

<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 ODOSE NA KOSOVSKU POVERENIÇKU AGENCIJU</p>
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ASC-09-0094

In the case of SCEL-09-0018
SOE "██████████" Viti

- ██████████, village Germovë/Grmovo, Viti/Vitina, Complainant No.3
- ██████████, village Vërban/Vrban, Viti/Vitina, Complainant No.4
- ██████████, village Pozharan/Požaranje, Viti/Vitina, Complainant No.6
- ██████████, village Pozharan/Požaranje, Viti/Vitina, Complainant No.8
- ██████████, village Pozharan/Požaranje, Viti/Vitina, Complainant No.9
- ██████████, village Sllatinë e Epërma/Slatina, Viti/Vitina, Complainant No.10
- ██████████, village Tërstenik/Trstenik, Viti/Vitina, Complainant No.11
- ██████████, village Smirë/Smira, Viti/Vitina, Complainant No.12
- ██████████, village Pozharan/Požaranje, Viti/Vitina, Complainant No.13
- ██████████, village Tërstenik/ Trstenik, Viti/Vitina, Complainant No.14
- ██████████, village Gërmovë/Grmovo, Viti/Vitina, Complainant No.15
- ██████████, village Pozharan/Požaranje, Viti/Vitina, Complainant No.18

Appellants

vs

Privatisation Agency of Kosovo

Ilir Konushevci street, No.8, Prishtinë /Priština

Respondent/Appellant

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, after deliberation held on 8 March 2010, delivers the following

DECISION

- 1. The appeals of the Complainants/Appellants are dismissed as inadmissible.**
- 2. The appeal of the Privatisation Agency of Kosovo is rejected as ungrounded.**
- 3. The decision of the Trial Panel of the Special Chamber in the case SCEL-09-0018 dated 15 October 2009 is upheld.**

Procedural and factual background:

On 15 October 2009 the Trial Panel of the SCSC issued a decision in the case SCEL-09-0018, declaring the list of employees of the SOE "██████████" eligible to share in the privatisation proceeds null and void. The Trial Panel further instructed the Respondent to prepare a new list according to the law and that the Review Committee, which is entrusted to prepare such a list, is to be composed and has to act in strict accordance with the law.

Appeals of the Complainants

The Complainants have timely filed appeals against the mentioned decision.

The Complainants/Appellants object the decision in its entirety as they were not included in the list of employees. They request the Appellate Panel of the SCSC to "review" the list compiled by the Respondent.

On 30 December 2009 the Appellate Panel ordered the Complainants/Appellants to provide a copy of the decision against which the appeals are brought and a statement of the date on which the decision of the Trial Panel was served on them. The Complainants/Appellants ██████████
██████████ and ██████████ did not reply to the order. The Complainants/Appellants ██████████ and ██████████ in their reply to the order did not provide the decision of the Trial Panel and did not state the

date when the decision was served on them as it was requested. The Complainants/Appellants [REDACTED] and [REDACTED] provided the decision of the Trial Panel, but they did not indicate the date when the decision of the Trial Panel was served on them.

Appeal of the Privatisation Agency of Kosovo

On 26 November 2009 the Privatisation Agency of Kosovo (PAK) has filed a submission in relation with the decision of the Trial Panel SCEL-09-0018.

On 4 January 2010 the Appellate Panel ordered the PAK to clarify if the submission dated 26 November 2009 is to be considered as an appeal. In the response to the order on 27 January 2010 the PAK stated that the submission is to be considered as an appeal.

The PAK submits that the "first instance administrative body", which at that time was the only administrative body, acted in accordance with Section 53.2 of the Law on Administrative Procedure (promulgated with UNMIK REG 2006/33) and Section 67.4 of UNMIK AD 2008/6, as it had contacted all the employees, who had not provided sufficient evidence or information. In addition it states that the employees list Review Committee after its establishment on 1 October 2009 did not review the complaints since it considered that it is the matter of the court to decide on these complaints. With regard to this the Review Committee acting as the second instance administrative body would act upon the final decision of the court making the eventual corrections and changes to the employees list.

The PAK requests the Appellate Panel to amend the point one of the enacting clause of the decision of the Trial Panel. The PAK submits that if the Review Committee approves the list without any alteration to the previous list, there would be no need to publish a new list, and the approved list could be accepted as having fulfilled the legal requirements. Instead of publishing a new list the Agency could issue a notification to the Special Chamber.

Legal Reasoning:*Appeals of the Complainants*

The Appellate Panel has examined the appeals of the Complainants/Appellants in terms of Section 61.4 UNMIK AD 2008/6 and concludes that the appeals are inadmissible.

Section 60.2 UNMIK AD 2008/6 states that the decision of the Trial Panel shall be attached to the appeal. The appeal shall state the date on which the decision was served on the appellant. By the order of 30 December 2009 the Complainants/Appellants were advised by the Appellate Panel that if they fail to supplement their appeals or to produce the required documents, the Appellate Panel shall reject the appeals on the grounds of inadmissibility.

The Complainants/Appellants did not comply with this order. The Complainants/Appellants No.4, 10, 11, 12, 13 and 14 did not submit any of the required documents. The Complainants/Appellants No.15 and 18 did not submit the requested decision and the statement of the date when the decision was served on them, the Complainants/Appellants No. 3, 6, 8 and 9 partially fulfilled the order. They provided only the decisions of the Trial Panel. Thus the appeals of all the Complainants/Appellants had to be rejected as inadmissible.

The Complainants/Appellants are natural persons, who may not have the needed knowledge to comply with orders of the court. In the case at hand it was anyhow not needed to reserve them a second opportunity to comply with the court order, for the following reasons: Taking into account the conclusion of the decision of the Trial Panel, which is upheld, as it is later explained in this decision, the Complainants/Appellants have no legal interest to appeal. The decision of the Trial Panel wholly invalidates the list of eligible employees of the SOE "██████████" and the PAK is obligated to prepare a new list of eligible employees according to the law. After the internal review of the new list by the PAK, the final list together with a notice of the right of complaint shall be published on two consecutive workdays and the following weekend in major Albanian language publications of general circulation in Kosovo and major

Serbian language publications. According to Section 10.6 of UNMIK REG 2003/13 the complaint must be filed with the Special Chamber *within 20 days* after the final publication in the media by the Agency.

All the complaints, which were already filed with the Special Chamber after the publication of the now invalidated list of eligible employees of the SOE "██████████" Viti/Vitina, will be taken into account as complaints against the newly published list of eligible employees of the fore mentioned SOE provided their concerns will not be addressed in the new list. All employees including those, who have not filed earlier complaints with the Special Chamber in time or complaints which do not meet other legal requirements set out in Section 67.6 of UNMIK AD 2008/6, will have the opportunity to file a new complaint after the publication of the new list.

Appeal of the Respondent

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

Section 67.5 of UNMIK AD 2008/6 stipulates that the final list of eligible employees, decided by the Board of Directors in conformity with section 10.2 of UNMIK REG 2003/13 and established according to Section 67.2 to 67.5 of UNMIK AD 2008/6, shall be published in conformity with Section 10.3 of UNMIK REG 2003/13. As such the requirements for a valid employee list are:

- Decision of the Board of Directors in conformity with Section 10.2 of UNMIK REG 2003/13, and
- Publication in conformity with Section 10.3 of UNMIK REG 2003/13, which means being published on two consecutive workdays and the following weekend in major Albanian language publications of general circulation in Kosovo and major Serbian language publications.

A list is in conformity with Section 10.2 of UNMIK REG 2003/13 if reviewed and adjusted by the Agency.

As the Kosovo Trust Agency as "the Agency" which, in conformity with the applicable law in Kosovo should be the one dealing with the privatisation of the SOEs and the distribution of 20 per cent to the eligible employees, does not act on this field of its responsibilities anymore, and as the Respondent/Appellant has taken over those responsibilities on the basis of the Law on the Privatization Agency of Kosovo (Law no. 03/L-06) the Special Chamber accepts the activities of the PAK as an obvious matter of fact to enable the employees involved in the privatisation process to have effective access to court in the meaning of Article 6 of the European Convention on Human Rights. This does not mean that the Special Chamber accepts the Law on the PAK as an applicable law in Kosovo, but to ensure a secure and rightful privatisation process this Law on the PAK has to be treated as valid and binding internal rules of the organisation within the privatisation process. The PAK, factually acting as a successor of the KTA on the field of the privatisation, thus has to - at least in this context - follow the rules laid down in the Law on the PAK.

Section 24.1 of the Law on the PAK, pursuant to which the PAK as a factual entity has been established, stipulates that, the Agency shall establish Review Committees. Such Review Committees shall have three members, one of which shall be an international member appointed by the International Civilian Representative as it is stipulated in Section 24.2 of the Law on the PAK. This person shall chair the Review Committee. Any person aggrieved by any act or omission of the Agency shall have the right to file a written application requesting that the Review Committee review such act or omission. Section 24.8 of the Law on the PAK stipulates that any final decision of the Agency, including its Review Committees, can be challenged at the Special Chamber. This indicates that the PAK has organized its internal review in the sense that the Review Committee as outlined in the law is responsible for the review according to Section 10.2 of UNMIK REG 2003/13 and that the list is only final once it has been reviewed by the Review Committee.

In the case at hand the Respondent/Appellant itself states that the Review Committee had not existed at the time of the first review of the list and that the list had been reviewed by the first instance administrative body. This is not in

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conformity with the law establishing the PAK. The list can therefore not be considered as reviewed pursuant to Section 10.2 of UNMIK REG 2003/13.

For these reasons the Respondent/Appellant has not acted in accordance with the law and has not fulfilled all its obligations when reviewing and adjudicating the complaints of the SOE "[REDACTED]". The Appellate Panel considers that the list is only final once it has been reviewed in a proper way. As a consequence of this the new correctly reviewed list has to be also published according to Section 10.3 of UNMIK REG 2003/13.

Richard Winkelhofer, EULEX Presiding Judge (signature)

Torsten Frank Koschinka, EULEX Judge (signature)

Eija-Liisa Helin, EULEX Judge (signature)

Tobias Lapke, EULEX Registrar (signature)