 2009, SCC-09-0129, after deliberations held on 14 May 2010, delivers the following

DECISION

- 1. The appeal is rejected as ungrounded.**
- 2. The request for a stay of the proceedings is rejected as ungrounded.**
- 3. Attorney-at-law Miro Delević is obliged to pay court fees in an amount of 60 Euros to the Special Chamber.**

Factual and procedural background:

On 26 January 2010, Attorney-at-law ██████████ in the name of ██████████ filed an appeal against the decision of the Trial Panel dating 24 November 2009, SCC-09-0129, by which the claim filed in the name of ██████████ as Claimant was dismissed as inadmissible. On 10 February 2010, Attorney-at-law Miro Delević was requested to comply with Section 60.2 of UNMIK Administrative Direction (AD) 2008/6 by providing a certified copy of his power of attorney as well as an English translation of the appeal and all the supporting documents. On 22 March 2010 he filed a submission informing the court that he was unable to comply with the aforementioned requirements due to the death of the Claimant, simultaneously requesting the SCSC to stay the proceedings in this case until the inheritance proceedings are finalized. On 25 March 2010, Attorney-at-law ██████████ was requested to provide clarification as to when his client ██████████ passed away, and evidence that he had been authorized to represent his late client in the proceedings before the SCSC.

On 12 April 2010, Attorney-at-law ██████████ clarified that ██████████ died on 21 July 1968 in Belgrade, having left a power of attorney authorizing her cousin ██████████ regarding the restitution of her property in Kosovo. ██████████ transferred this authorization to their common cousin ██████████ who then authorized Attorney-at-law ██████████ for the current proceedings. Further, he submitted that there is "a new inheritance procedure" regarding the property of late ██████████ pending before the Second Municipal Court of Belgrade. On the basis of the reasons given above he requested the proceedings to be stayed until the inheritance procedure is finalized.

Legal reasoning:

III

The appeal is admissible, but ungrounded. The request to stay the proceedings had to be rejected as ungrounded, as well.

Capability of being a party in the case at hand

A deceased person is not capable of being a party in a lawsuit and cannot initiate legal proceedings; any submissions (in particular: claims and appeals) can neither be filed in their name, nor on their behalf (compare Article 77 Code of Civil Procedure, Official Gazette 4/77-1478, 36/80-1182, 69/82-1596 of the SFRY ["LCP"]; see also Article 73.1 of the Kosovo Law on Contested Procedure ["NLCP"], Law No.03/L-006, stating that a party to the proceedings may be any natural or legal person, which encompasses that these persons exist, for "natural person" meaning that (s)he must [still] be alive).

On principle, only the legal successor/s to a late person is/are entitled to initiate proceedings concerning legal relationships of the deceased, if at all, and only in his/her/their own name, while claiming and (later) proving their legal succession to the late person (or, under certain circumstances, a trustee of the inheritance, while the question of the legal succession is still pending).

██████████ died on 21 July 1968. The claim was filed in her name on 13 July 2009, without indicating her death, at all. From the submission of Attorney-at-law ██████████ it is clear that he definitely intended to file the claim in her name, and not (undisclosed) in the name of any legal successor to her. He claimed that late ██████████ had left a power of attorney to her cousin ██████████ ██████████ in order to get back her property in Kosovo, who then passed it on to her cousin ██████████, who finally authorized him (this power of attorney, by the way, was neither presented in the Trial Panel proceedings, nor in the Appellate Panel proceedings).

He therefore definitely and intentionally initiated proceedings in the name of a late person. As a consequence, the theoretical question of the clarification of the notation of an (existing) party in the course of the proceedings, due only to a false denomination of the existing subject, can be left unanswered here.

For these reasons the appeal launched in the name of the late person is admissible, as the Appellant Attorney-at-law [REDACTED] is entitled to act as a party himself in the appeals proceedings dealing with exactly the question of the right to participate in proceedings as a party; it is, however, ungrounded for the reasons given.

Request to stay the proceedings

Attorney-at-law [REDACTED] also requested to stay the current proceedings until the inheritance procedure at the Second Belgrade Municipal Court is finalized.

Pursuant to Section 13.2 (vi) of UNMIK AD 2008/6 the SCSC may "stay the entire or parts of any proceedings or Decision or Judgment either generally or until a specified date or event", without specifying the circumstances under which this stay should take place. It is, however, obvious that the stay in the proceedings can be granted only for grounded reasons, and that the stay is not left to the mere discretion of the SCSC. According to Article 212 (1) of the LCP (and Article 277.1 a) of the NLCP) the procedure shall be stayed when a party dies or loses the procedural capacities and does not have an authorized representative.

In line with general principles, it follows from these rules that the stay of proceedings can only be directed if specific circumstances arise in the course of the proceedings, which did not occur prior to their initiation. In particular, the stay of proceedings has to be ordered only in a situation when a party dies during the proceedings, while the named provisions do not cover claims filed in the name of (already) late persons.

Therefore, also the request to stay the proceedings had to be rejected as ungrounded. It is of no more relevance, what the contents (merits) of the alleged inheritance procedure in Belgrade are about.

As the Trial Panel did not render a decision on the merits, the potential legal successors to late [REDACTED] may file a new claim with the Trial Panel, which complies with the requirements as set by the law.

Court fees

According to Article 2 of the Law on Court Fees (Official Gazette of the Socialist Autonomous Province of Kosovo of 3 October 1987), individuals upon whose proposal or in whose interest actions in a procedure are undertaken shall pay the fees prescribed by this law. In the case at hand Attorney-at-law [REDACTED] has filed a claim without the authorization of a(n) – existing - party, and is therefore seen as an individual upon whose proposal actions in a procedure have been undertaken.

According to the SCSC's Additional Procedural Rules regarding Court Fees as in force from 10 March 2010 (based on Section 57.2 of UNMIK AD 2008/6), the following court fees for the appeals proceedings apply (see ASC-09-0072 et al):

Court Fee Tariff Section 10.11 (filing of the appeal)	30 Euros
Court Fee Tariff Section 10.15 in conjunction with 10.21 and 10.1 (decision in second instance)	30 Euros
Total	60 Euros

For the reasons given above, these court fees are to be borne by the Appellant who is therefore obliged to pay the mentioned amount to the SCSC (see Article 2 [1] Law on Court Fees, Official Gazette of the Socialist Autonomous Province of Kosovo of 3 October 1987).

Richard Winkelhofer, EULEX Presiding Judge	[signature]
Torsten Frank Koschinka, EULEX Judge	[signature]
Eija-Liisa Helin, EULEX Judge	[signature]
 Tobias Lapke, EULEX Registrar	 [signature]