

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 ODOSE NA
KOSOVSKU
POVERENIÇKU AGENCIJU

SCA – 08 – 0066

24 February 2011

██████████ Private Company, Deçan/Deçane

Claimant/Appellant

Vs.

██████████ Pejë/Peć

Respondent

The Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters, Trial Panel composed by Laura Plesa, Presiding Judge, Katarina Entcheva and Sabri Halili, judges, after the examination of the appeal submitted against the Judgment II.C.no.161/2006 of the District Economic Court in Prishtinë/Priština, dated 3 October 2007, by the claimant ██████████ **Private Company, Deçan/Deçani**, in the case against ██████████ **POE, Pejë/Peć**, regarding the payment of 14.071,065 Euros as compensation for illegal profit, plus legal interest and procedural expenses, after deliberation held on 24 February 2011, issues the following:

JUDGMENT

1. The suspension in the proceedings in this case, decided pursuant to UNMIK Executive Decision 2008/34 of 29 July 2008, is hereby lifted.
2. The appeal of ██████████ a trade and services company from Deçan/Deçani is rejected as ungrounded and the judgment II.C.no.161/2006 of the District Economic Court in Prishtinë/Priština, dated 3 October 2007, is upheld.
3. The appellant is obliged to pay court fees in the amount of 148 Euros for issuance of the judgment.

Factual and Procedural background

On 13 June 2008, ██████████ a trade and services company from Deçan/Deçani, filed an appeal at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters against Judgment II.C.no.161/2006 of the District Economic Court in Prishtinë/Priština, dated 3.10.2007, which had rejected as ungrounded its claim that requested from ██████████ the payment of 14.071,065 Euros as compensation for illegal profit, plus legal interest, starting from 20.10.1999 until the final payment date, as well as procedural expenses.

The appellant requests the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters to amend the judgment objected to or to revoke it and remand the case to the first instance court for retrial.

The appeal was served to the respondent [REDACTED] from Pejë/Peć, but no reply has been received by the Special Chamber.

Legal reasoning

On 20 October 1999, the parties had signed lease contract no.229, whereby the appellant/lessor [REDACTED] a trade and services company from Deçan/Dečani assumed the obligation to put at the disposal of the respondent [REDACTED] its bus, for the purpose of operating in the line Pejë/Peć - Prishtinë/Priština and back. According to the lease contract, a general fee would be paid for every departure from and entry into the Bus Station of [REDACTED]. Article 5 of the contract provided that the lessor [REDACTED] had the right to receive the profits from the sale of the bus tickets, provided that it paid to the lessee [REDACTED] each time, the equivalent of the price of five tickets, in the amount of 30DM.

By the judgment II.C.no.161/2006, the District Economic Court in Prishtinë/Priština, of 3 October 2007 rejected as ungrounded the claim of the claimant [REDACTED] company that requested from [REDACTED] the payment of 14.071,065 Euros as compensation for illegal profit, plus legal interest (which would be calculated starting from 20 October 1999 until the final payment date), as well as procedural expenses. The District Court had established that in this case it was dealing with a lease contract, and not with a contract for the parking of the bus in its respective booked parking place;(related to the petit of the claim, this Court notes that the Claimant alleged that the fee charged for these services was often double or even triple compared to that charged to other buses offering the same services). In the initial claim as registered with the Special Chamber on 28 February 2006 the Claimant alleged the illegal profit being caused by the payment requested either for the rent or for the parking. In the final hearing held on 3.10.2007 the Claimant stated that the boarding fee paid was not a debt of the Claimant and that the amount was much bigger than other companies were charged with.

The District Court found that the above amount to be paid was freely agreed upon by the parties in their lease contract. Therefore it rejected the claim of [REDACTED] requesting to be paid back the amount of 14.071,65 Euro, on the basis of illegal profit, as ungrounded.

Another argument of the respondent at the District Court was that the claim of [REDACTED] was statute barred. The Respondent argued that pursuant to the Law on Obligations, claims arising from service contracts are prescribed after 3 years. The contract was concluded on 20 October 1999, and the claim was submitted on 8 March 2004, so the claim was prescribed.

The District Court found these allegations ungrounded because in this case, the claim was for illegal profit, therefore the general prescription deadline of 10 years applied, according to Article 371 of the Law on Obligations.

The Judgment was served on the Claimant on the 7 December 2007 and on the respondent on 6 December 2007.

On 6 February 2008 (registered on 13 June 2008) the claimant/appeallant, filed an appeal at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters against Judgment II.C.no.161/2006 of the District Economic Court in Prishtinë/Priština, dated 3 October 2007.

The appellatant requests the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters to amend the judgment objected to or to revoke it and remand the case to the first instance court for retrial.

In its appeal the appellatant claimed that before the war, it was not a practice for the travel lines to be registered with the respective Ministry. The only competent body for assigning such travel lines was the Transporters Association in Pejë/Peć, which had done so directly to the appellatant, through an attestation dated 25 September 1999 (copy exhibited). Thus, according to the appellatant, the respondent [REDACTED] in its contract that should not have even been named a "lease contract", had sold to the appellatant the right to use the travel line which it did not itself possess. The appellatant also submits that after the war, the newly constituted Ministry of Transport and Post Telecommunications allowed the appellatant the use of the same travel line.

The appellatant claimed that in fact, its bus never performed any services for the respondent, as provided for in the lease contract. It only paid regularly at least twice for the parking of the bus, compared to what was being paid by other transporters. It even had to pay when its bus did not travel at all.

The appeal was served to the respondent [REDACTED] from Pejë/Peć, but no reply has been received by the Special Chamber.

The appeal is admissible, but ungrounded. Based on Section 63.2 of UNMIK AD 2008/6 the Special Chamber decided to dispense with the oral part of the proceedings.

The appeal is rejected as ungrounded since from the facts that are to be established by the Special Chamber no proof of the prejudice claimed is found.

According to the calculation of the claimant, for the period in the year 1999, a fee for parking was paid in an amount of 30 DM. This is a changed statement in the claim since originally the claimant recognized that the payments were made either in consideration of the use of the bus line or for the entry in the station. For the period of year 1999 the relations between parties were regulated by the written agreement and no comparison can be made with other payments consisting in the fee for parking since the fee paid by the claimant was the rent (including presumably the fee for parking the bus). And the price for the paid rent was a negotiated one.

As regards the period after the year 2000, the agreement of the parties was not put into a written form but it is not contested that payments were made by the claimant to the respondent. According to the registration book 2 types of payments were done between parties. It is presumed that the higher one is for the rent of the bus line and the smaller one is the fee for parking. That is why all the calculation – which refers to

the payments made by the claimant as being the fee for parking – but which are the price for rent of the bus line- is not supported by the evidence. Since the claimant did not prove any right for using the bus line in this period, the court finds that the lease contract went on and the Claimant made the payments for the rent of the bus and for the parking. As for the letter dated 25 September 1999 this document does not prove the right for use of the bus line and.

As for the necessity of supplemental verifications, the Court found that the Claimant offered no indications from which an illegal behavior of the Respondent – towards the claimant may be discovered. The Claimant is a company with a continuous commercial activity and a standard of care in entering an agreement is required from the claimant. That is why no other verifications are found necessary in order to check if the Respondent used some different fees for different companies. The illegal profit as claimed can be found only when a fault is found in the behavior of the respondent (as defined by the article 158 of Law on Contracts and Torts) and no indications of the illegal intention or negligence of the Respondent – that would have determined the will of claimant to make those payments -was given.

Court fees

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 current proceedings apply:

Court Fee Tariff Section 10.11 (filing of the appeal)	30 Euros
Court Fee Tariff Section 10.21 in conjunction with 10.12 and 10.1 (decision in second instance)	118 Euros
Total	148 Euros

The court fee for issuing the judgment as governed by Section 10.21 in conjunction with Sections 10.12 and 10.1 of the Court Fee Tariff has to be determined according to the value of the claim. Since the value of the claim is 14.071.065 Euros, the court establishes the court fee for the judgment in second instance as of 10.1 is 118 Euros (for the claim over 10.0001 Euros – 50 Euros + 0.5 % to max of 500Euros).

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

Based on the above, the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters decides as in the enacting clause of this decision.

Pursuant to section 9.5 of UNMIK Regulation 2008/4 an appeal against this judgment can be submitted in writing to the appellate panel of the Special Chamber within 30 (thirty) days from the receipt of this judgment.

Laura Plesa, Presiding Judge EULEX

Katarina Entcheva, Judge EULEX

Sabri Halili, Judge

Tobias Lapke, Registrar EULEX

