

<p style="text-align: center;">DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENCINË KOSOVARE TË PRIVATIZIMIT</p>	<p style="text-align: center;">SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY OF KOSOVO RELATED MATTERS</p>	<p style="text-align: center;">POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODRNOSE NA KOSOVSKU AGENCIJU ZA PRIVATIZACIJU</p>
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12 December 2012

SCEL – 06 – 0002 - C0021

Complainant

Z.P.D., XX

vs.

Respondent

**Privatization Agency of Kosovo,
Ilir Konushevci 8, Prishtinë/Priština**

The Specialized Panel composed by Alfred Graf von Keyserlingk, Presiding Judge, Shkelzen Sylaj and Çerim Fazliji, Judges, issues the following

D E C I S I O N

**The complaint of Z.P.D.
is dismissed as inadmissible.**

Factual and Procedural Background

On 11 November 2011, the Complainant filed a complaint with the Special Chamber seeking inclusion on the list of employees eligible to receive a share from the privatization proceeds of the SOE XX, Prishtinë/Priština (hereinafter the SOE).

The Complainant states that she was employed with the SOE since 16.08.1982 and her employment had not been terminated. The Complainant asks that her complaint is granted although she did not

appeal against the provisional list published by the PAK, because she only found out about the final list and the privatization process when the deadline expired. The complainant states that she is not in a position to follow the press because she is a displaced person, with no income, and a sick daughter.

The complainant enclosed a copy of her employment booklet, identification document and medical certificates.

In written observations to the complaint filed on 14 December 2011, the Privatization Agency of Kosovo (hereinafter the PAK) submitted that the complaint should be rejected as inadmissible because the deadline for filing complaints with the Special Chamber (Section 10.6 UNMIK REG 2003/13) was on 22 May 2006 while the complaint was filed on 11 November 2011, five years after the deadline.

In response of 13 August 2012, the Complainant states that she is aware that her complaint is late, but during that time she was in hospital in Serbia with her daughter, also she filed a complaint on 14 February 2007, when she realized that the SOE was privatized and her name was not on the final list. She submits that she was employed as a secretary since 1982 until June 1999 when she had to leave her working place due to the well-known security situation. She states that she fulfills all the legal requirements since her employment had not been terminated.

Reasons at Law

The complaint is inadmissible because it is untimely filed. The time limit for filing complaints was 22 May 2006.

Section 10.6 (a) of UNMIK Regulation 2003/13 amended by UNMIK Regulation 2004/45 on the transformation of the right of use to socially-owned immovable property, foresees a timeline of 20 days, after the publication of the final list in the media by the Agency, to challenge the final list of eligible employees entitled to 20% of the corporate proceeds from the privatization of the SOE.

This legal timeline is as binding for the Court as for the parties in proceedings, it cannot be changed. In case the complaint challenging the final list of employees was made within this timeline, it is considered as timely and the examination of its merits can be taken into account. On the contrary, when a complaint is made after the legal deadline it is untimely, regardless whether the Complainant knew or could know the publication of the Final list.

Based on Article 117 of the LCP, applicable based on Article 70.3 of UNMIK AD 2008/6, the Court may enable a party to undertake a procedural action, who otherwise would have lost the said right, in case that party submits a request for restitution to the previous position. But based on Article 118, paragraph 3, of the LCP and following after the expiry of the deadline of 3 months from the date of non-compliance, the restitution to the previous position cannot be legally requested.

This is valid for this complaint and would be equally valid for a previous complaint of 14 February 2007.

Costs

The court does not impose costs to the Claimant as the Court's Presidium till now did not issue a written schedule which is approved by the Kosovo Judicial Council (Art.57 Paragraph 2 of the Special Chamber Law). This means that till now there is no sufficient legal basis to impose costs.

Legal Advice

Against this decision within 21 days an Appeal can be submitted to the Appellate Panel of the Special Chamber. The Appeal shall also be served to the other parties and submitted to the Trial Panel **by the Appellant**, all within 21 days. The Appellant shall submit to the Appeals Panel a proof that he has served the Appeal also to the other parties.

The prescribed time limit begins at midnight of the day, when the Appellant has been served with the decision in writing.

The Appellate Panel shall reject the Appeal as inadmissible if the Appellant has failed to file it within the prescribed period.

The Respondent may file a response with the Appellate panel within 21 days from the date he was served with the appeal, serving the response also to the appellant and the other parties.

The appellant then has 21 days after being served with the response to its appeal, to submit to the Appellate panel and to serve the other party its own response. The other party then has 21 days after being served with the appellant's response to submit to the Appellant and to the Appellate panel its counter-response.

Alfred Graf von Keyserlingk, Presiding Judge