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| **DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENSINË KOSOVARE TË PRIVATIZIMIT** | **SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY OF KOSOVO RELATED MATTERS** | **POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODNOSE NA KOSOVSKU AGENCIJU ZA PRIVATIZACIJU** |

*Decision of 31 October 2013 – ASC-10-0064*

**Procedural and factual background:** [1] On 20 April 2010, the single judge of the Trial Panel of the SCSC rejected the Claimant’s claim as inadmissible, Decision SCC-09-0015, arguing that the Claimant notified the [Privatization] Agency [of Kosovo] only after the claim was lodged, thus not in compliance with Sec 29.1 of UNMIK Reg 2002/12 read in conjunction with Sec 28.3 and 28.2 of UNMIK AD 2008/6.

[2] On 17 September 2010, the Claimant (hereinafter, the Appellant) filed an appeal (named the request for restoration to previous position) – in Albanian only - with the SCSC against the Decision of Trial Panel SCC-09-0015. By Decision of the Presiding Judge of the Trial Panel dated 22 March 2010, the Appellant’s request for assistance in translation and for exemption from court fees was accepted. The Appellate Panel ordered the ex officio translation of the submission.

[3] The Appellant in [her] submission requested restoration to the previous position (hereinafter: the appeal) because she mistakenly considered that the deadline for appeal had expired since she received the Decision of the Trial Panel from her representative on 7 September 2010. From the acknowledgment of receipt of the Decision of the Trial Panel in the case file, the Appellate Panel found that the subject of the appeal was received by the representative of the Appellant, *B E*, on 7 September 2010. The Appellant submitted that she had the intention to notify the Agency, and notified the Agency after the claim was submitted, and thus fulfilled the legal requirement stipulated in Sec 29.3 of UNMIK Reg 2001/12. She asked the Appellate Panel to allow the appeal of the Appellant as grounded and to quash the Decision of the Trial Panel SCC-09-0015 dated 26 August 2010.

[4] On 2 November 2011, the Appellate Panel issued a clarification order requesting the Appellant to clarify who is currently representing the Appellant, either the attorney *B E* (representative before the Trial Panel proceedings) or Mr. *M L*. Written evidence that the power of attorney for *B E* was revoked and the certified copy of the power of attorney, granting the representative the power to represent the Appellant before the SCSC; and written evidence that Mr. *M L* is a registered member of a bar association.

[5] The Order of the Appellate Panel was served on the Appellant on 4 November 2011. The Appellant duly informed the Appellate Panel that she had revoked the power of attorney to her representatives, attorney *B E* and Mr. *M L* and that she had granted power of attorney to attorney *N U*.

[6] *N U*, on 30 November 2011 was ordered to submit a statement certifying he confirmed and ratified [correct: approved] the content of the original appeal filed on 17 September 2010 and of the supporting documents.

[7] The order was served on *N U* on 16 December 2011. By an order dated 12 December 2011 the Appellate Panel approved allowed *N U* to examine the case file.

**Legal Reasoning:** [8] The appeal is admissible and grounded.

[9] The Appellate Panel has decided to dispense with the oral part of the proceedings under Art 64.1 of Annex, and omit service of the appeal for response on the Respondent under Art 10.9 of LSC and Art 60.2 of Annex.

Notification of the Agency

[10] As already clarified by the Appellate Panel’s case law (see ASC-09-0072, ASC 10-0023, ASC-10-0050 etc.) the notice to the Agency about the intention to file a claim is among the admissibility criteria as set forth in Sec 28.3 of UNMIK AD 2008/6. Even though the admissibility criteria have to be examined ex officio at an earlier stage of the proceedings, without a Respondent having been involved yet, the mere contention by a Claimant that a proper notice was given is sufficient, as it is up to a Respondent’s discretion not to contest the facts as stated by a Claimant, including the question of the notification. Therefore, if a Claimant maintains that a proper notification has been filed, the Trial Panel cannot dismiss the claim as inadmissible, based on the lack of proof of such notification. Unless the claim is inadmissible on other grounds, it has to give a Respondent the opportunity to take a stand on the claimed notification, alongside the merits of the case by serving the claim and other documents on a Respondent. It rests with a Respondent then to contest the facts as maintained in the claim, including the issue of the time of notification. Only if a Respondent, represented by the Agency, contests the time of the notification, will a Claimant be required to prove the notification.

[11] In the instant case, the Respondent is not able to contest the notification. On 18 February 2009, the Appellant filed a claim with the Trial Panel of the SCSC. According to the submitted documents, the Agency was notified about the claim of the Appellant on 3 June 2009, which is almost 4 (four) months after the Appellant filed the claim with the SCSC. The Appellant has therefore not complied with Sec 29.1 of UNMIK Reg 2002/12 and Sec 28.2(e) and 28.3 of UNMIK AD 2008/6 read in conjunction with Sec 58.2 of UNMIK AD 2008/6. Under these circumstances no further necessity arose to involve the Respondent.

[12] However, it is evident that from 3 June 2009 the PAK was aware of the claim and did not elect to enter into the proceedings as representatives of the Respondent. Bearing in mind, that the object of the notification provision is to inform the Agency about potential claims and to provide them with the opportunity to take the matter up on behalf of the SOE, that aim has demonstrably been met. In addition, it has to be taken into consideration that the duty of the Appellant to notify the Agency in advance adds extra burden to her as to her access to justice and the requirement provision must therefore be interpreted in a restricted way. In the circumstances, the Appellate Panel considers the notification out of time is without relevance to the adjudication of the claim.

[13] Thus the dismissal of the claim as inadmissible was not appropriate. The appealed decision therefore cannot stand and must be quashed. The Specialized Panel will try the claim, refraining from any dismissal based on the same ground.