

<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 – 10 – 0018

In the lawsuit of

██████████, **natural person**

Skenderbeu, Kamenicë/Kamenica

Represented by ██████████, lawyer in Gijlan/Gnjilane

Claimant/Appellant

vs

██████████ **SOE**

Kamenicë/Kamenica

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/Appellant against the decision of the SCSC of 14 January 2010, SCC – 09 – 0117, after deliberation held on 17 August 2010, delivers the following

DECISION

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

Procedural and factual background

The Claimant requested the SCSC to certify that he is the legal owner of a flat and to oblige the Respondent to recognise his property rights.

II

On 14 January 2010 the Trial Panel issued a decision (SCC-09-0117) rejecting the claim as inadmissible.

On 12 February 2010 the Claimant (hereinafter the Appellant) filed an appeal with the SCSC against the decision of the Trial Panel.

On 16 March the Appellant was requested to submit within 14 (fourteen) days from the receipt of the order the date on which the appealed decision was served on him as well as a full translation of the appeal, the supporting documents and the power of attorney. The appellant was also informed of the possibility to file a request for assistance in translation.

On 12 April 2009 the Appellant was again requested to submit within 5 (five) working days from the receipt of the order the date on which the decision was served on him, since it was not provided with the answer to the previous order, as well as the English translation of the cover letter to the answer to the order, submitted on 25 March 2009.

On 26 April 2010 the Appellant replied, in Albanian language only.

Reasons at law

The Appeal is dismissed as inadmissible.

The Appeal does not conform to the requirements set out by UNMIK AD 2008/6, because it is not accompanied by a full English translation of the appeal and of all supporting documents, as foreseen by Section 28.4 as read in conjunction of Section 58.2 of UNMIK AD 2008/6. Moreover, in reaction to the two clarification orders sent out by the Appellate Panel, the Appellant explicitly refused to produce an English translation of the documents, stating that the Law on Contested Procedures (L-03/L -006 promulgated by the Assembly of Kosovo), does not require an English translation. This legal opinion cannot be followed. As

III

lex specialis and lex posterior, UNMIK REG 2008/4 and UNMIK AD 2008/6 clearly prevail the provisions of the Law on Contested Procedure. Moreover, this can also be followed from Section 70.3 lit (a) UNMIK AD 2008/6. A translation ex officio, charging the Appellant for the costs, was not necessary, as the Appellant did not, although informed about this possibility, ask for assistance in translation, Section 25.9 UNMIK AD 2008/6. This provision`s scope of applicability is strictly limited to cases in which applications for assistance in translation have not been successful (renouncement of ASC-09-0087). Sentence 3 of the named provision clearly refers to sentence 2 ("such translations"). There is no reason to broaden its scope of applicability, as the ratio legis of Section 25.9 UNMIK AD 2008/6 is clearly to protect those, who cannot afford or believe they cannot afford to take care for the translation of the necessary documents. As it might happen that some of those, for purely procedural reasons, do not succeed with their application for assistance in translations, the law wants to safeguard that the court takes care for that ex officio, charging them afterwards with the costs. It was not meant to safeguard the procedural positions of those, who are of the opinion that they do not have to abide to the law or those who do not take care for their own procedural rights by requesting assistance in translation at all. Taking this into consideration, the Appellate Panel renounces its former position taken on this topic in the decision ASC-09-0087.

Thus, pursuant to Section 61.4 of UNMIK AD 2008/6, the Appellate Panel has to reject the Appeal as inadmissible.

Costs / Court fees

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 (Decision on second instance)	30 Euros
Total	60 Euros

IV

These 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 signature

Torsten Koschinka, EULEX Judge signature

Eija-Liisa Helin, EULEX Judge signature

Tobias Lapke, EULEX Chief Registrar signature