

DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHITJE 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 ODMOSE NA KOSOVSKU POVERENIÇKU AGENCIJU
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23 June 2010

SCEL – 09-0025

Complainants

1. [REDACTED] Prishtinë/Priština
2. [REDACTED] Mazgit village, Municipality of Obiliq/Obilic
3. [REDACTED] Prishtinë/Priština
4. [REDACTED] Smederevska Palanka, Republic of Serbia
5. [REDACTED] Bërnice e Poshtme/ Donja Brnjica, Prishtinë/Priština
6. [REDACTED] Kanarevo Brdo 42/7, Belgrade, Republica of Serbia
7. [REDACTED], Kragujevac 34000, Republic of Serbia
8. [REDACTED] Kragujevac 34000, Republic of Serbia
9. [REDACTED] Devet Jugovića, Prishtinë/ Priština
10. [REDACTED], Prishtinë/Priština
11. [REDACTED] Grashticë (Ugri) village, Prishtinë/Priština
12. [REDACTED], Prishtinë/Priština
13. [REDACTED], Belgrade, Republic of Serbia
14. [REDACTED], Prishtinë/Priština

Vs.

Respondent

Privatization Agency of Kosovo
Ilir Konushevci Str.8, Prishtinë/Priština

To: Complainants and Respondent

The Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (the “Special Chamber”), Trial Panel, composed of Anna Bednarek, Presiding Judge, Antoinette Lepeltier-Durel and Gyltene Sylejmani, Judges, after deliberation held on 23 June 2010, issues the following

JUDGMENT

1. The complaints of [REDACTED] are accepted as grounded. The Respondent is ordered to include them in the final list of employees eligible to a share of the privatization proceeds of [REDACTED]
2. The complaints of [REDACTED] (for late [REDACTED]) and [REDACTED] are rejected as ungrounded.

3. The complaint of [REDACTED] is rejected as untimely.
4. 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 of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters.

Procedural background:

On 13 August 2009 [REDACTED] (complainant No 1) filed a complaint at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters against the Privatisation Agency of Kosovo (PAK) in which he indicated that his name did not appear in the published List of the Employees of the Socially Owned Enterprise "Kosova-Hidroteknika" from Prishtinë/Priština and requested to be included on the list as he had been employed with the SOE for 18 years, 8 months and 19 days (from 16 November 1983 until 5 August 2002). The complainant stated that the published list was incomplete and based on erroneous determination, compiled by unauthorised persons and without cooperating with the Federation of Independent Trade Unions of Kosovo. To his complaint the complainant submitted a certified copy of his employment booklet and a copy of the Decision dated 28 October 1983 by which he was appointed as a Technical Director at the SOE from 16 November 1983.

The Special Chamber served the complaint on the Privatization Agency of Kosovo on 15 August 2009 and the respondent submitted written observations on 21 August 2009. The PAK stated that the complaint should be rejected as ungrounded because at the time of privatization the complainant was not registered as an employee of the SOE. According to the respondent the complainant did not submit sufficient evidence to prove that he was on the payroll at the time of privatization, as provided under Section 10.4 of UNMIK Regulation 2003/13.

The complainant was served with the written observations and on 30 September 2009 submitted a response in which he objected the conclusion of the PAK's written observations and stated that the requirements as set out in Section 10 of UNMIK Regulation 2003/13 were fulfilled since he had been on the payroll of the SOE for more than 3 years (from 15 June 1999 until 31 July 2002). The complainant attached the Certificate from the accountant at the SOE. He added that the 5th Wave of the Privatization in which the SOE "Kosova - Hidroteknika" was included was launched on 10 May 2005. All the contracts with the workers ended on 23 May 2005 and from that date no employee received any salary.

On 19 August 2009 [REDACTED] (complainant No 2) filed a complaint at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters against the Privatization Agency of Kosovo. The complainant requested the inclusion on the list of employees claiming that he was employed with the SOE for more than 30 years until his employment was terminated in 2004. He maintained that the requirements were fulfilled like in case of the other employees included in the list. The complainant attached a certified copy of his employment booklet.

The Special Chamber served the complaint on the Privatization Agency of Kosovo on 21 August 2009 and the respondent submitted the written observations on 27 August 2009. The PAK requested to reject the complaint as ungrounded since the complainant did not submit any material evidence to prove the employment continuity with the SOE after 22 September 2004. The respondent stated that the workbook of the complainant submitted by him was closed on that day. According to the PAK the Complainant was not on the payroll or on the waiting list at the time of privatization, which means on 22 May 2006 and was not registered as an employee of the SOE at that time.

The complainant was served with the written observations of the respondent on 22 September 2009. The deadline for the complainant to file a response to the written observations of the PAK expired on 5 October 2009. No response has been filed until the day of the deliberation.

On 29 January 2010 the respondent submitted the English translation of the Decision dated 22 September 2004 on the termination of contract signed between the complainant and "Kosova - Hidroteknika" in Prishtinë/Priština.

On 20 August 2009 [REDACTED] (complainant No 3) filed a complaint at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters against the Privatization Agency of Kosovo in which he requested to be included on the list of the employees. The complainant retained that he was employed with the SOE in the period between 1 October 1989 and 31 July 1999 and from 1 November 1999 until 5 December 2004 as a Head of Legal and Administrative Services. Since the complainant was on a payroll for more than three years and was not included on the list, he felt discriminated. According to the complainant the list "was compiled by unauthorised persons, incomplete, had wrong determination, and included the employees that do not deserve to be on the list". He also stated that either before the beginning or during the privatization process of the SOE he remained in work relation and participated actively in the procedure of privatisation. [REDACTED] submitted a certified copy of his employment booklet, copy of the employment contract and a Decision on appointment as acting managing director.

The complaint was served on the Privatization Agency of Kosovo on 24 August 2009. In written observations of 27 August 2009 the PAK submitted that the complaint should be rejected as ungrounded because the complainant was not registered as an employee of the SOE at the time of privatization, 22 May 2006. The respondent indicated that the Matrix book under No 537 showed that [REDACTED] was in work relation the period between 10 October 1989 and 30 July 1990. The PAK concluded that the data though of the Matrix book do not correspond to the data in the Work book. According to the PAK the complainant did not fulfil the legal requirements of Section 10.4 and Section 10.6 of UNMIK Regulation 2003/13 and should not be considered eligible.

The complainant was served with the written observations (24 September 2009) and on 28 September 2009 filed a response. He stated the PAK did not provide legal grounds for his exclusion from the list and have not considered the facts of his case. The complainant

maintained that on the published list there are workers that did not work in the SOE after 1999 at all and the eligible workers were not included on the list.

On 25 August 2009 [REDACTED] (complainant No 4) filed a complaint at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters against the Privatization Agency of Kosovo claiming to be included on the list of employees on the basis of the fact that she was employed with the SOE and was on the payroll for more than 3 years: from 21 July 1980 until June 1999 when she left Prishtinë/Priština due to the poor security situation. She left Prishtinë/Priština fearing for her life and for life of her family members. [REDACTED] claimed that the only reason why her name was not included on the list was discrimination on the basis of her Serbian nationality. The complainant submitted also a certified copy of her employment booklet.

The Special Chamber served the complaint on the Privatization Agency of Kosovo on 27 August 2009. The respondent submitted written observations on 2 September 2009. It claimed that the complaint should be rejected as ungrounded because the complainant was not registered as an employee of the SOE at the time of privatization. According to the respondent, the complainant failed to present evidence that she was employed with the SOE after 21 July 1980 and has not presented evidence that she was discriminated. Since the employment booklet is presented in a non-certified copy it cannot be accepted as relevant legal evidence in terms of Section 64.4 UNMIK AD 2006/17. The PAK proposed to ask the complainant to submit additional information and evidence in that regard.

The complainant was served with the written observations on 25 November 2009 and filed a response on 24 December 2009, while the deadline expired on 5 December 2009. The complainant stated that the certified copy of her employment booklet already attached to the complaint should be sufficient evidence for her employment. Further she stated that the PAK for compiling the list was requesting only (uncertified) copies of employment booklets. She maintained that after 1999 the freedom of movement was not guaranteed to the members of Serbian ethnicity, which is a well known fact and therefore he was not able to return to work.

On 27 August 2009 [REDACTED] (complainant No 5) filed a complaint at the Special Chamber of the Supreme Court of Kosovo for Kosovo Trust Agency Related Matters against the Privatization Agency of Kosovo asking to determine that he was an eligible employee to obtain 20% of proceeds from the sale of shares of the SOE "Kosova – Hidroteknika". He submitted a certified copy of the employment booklet and an unreadable copy of decision on employment.

On 3 September 2009 the complaint was served on the respondent. In written observations of 9 September 2009 the PAK submitted that that the complaint should be rejected as ungrounded because the complainant was not registered as an employee of the SOE at the time of privatization, 22 May 2006. In the respondent's point of view the complainant did not present any evidence that he was employed with the SOE after 1991 or after 1999. The respondent stated also that the allegation of the complainant about being discriminated, since not accompanied by the evidence cannot be accepted.

The Special Chamber served the written observations on the complainant on 28 September 2009. The deadline for the complainant to file a response to the written observations of the PAK expired on 8 October 2009. No response has been filed until the day of the deliberation.

On 27 August 2009 [REDACTED] (complainant No 6) filed a complaint at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters against the Privatization Agency of Kosovo requesting to be included on the list of eligible employees of the Enterprise "Kosovo – Hidroteknika" since she was an employee of that SOE since 1 August 1981 until June 1999 when she had to leave Prishtinë/Priština in June 1999 due to the poor security situation and because of fear for her and her family's life. The complainant indicated that the fact that she is not on the list is a discrimination based of her Serbian ethnicity. She has submitted a copy of her employment booklet which shows employed with the SOE from 1 August 1981 and still open.

The Special Chamber served the complaint on the Privatization Agency of Kosovo on 3 September 2009. In written observations of 7 September 2009 the PAK submitted that the complaint should be rejected as ungrounded because the complainant was not registered as an employee of the SOE at the time of privatization, 22 May 2006. According to the respondent the complainant did not present evidence that she was employed with the SOE after 1 August 1981, respectively after June 1999 and did not present the evidence that she was discriminated.

The written observations were served on the complainant who filed a response on 11 December 2009. [REDACTED] stated that the evidence for her employment is the certified copy of her employment booklet already attached to the complaint. She further underlined that it is a well known fact that after 1999 the freedom of movement was not guaranteed to members of Serbian ethnicity and therefore she was not able to return to work as there was no transport arrangement for the SOE employees.

On 27 August 2009 [REDACTED] (complainant No 7) filed a complaint at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters against the Privatization Agency of Kosovo claiming to be included on the list of employees as he was employed with the SOE from 14 June 1981 until June 1999 when he left Prishtinë/Priština due to the poor security situation fearing for his life and for the lives of his family. He maintained that he fulfilled the legal requirements and the fact that he is not on the list is a discrimination based of his Serbian ethnicity. He has submitted a certified copy of his employment booklet, which shows employment with the SOE from 14 June 1981 and is still open.

The Special Chamber served the complaint on the Privatisation Agency of Kosovo on 3 September 2009. In written observations of 9 September 2009 the PAK submitted that the complaint should be rejected as ungrounded because the complainant was not registered as employee of the SOE at the time of privatization. According to the

respondent the complainant did not present any evidence that he was employed with the SOE after 14 June 1981 and did not present the evidence that he was discriminated.

The written observations were served on the complainant on 24 November 2009. In response to the written observations of 4 December 2009 the complainant maintained that the evidence for his employment with the SOE was his employment booklet. He further submitted that he had to leave Kosovo in 1999 and therefore was not in a position to return to work. He stated that it is a notorious fact that after 1999 the freedom of movement for the members of Serbian community was not guaranteed. The complainant underlined that his house in Devet Jugović/Devet Jugoviq village was destroyed and he did not have the place to live in Kosovo. The facts that in that village crimes were committed during the conflict between Serbs and Albanians were well known. Therefore the complainant could not stay and continue living in his village even though he did not take part in the conflict.

On 27 August 2009 [REDACTED] (complainant No 8) filed a complaint at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters against the Privatization Agency of Kosovo claiming to be included on the list of employees as he was employed with the SOE for many years but had to leave Kosovo in 1999 due to the poor security situation. He maintained that he fulfilled the legal requirements and the fact that he is not on the list is a discrimination based of his Serbian ethnicity. He has submitted a certified copy of employment booklet, which shows employment with the SOE from 1 March 1985 and still open.

The Special Chamber served the complaint on the Privatization Agency of Kosovo on 3 September. In written observations of 10 September 2009 the PAK submitted that the complaint should be rejected as ungrounded because the complainant was not registered as an employee of the SOE at the time of privatization. According to the respondent the complainant did not provide any evidence that he was employed with the SOE at the time of privatization and did not present the evidence that he was discriminated.

The written observations were served on the complainant on 24 November 2009. The deadline for the complainant to file a response to the written observations of the PAK expired on 4 December 2009. No response has been filed until the date of the deliberation.

On 27 August 2009 [REDACTED] (complainant No 9) filed a complaint at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters against the Privatization Agency of Kosovo seeking the inclusion on the list of employees of the SOE "Kosovo – Hidroteknika" on the basis of the fact that she was employed with the SOE since 26 October 1993 until June 1999 when fearing for her and her family lives she had to leave Kosovo due to the poor security situation. The complainant maintained that she fulfils the legal requirements and the fact that she is not on the list is a discrimination based of her Serbian ethnicity. She submitted a certified copy of her employment booklet.

The Special Chamber served the complaint on the respondent on 3 September 2009. In the written observations of 10 September 2009 the PAK stated that the complaint should be rejected as ungrounded because the complainant was not registered as employee of the SOE at the time of privatization. According to the respondent the complainant did not present any evidence that she was employed with the SOE at the time of privatization and did not present any evidence that she was discriminated.

The written observations were served on the complainant on 28 September 2009, but no response has been filed until the day of the deliberation although the deadline for the complainant to file a response to the written observations of the PAK expired on 8 October 2009.

On 28 August 2009 [REDACTED] (complainant No 10) filed a complaint at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters against the Privatization Agency of Kosovo seeking the inclusion on the list of employees due to the fact that he was employed with the SOE from 1 August 1981 until 10 April 1999 and from 11 April 1999 until 11 July 2004. According to the complainant on 30 July 2004 he was appointed as Acting Director of the SOE. The complainant maintained that he fulfilled the legal requirements as other employees on the list. He submitted a copy of UNMIK Identity Card, a certified copy of his employment booklet and other documents.

The Special Chamber served the complaint on the Privatization Agency of Kosovo on 3 September 2009. In the written observations of 10 September 2009 the PAK submitted that the complaint should be rejected as ungrounded because the complainant was not registered as an employee of the SOE at the time of privatization, 22 May 2006. According to the respondent the complainant did not present the evidence that he was employed with the SOE after 2004.

The complainant was served with the written observations on 23 September 2009. The deadline for the complainant to file a response to the written observations of the PAK expired on 5 October 2009. No response has been filed the day of the deliberation.

On 28 August 2009 [REDACTED] (complainant No 11) filed a complaint at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters against the Privatization Agency of Kosovo in which he asked to be included on the list of employees of the SOE "Kosovo – Hidroteknika" stating that he was employed with the SOE from 15 October 1984 until 10 April 1999 and from 10 April 1999 until 11 July 2004. The complainant stated also that on 30 July 2004 he became an Acting Director of the Enterprise. The complainant maintained that he fulfilled the requirements as other employees on the list. He attached a certified copy of his employment booklet and other documents.

The Special Chamber served the complaint on the Privatization Agency of Kosovo on 3 September 2009. In written observations of 10 September 2009 the PAK submitted that the complaint should be rejected as ungrounded because the complainant was not registered as an employee of the SOE at the time of privatization. According to the PAK

the complainant did not present any evidence that he was employed with the SOE after 2004.

The complainant was served with the written observations on 29 September 2009. The deadline for the complainant to file a response to the written observations of the PAK expired on 9 October 2009. No response has been filed until the day of the deliberation.

On 31 August 2009 [REDACTED] (complainant No 12), a wife of late [REDACTED] filed a complaint at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters against the Privatization Agency of Kosovo and asked the inclusion of her late husband on the list on the basis of the fact that he was employed with the SOE from 1980 and was registered in the payroll of the Enterprise at the time of privatisation. She submitted a copy of her husband's employment booklet, as well as a decision adjusting his working relation until he reaches the age of 65.

The Special Chamber served the complaint on the Privatization Agency of Kosovo on 4 September 2009. In written observations of 9 September 2009 the PAK submitted that the complaint was filed on 1 September 2009 after the deadline of 28 August 2009 and should therefore be rejected as inadmissible.

The written observations were served on the complainant and she submitted a response on 5 October 2009 stated that she had missed the deadline because she was ill and requested the Special Chamber to consider her complaint as filed timely. The complainant attached to that submission medical certificates proving that she was undergoing medical examinations.

On 1 April 2010 the Special Chamber issued an order asking the complainant to submit the Municipal Court's Decision on inheritance in order to prove her right to file the complaint as a legal successor of her late husband within 10 days from the acknowledgment of receipt of the order.

On 26 April 2010 the complainant submitted Death Testimony of 20 April 2010 and the Marriage Certificate.

On 3 September 2009 [REDACTED] filed a complaint (complainant No 13) at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters against the Privatization Agency of Kosovo seeking the inclusion on the list on the basis that he was employed with the SOE from 12 March 1980 until 8 May 1989. The complainant maintained that he fulfilled the requirements as other employees on the list. He submitted a certified copy of employment booklet as well as other documents.

The Special Chamber served the complaint on the Privatization Agency of Kosovo on 8 September 2009. In written observations of 11 September 2009 the PAK submitted that the complaint was filed on 4 September 2009 after the deadline of 28 August 2009 and should therefore be rejected as inadmissible.

The written observations were served on the complainant on 20 November 2009.

On 1 April 2010 the Special Chamber issued an order asking the complainant to give the reasons for filing the complaint after the deadline. On 21 April 2010 the complainant answered to the order indicating that the reason for late submission of the complaint was the service of the Serbian Post. He attached a copy of the complaint mailed to the Special Chamber on 24 August 2009.

On 19 February 2010 [REDACTED] (complainant No 14) filed a complaint at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters seeking the inclusion on the list on the basis of the fact that he was employed with the SOE for more than 26 years until 23 May 2006 when he was retired. To the complaint [REDACTED] attached a copy of his work book and other documents.

The Special Chamber served the complaint on the Privatization Agency of Kosovo on 26 February 2010. In the written observations of 5 March 2010 the PAK submitted that the complaint was filed after the deadline of 28 August 2009 and should therefore be rejected as inadmissible.

On 1 April 2010 the Special Chambers issued an order serving the written observations on the complainant as well as requesting the complainant to give the reason for filing the complaint after the deadline. The order was served on the complainant on 8 April 2010, but no response reached the Special Chamber by the day of the deliberation.

On 2 October 2009 the PAK submitted to the Special Chamber additionally: a copy of the Decision of the PAK Claims Review Committee, a copy of the SOE "Kosova - Hidroteknika" SDR file, and a copy of the Matrix Book of the SOE.

In additional clarification of 29 January 2010 the PAK submitted that pursuant to Decision no 1/1999 the SOE's "Professional college" invited all employees to return to work until 1 July 2000. The employees that returned to work were included in this list, while the rest were considered not interested in returning to work. The PAK enclosed copies of the following publications in the press: Blic of 5, 6 and 8 August 2009, Kosova Sot of 6 and 8 August 2009, Infopress of 7, 8 August 2009, Koha Ditore 6, 7 and 8 August 2009. The PAK further clarified that after 1999 the SOE operated with around 60% of its capacity with 63 employees.

On 30 June 2010, the PAK submitted additionally that following the establishment of Employee List Review Committee chaired by its international member comprising also two local members the employee list did not undergo any changes. The PAK has enclosed a Note of Observations by the new Employee List Review Committee.

The facts:

The Kosovo Trust Agency (KTA) launched the 5th Wave of Privatization, in which the Socially Owned Enterprise "Kosova Hidroteknika" in Pristinë/Priština (also referred to as the SOE "Hidrokosmet") was included (hereinafter called the "SOE"). On 22 May 2006 the privatization sales contract was ratified and entered into force.

On 5, 6, 8 August 2009 the Privatization Agency of Kosovo (PAK) published the list of the eligible employees in Serbian language newspaper Blic and on 5, 6, 8 August 2009 in Serbian language newspaper Marketing.

On 6 and 8 August 2009 the Privatization Agency of Kosovo (PAK) published the list of the eligible employees in Albanian language newspaper Kosova Sot; on 7 and 8 August 2009 in Albanian language newspaper Infopress; on 6, 7, 8 in Albanian language newspaper Koha Ditore.

The deadline for filing the complaints with the Special Chamber pursuant to Section 10.6 of UNMIK Regulation 2003/13 expired on 28 August 2009. The Special Chamber has registered 14 complaints seeking inclusion in the final list of eligible employees established by the PAK.

The complainant [REDACTED] worked with the privatized Socially Owned Enterprise "Kosova – Hidroteknika" in Pristine/Pristina since 15 June 1999 until 31 July 2002 (proof: the circumstance indicated by the complainant and not contested by the respondent).

The complainant [REDACTED] was employed by the privatized SOE from 3 March 1975 until 22 September 2004 when his contract was terminated "due to unsatisfactory work performance". On 22 September the employment booklet was closed (proof: circumstance indicated by the complainant and not contested by the respondent, Decision dated 22 September 2004).

The complainant [REDACTED] was employed by the privatized SOE in the periods between 1 October 1989 and 31 July 1990, as well as between 1 November 1999 and 5 December 2004 (proof: work booklet submitted by the complainant)

The complainant [REDACTED] was employed with the privatized SOE since 21 July 1980. Her Work booklet is still open. The Matrix book under No. 302 related to the complainant 4 does not contain any remarks about termination of the employment relation (proof: Work booklet submitted by the complainant, Matrix book submitted by the respondent under No. 302, p.75).

The complainant [REDACTED] was employed with the privatized SOE in the periods between: 26 August 1980 and 31 December 1980, 24 February 1981 and 24 November 1981, 11 March 1982 and 11 December 1982, 28 March 1983 and 21 December 1983, 16 April 1984 and 16 October 1984, 13 June 1985 and 7 October 1985, 8 October 1985 and 13 December 1985 and finally since 6 May 1986. The Work booklet is open (proof: Work booklet submitted by the complainant, matrix book submitted by the respondent under No. 426, p. 63).

The complainant [REDACTED] was employed with the privatized SOE on 1 August 1981. She worked for the Enterprise until June 1999 when fearing for her and her family lives, she left Kosovo. The Work booklet was never closed. The Matrix book contains no

remarks about the termination of the contract (proof: Work booklet submitted by the complainant, Matrix book submitted by the respondent under No. 386, p. 69).

The complainant [REDACTED] was employed with the privatized SOE since 14 June 1981 until June 1999, when he left Kosovo because of the military conflict. The Work booklet was never closed. The Matrix book contains no remarks about the termination of the contract (proof: Work booklet submitted by the complainant, Matrix book submitted by the respondent under No. 362, p. 69).

The complainant [REDACTED] was employed with the privatized SOE since 1 March 1985 until June 1999, when he left Kosovo because of the military conflict. The Work booklet was never closed. The Matrix book contains no remarks about the termination of the contract (proof: Work booklet submitted by the complainant, Matrix book submitted by the respondent under No. 306, p. 65).

The complainant [REDACTED] was employed with the privatized SOE in the periods: from 26 October 1993 until 26 April 1994, from 28 April 1994 until 28 October 1994, from 1 November 1994 until 1 May 1995 and from 5 May 1995. The Work booklet of the complainant is open (proof: work booklet submitted by the complainant).

The complainant [REDACTED] was employed with the privatized SOE from 1 August 1981 until 11 July 2004. Since 12 July 2004 the complainant was employed at the Directorate for public services, transport and environment (proof: work booklet, certificate dated 23 November 2004 submitted by the complainant).

The complainant [REDACTED] was employed with the privatized SOE from 15 October 1984 until 18 June 1986, from 29 June 1987 until 10 April 1999 and then from 11 April 1999 until 11 July 2004. Since 12 July 2004 the complainant was employed at the Directorate for public services, transport and environment (proof: work booklet submitted by the complainant).

[REDACTED] late husband of [REDACTED] (complainant 12) was employed with the privatized SOE from 10 July 1980 until 10 April 1999 and then from 11 April 1999. Since 1 March 2003 [REDACTED] obtained the right to the financial assistance from the SOE "Kosova – Hidroteknika" until the time when he fulfilled the conditions for the retirement (until he became 65 years old). On 29 April 2007 [REDACTED] died (proof: work booklet, Decision No. 47-7/3-2003 dated 11 March 2003, Death Certificate L-2- F-202).

The complainant [REDACTED] was employed with the privatized SOE from 12 March 1980 until 8 May 1989 when his work book is closed with the SOE (proof work booklet submitted by the complainant).

The complainant [REDACTED] was employed with the privatized SOE for more than 26 years until 23 May 2006 when he was retired (proof: work book submitted by the complainant).

Legal Reasoning:

Section 67.10 of UNMIK AD 2008/6 states: “An oral hearing shall be held, if requested in writing by a complainant or the respondent. The Trial Panel may in its own discretion decide that an oral hearing shall be held. If an oral hearing is to be held, the Trial Panel shall inform the complainant and the Agency of the date of such hearing by written notice.”

Since none of the Complainants filed a request for an oral hearing, nor explicitly asked to be heard or to hear witnesses, therefore pursuant to Section 67.10 of UNMIK AD 2008/6 the Special Chamber decided to proceed with a judgment on merit of this case without fixing a hearing date.

The complainants requested the Special Chamber to include them on the official list of the eligible employees entitled to a 20% share of the proceeds from the sale of the shares obtained during the privatization of the Socially Owned Enterprise “Kosova-Hidroteknika” in Prishtinë/Priština.

According to Section 10.1 of UNMIK Regulation 2003/13 on the Transformation of the Right of Use to Socially-Owned Immovable Property “the employees of the Socially Owned Enterprises shall be entitled to a share of the proceeds from the privatization on a priority basis. This share shall be 20 per cent of the proceeds from the sale of shares of a subsidiary corporation of the Socially – Owned Enterprise that is privatised pursuant to section 8 of Regulation No. 2002/12. The amount shall be distributed for the benefit of eligible employees in accordance with this section.”

Pursuant to Section 10.3 of UNMIK Regulation 2003/13:
“The official list of eligible employees issued by the Agency shall be published, together with a notice of the right of complaint pursuant to 10.6, on two consecutive workdays and the following weekend in major Albanian language publications of general circulation in Kosovo and major Serbian language publications.”

On 29 January 2010 the PAK provided the proof that the list of employees was published in the media in accordance with UNMIK Regulation 2003/13 which means in two consecutive workdays (5 and 6 or 6 and 7 of August 2009) and the following weekend (8 August 2009) in both: Albanian language (Kosova Sot, Koha Ditore, Infopress) and Serbian language (Blic, Marketing) newspapers.

The procedure for filing a complaint with the Special Chamber is regulated by the Section 10.6 (a) of UNMIK Regulation 2003/13, which states that “The complaint must be filed with the Special Chamber within 20 days after the final publication in the media pursuant to subsection 10.3 of the list of eligible employees by the Agency”. Since the last publication of the list appeared during the weekend and precisely on 8 August 2009, the last day for filing the complaints with the Special Chamber was on 28 August 2009.

The complaint of [REDACTED] (complainant No 14) is to be rejected as inadmissible as submitted after the deadline indicated above (28 August 2009). His

complaint was registered at the Special Chamber on 22 February 2010 while the date of submission of the complaint, sent by regular post, is 19 February 2010. With the order issued on 1 April 2010 the complainant was asked to give in writing the reasons for filing the complaint after the deadline, when such reasons ceased to exist, as well as to submit any documents in support of his statement within 10 days from the acknowledgment of receipt of the order. The complainant received the order on 8 April 2010, but did not reply to it. Since the complaint of [REDACTED] was filed after the deadline 28 August 2009 determined in accordance with Section 10.6 (a) of UNMIK Regulation 2003/13, it is to be rejected as inadmissible pursuant to Section 28.3 of UNMIK AD 2008/6 as read in conjunction with Sections 28.2 (d) and 67.1 of UNMIK AD 2008/6 and Section 10.6 of UNMIK Regulation 2003/13.

The complaints of the complainants No 1-13: R [REDACTED] and [REDACTED] were submitted on time.

Section 10.4 of UNMIK Regulation 2003/13 as amended by UNMIK Regulation 2004/45 instead sets out the requirements for an employee to be considered eligible: "For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-owned Enterprise at the time of privatization or initiation of the liquidation procedure and is established to have been on the payroll of the enterprise for not less than three years. This requirement shall not preclude employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6."

The Special Chamber finds that the complainants: [REDACTED] and [REDACTED] fulfil the requirements of Section 10.4 of UNMIK Regulation 2003/13 as amended and their complaints are accepted as grounded.

The complainant [REDACTED] presented the evidence (certified copy of employment booklet) indicating that he started working at the SOE on 6 May 1986 and his employment is still open. The same circumstances are confirmed by reference 426 in the SOE's Matrix Book, as provided by the Respondent PAK. The PAK argued that the presented evidence was not sufficient to prove that the complainant was discriminated and that he was registered with the SOE at the time of privatization. This argument cannot be accepted because the details in the employment booklet and the Matrix Book are the same. The Special Chamber established that the complainant has been working at the SOE from 6 May 1986. Therefore, the Special Chamber finds that according to the presented evidence the complainant has been on the payroll for more than three years and was still registered as an employee of the SOE at the time of privatization, 22 May 2006. For that reason the Court assesses that the complaint of [REDACTED] is grounded.

The complainants registered under numbers 4, 6, 7, 8 claimed that the list was created not in a proper way, since they were discriminated because of the Serbian ethnicity.

Primarily it needs to be clarified that the issue of discrimination of the employees is regulated in UNMIK Regulation 2003/13. Section 10.4 states that the requirement of being an employee registered with the SOE at the time of privatisation and minimum 3 years of being on a payroll of the SOE “shall not preclude the employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination”. Section 10.6 (b) indicates instead that “Any complaint filed with the Special Chamber on the grounds of discrimination as reason for being excluded from the list of eligible employees has to be accompanied by documentary evidence of the alleged discrimination.”

Nonetheless, in order to prevent discrimination and promote and put into effect the principle of equal treatment of the citizens of Kosovo, the Assembly of Kosovo, on 30.07.2004, adopted the Anti-Discrimination Law 2004/3 (UNMIK Regulation 2004/32). Section 11.1 of the same Law states: “When this law comes into effect it supersedes all previous applicable laws of this scope”. In Section 11.2 we read that “The provisions of the legislation introduced or into force for the protection of the principle of equal treatment are still valid and should be applied if they are more favourable than provisions in this Law.”

Therefore the provisions of the Anti-Discrimination Law supersede the provisions regarding the burden of proof required to prove discrimination as determined at Section 10.6(b) of UNMIK Regulation 2003/13. Pursuant to Section 8 of the Anti-Discrimination Law individuals claiming discrimination are required to submit facts from which it may be presumed that there has been direct or indirect discrimination. In addition, once the complainant presents a *prima facie* case of direct or indirect discrimination, the respondent is obliged to disprove discrimination.

The complainants registered under numbers 4, 6, 7, 8 underlined that they were discriminated because of their Serbian ethnicity. The respondent instead argued that they did not submit any evidence that would prove the complainants’ statements. Regardless of the fact, that it is the respondent’s obligation to prove that it was contrary to what the complainants stated, the situation in Kosovo after conflict was of a common knowledge.

According to Article 221 paragraph 4 of the Code on Contested Procedure (7/77-1478 as amended) “Facts that are a matter of common knowledge need not to be proved”.

The Special Chamber wishes to underline that there are several reports presented by different Governmental and Non-Governmental Organisations which described the security situation in Balkans and in Kosovo in particular. As an example the report of the International Crisis Group of 6 August 1999 may be quoted: “No day passes without at least one report of an attack on some member of an ethnic minority in Kosovo. Serbs and Roma (gypsies) are the most vulnerable, but Gorani, Bosniaks and members of the majority Albanian community have also been targeted. Attacks include house-burnings, physical assault and murder. (...) These attacks are so widespread that some observers are

speculating that there is an organised campaign aimed at creating an ethnically pure Albanian Kosovo.”

Further, the report of Amnesty International, the Non-Governmental Organisation operating in the field of human rights published in November 1999 reads as follows: “an atmosphere of intolerance in Kosovo, characterized by intimidation, harassment and discrimination, has resulted in severe restrictions of freedom of movement and impeded access to primary services, such as health care and education, for many minority communities. Victims of such abuses are frequently the elderly or ill, who are unable or unwilling to leave their homes.”

In June 2009 Amnesty International published the report “Burying the Past” where with regards to the security situation in Kosovo it was stated: “Between March and June 1999, more than 3,000 ethnic Albanians were the victims of enforced disappearance by Serbian police and paramilitaries and Yugoslav military forces. Following the war an estimated 800 Serbs, Roma and members of other minority groups were abducted by Kosovo Albanians, including the Kosovo Liberation Army. (...) Many of the Serbs who stayed in Kosovo after the VJ (Vojska Jugoslavije – the Yugoslav Army) and Serbian police departed did so because they believed KFOR and UNMIK would protect them. Many of them were abducted or killed under the eyes of KFOR.”

The complainant [REDACTED] has presented the evidence (a certified copy of the employment booklet, which the respondent seemed not to notice) indicating that she started working at the SOE on 21 July 1980 and her employment is still open. The same circumstances are confirmed by reference 302 in the SOE’s Matrix Book, as provided by the Respondent PAK. The complainant stated that she had stopped working when she had to leave Prishtinë/Priština in June 1999 due to the poor security situation and ever since she was not able to return to work. The PAK argued that the presented evidence was not sufficient to prove that the complainant was discriminated and that she was not registered with the SOE at the time of privatization. This argument of the respondent cannot be accepted because the details in the employment booklet and the Matrix Book are the same, whereas the poor security situation in Kosovo in 1999 and the restricted freedom of movement for members of certain ethnicities in Kosovo after 1999 are notorious facts which do not need to be proved. The Special Chamber established that the complainant has been working at the SOE from 21 July 1980 until June 1999. Therefore, the Special Chamber finds that according to the presented evidence the complainant has been on the payroll for more than 3 years and was still registered with the SOE at the time of privatization, 22 May 2006, her employment booklet was never closed. With regard to the argument raised by the complainant that she was discriminated it should be pointed out that according to the Law on Discrimination quoted above, that the burden of proof of that circumstance is with the respondent. It is up to him to demonstrate that the complainant was not discriminated. Since the respondent did not submit any prove as to refute the complainant’s statement, the Special Chamber retains that the provision of Section 10.4 of UNMIK Regulation 2003/13 is directly applied to [REDACTED]. In that context it should be noted also that the Court did not find it reasonable the suggestion to ask the complainant for further proves with regard to the discrimination and the Special Chamber did not approve that request. As a consequence

the Court assessed that the complainant could have been on a payroll of the Enterprise if she was not subject to discrimination.

The complainant [REDACTED] presented the evidence (a copy of employment booklet) indicating that she started working at the SOE on 1 August 1981 and her employment is still open. The same circumstances are confirmed by reference 368 in the SOE's Matrix Book, as provided by the Respondent PAK. The complainant stated that she stopped working when she had to leave Prishtinë/Priština in June 1999 due to the poor security situation and ever since she was not able to return to work. The PAK argued that the presented evidence is not sufficient to prove that the complainant was discriminated and that she was registered with the SOE at the time of privatization. This argument of the respondent cannot be accepted because the details in the employment booklet and the Matrix Book are the same, whereas the poor security situation in Kosovo after 1999 and the restricted freedom of movement for members of certain ethnicities in Kosovo after 1999 are notorious facts which do not need to be proved. The Special Chamber established that the complainant has been working at the SOE from 1 August 1981 until June 1999. Therefore, the Special Chamber finds that according to the presented evidence the complainant has been on the payroll for more than three years was still registered as an employee of the SOE at the time of privatization, 22 May 2006, her employment booklet was never closed. With regard to the argument raised by the complainant that she was discriminated is should be pointed out that according to the Law on Discrimination quoted above, that the burden of proof of that circumstance is with the respondent. It is up to him to demonstrate that the complainant was not discriminated. Since the respondent did not submit any prove as to refute the complainant's statement, the Special Chamber retains that the provision of Section 10.4 of UNMIK Regulation 2003/13 are directly applied to [REDACTED]. She could have been on a payroll of the Enterprise if she was not subject to discrimination.

The complainant [REDACTED] presented the evidence (a certified copy of employment booklet) indicating that he started working at the SOE on 14 June 1981 and his employment is still open. The same circumstances are confirmed by the reference 362 in the SOE's Matrix Book, as provided by the Respondent PAK. The complainant stated that he had to leave Prishtinë/Priština in June 1999 due to the poor security situation and ever since he was not able to return to work. The PAK argued that the presented evidence is not sufficient to prove that the complainant was discriminated and that he was registered with the SOE at the time of privatization. This argument of the respondent cannot be accepted because the details in the employment booklet and the Matrix Book are the same, whereas the poor security situation in Kosovo in 1999 and the restricted freedom of movement for members of certain ethnicities in Kosovo after 1999 are notorious facts which do not need to be proved. The Special Chamber established that the complainant has been working at the SOE from 14 June 1981 until June 1999. Therefore, the Special Chamber finds that according to the presented evidence the complainant has been on the payroll for more than three years was still registered as an employee of the SOE at the time of privatization, 22 May 2006, his employment booklet was never closed. With regard to the argument raised by the complainant that he was discriminated is should be pointed out that according to the Law on Discrimination quoted above, the burden of proof of that circumstance is with the respondent. It is up to

him to demonstrate that the complainant was not discriminated. Since the respondent did not submit any prove as to refute the complainant's statement, the Special Chamber retains that the provision of Section 10.4 of UNMIK Regulation 2003/13 are directly applied to [REDACTED]. He could have been on a payroll of the Enterprise if he was not subject to discrimination.

The complainant [REDACTED] presented the evidence (a certified copy of employment booklet) indicating that he started working at the SOE on 1 March 1985 and his employment is still open. The same circumstances are confirmed by reference 406 in the SOE's Matrix Book, as provided by the Respondent PAK. The complainant stated that he had to leave Prishtinë/Priština in June 1999 due to the poor security situation. The PAK argued that the presented evidence is not sufficient to prove that the complainant was discriminated and that he was registered with the SOE at the time of privatization. This argument of the respondent cannot be accepted because the details in the employment booklet and the Matrix Book are the same, whereas the poor security situation in Kosovo in 1999 and the restricted freedom of movement for members of certain ethnicities in Kosovo after 1999 are notorious facts which do not need to be proved. The Special Chamber established that the complainant has been working at the SOE from 1 March 1985 until June 1999. Therefore, the Special Chamber finds that according to the presented evidence the complainant has been on the payroll for more than three years was still registered as an employee of the SOE at the time of privatization, 22 May 2006, his employment booklet was never closed. With regard to the argument raised by the complainant that he was discriminated is should be pointed out that according to the Law on Discrimination quoted above, that the burden of proof of that circumstance is with the respondent. It is up to him to demonstrate that the complainant was not discriminated. Since the respondent did not submit any prove as to refute the complainant's statement, the Special Chamber retains that the provision of Section 10.4 of UNMIK Regulation 2003/13 are directly applied to [REDACTED]. He could have been on a payroll of the Enterprise if he was not subject to discrimination.

Concluding the reasoning regarding the complaints accepted because of the discrimination the Special Chamber notes that the PAK in submissions dated 29 January 2010 indicated that pursuant to Decision no 1/1999 of 23 June 1999 the SOE's "Professional college" invited all employees to return to work until 1 July 2000. The employees that returned to work were included in this list, while those ones who did not present in the Enterprise until that date were considered not interested in returning to work. That argument cannot be shared by the Special Chamber. Issuing of the decision in the same month that the military conflict ends and asking the workers to present directly in the Enterprise to express the will of further work for that Enterprise can only be interpreted as arbitrary, with no legal basis and may be read as oriented to harm those workers that had to flee from Kosovo in order to save their lives. The deadline indicated by the "Professional college" remains with no effect with regard to the assessment whether the work contracts with those who left Kosovo were terminated or not. As it was already stated in one of the judgments of the Special Chamber (case SC/EL 04 0001) "...failure to present for work from early 2000 onwards was not in any way attributable to a desire on their part to be voluntary absent from work, but was due to the security concerns in which they found themselves. Neither could they have been expected to

comply with the warning notice of the Enterprises informing them that their absence from work for more than five days would result in their being struck off from the register of employees.”

The Complaints of [REDACTED] and [REDACTED] are rejected as ungrounded. The complainants do not fulfil the requirements of Section 10.4 of UNMIK REG 2003/13 subsequently amended.

The Complainant [REDACTED] provided the evidence indicating that he was employed with the SOE “Kosova – Hidroteknika” for more than three years from 16 November 1983 until 2002. However, the evidence shows and the complainant himself admits that as of 31 July 2002 his employment was terminated. That means that on the day of privatization: 22 May 2006 the complainant was not on a pay roll of the SOE. The fact that the employment relation between the complainant and the SOE was terminated almost 4 years before the privatization excludes him from the group of eligible employees. The requirements indicated in Section 10.4: the registration as an employee at the time of privatization and being on the payroll of the Enterprise for not less three years are meant to be fulfilled both one in conjunction with another. The legislator, by using the word “and” indicated that both conditions shall be fulfilled jointly, cumulatively. Therefore, the complainant although he worked for more than three years with the privatized Enterprise, cannot be included on the list, because he was not on a payroll already for almost 4 years at the time of the privatization. Moreover the complainant raised the argument that the list was prepared by an unauthorised body, since the Federation of Independent Trade Unions of Kosovo did not submit a draft of the list to the Agency. According to Section 10.2 of UNMIK Regulation 2003/13 the “representative body of employees in the Socially – Owned Enterprise concerned, in cooperation with the Federation of Independent Trade Unions of Kosovo, shall establish on a non-discriminatory basis and submit to the Agency a list of eligible employees entitled to receive payments pursuant to section 10.1. The Agency shall review the list and make such adjustments as it deems necessary to ensure equitable access by all eligible employees to the funds to be distributed”. Since the list in the shape given by the Agency (after eventual adjustments as deemed necessary) is subject of the revision by the Special Chamber as a result of several complaints, the circumstance that the Federation of Independent Trade Unions of Kosovo did not draft the first list remains without any effect and any relevance for the content final judgment in this case. As a consequence [REDACTED] does not fulfil the legal requirements for inclusion on the list of employees eligible to receive shares from the privatization and liquidation proceeds and his complaint has to be rejected.

The Complainant [REDACTED] provided the evidence indicating that he was employed with the SOE “Kosova – Hidroteknika” for more than 30 years until 22 September 2004. Pursuant to SOE Decision as of 22 September 2004 his employment contract was terminated, which is before the date of privatization on 22 May 2006. That means that on the day of privatization: 22 May 2006 the complainant was not on a payroll of the SOE. The fact that the employment relation between the complainant and the SOE was terminated 18 months before the privatization excludes him from the group of eligible employees. The requirements indicated in Section 10.4: the registration as an employee at

the time of privatization and being on the payroll of the Enterprise for not less three years are meant to be fulfilled both one in conjunction with another. The legislator, by using the word “and” indicated that both conditions shall be fulfilled jointly. Therefore, the complainant although he worked for more than three years with the privatized Enterprise, cannot be included on the list, because he was not on a payroll already for 18 months at the time of the privatization. As a consequence [REDACTED] does not fulfil the legal requirements for inclusion on the list of employees eligible to receive shares from the privatization and liquidation proceeds and his complaint has to be rejected.

The Complainant [REDACTED] provided the evidence showing that he was employed by the privatized SOE twice: from 1 October 1989 until 31 July 1990 and from 1 November 1999 until 5 December 2004. It should be noted that the argument raised by the respondent, that the data from the Matrix book do not correspond to the data from the Work booklet cannot be shared by the Court. The fact that the Work booklet contains the information about the second employment is convincing enough to assess that the complainant worked in that period of time. The Work booklet is credible evidence and is considered as sufficient to assume that the complainant worked in the last period of time indicated in the booklet. However that circumstance remains without any influence on the assessment of the complaint. The complainant, even considering the employment between November 1999 and December 2004, was not on a payroll of the SOE at the date of privatization 22 May 2006. His work relation was terminated more than one year before the Enterprise was privatized. The complainant stated also that the fact that he was not included on the list was discrimination. The Special Chamber is of the opinion though that discrimination has to be taken into consideration when it appears as the reason not to include a certain worker on the list. The legislator did not provide for the possibility of the approval of the complaint when the employee claims that discrimination is the result: not being included on the list. Therefore, the complainant does not fulfil the legal requirements for inclusion on the list of employees eligible to receive shares from the privatization and liquidation proceeds and his complaint has to be rejected.

The complainant [REDACTED] presented the evidence (certified copy of employment booklet) indicating that she started working at the SOE on 26 October 1993 and her employment was still open. However, according to reference 602 in the SOE's Matrix Book her employment was terminated on 5.05.1995, as provided by the Respondent PAK. The complainant states that she had to leave Prishtinë/Priština in June 1999 due to the poor security situation. The PAK argued that the presented evidence was not sufficient to prove that the complainant was discriminated and she was registered with the SOE at the time of privatization. The Special Chamber finds that the complainant has failed to prove that she was employed with the SOE after 5 May 1995 and that she fulfilled the legal requirements for inclusion on the list of employees eligible to receive shares from the privatization and liquidation proceeds. For that reason the complaint of [REDACTED] has to be rejected as ungrounded.

The Complainant [REDACTED] presented the evidence (certified copy of employment booklet) indicating that he was employed with the privatized SOE since 1 August 1981 until 11 July 2004, when his contract was terminated. The Work booklet contains another

note from which it appears that as of 12 July 2004 the complainant was employed at the Directorate for public services and environment and the booklet is still open. As a consequence the Court shares the opinion of the respondent that the complainant did not prove that he was on the payroll of the SOE on the day of privatization: 22 May 2006. Especially the complainant did not submit any evidence showing that from 30 July 2004 he was appointed as Acting Director of the SOE. As a proof for that fact the complainant indicates the "Notice about [REDACTED] as Acting Director of the SOE "Kosova – Hidroteknika" and appears as the same document the one submitted by another complainant to demonstrate the fact of being nominated as Acting Director of the SOE. Such a document was not attached to the claim and could not have any relevance for the final decision in this case. Since the respondent questioned that circumstance raised by the complainant by indicating that there is no proof of the employment with the SOE after 2004, it was the complainant's duty to prove that circumstance before the Court. The complainant though did not reply to the written observations and did not comment on the position of the PAK. In consequence the Court assesses that the complainant did not fulfil the requirements of Section 10.4 of UNMIK Regulation 2003/13 as amended as he was not employed with the SOE at the time of privatisation 22 May 2006. For those reasons his complaint has to be rejected.

The Complainant [REDACTED] presented the evidence (certified copy of employment booklet) indicating that his employment with the SOE lasted from 15 October 1984 until 18 June 1986, from 29 June 1987 until 10 April 1999 and subsequently from 11 April 1999 until 11 July 2004, when his contract was terminated. Subsequently the Work booklet contains another note from which it appears that as of 12 July 2004 the complainant was employed at the Directorate for public services and environment and urban land and the booklet is still open. As a proof for that fact the complainant indicates the "Notice about [REDACTED] as Acting Director of the SOE "Kosova – Hidroteknika" and appears as the same document the one submitted by another complainant to demonstrate the fact of being nominated as Acting Director of the SOE. Such a document was not attached to the claim and could not have any relevance for the final decision in this case. As a consequence the Court shares the opinion of the respondent that the complainant did not prove that he was on the payroll of the SOE on the day of privatization: 22 May 2006. Especially the complainant did not submit any evidence showing that from 30 July 2004 he was appointed as Acting Director of the SOE. Since the respondent questioned that circumstance raised by the complainant by indicating that there is no proof of the employment with the SOE after 2004, it was the complainant's duty to prove that circumstance before the Court. The complainant though did not reply to the written observations and did not comment on the position of the PAK. In consequence the Court assesses that the complainant does not fulfil the requirements of Section 10.4 of UNMIK Regulation 2003/13 as amended as he was not employed with the SOE at the time of privatisation 22 May 2006. For that reason his complaint has to be rejected.

[REDACTED] filed a complaint stating that she is the wife of late [REDACTED] who was employed with the privatized SOE. Initially the Court wishes to refer to the preliminary argument raised by the respondent stating that the complaint was submitted after the deadline as the Special Chamber did not share the opinion of the PAK. Referring to the

arguments of the Agency it should be noted that the complainant justified late submission with problems with her health. She also submitted copies of the medical documentation from which it appears that respectively on 27 August 2009 (one day before the deadline expired) and on 1 September 2009 the complainant was undergoing specialist medical examination because of "arrhythmia and weakened heart tones". The Special Chamber finds that serious heart problems and necessity to undergo medical examination are reasons justifying the delay in submitting the complaint to the competent Court. Considering that complainant submitted her complaint on 1 September 2009 it should be assessed that [REDACTED] took an action immediately after her health conditions allowed for that and without any unjustified further delay. That is why the Court considers the complaint as submitted on time.

With regard to the merits of the complaint the Court notes that from the verified copy of his employment booklet it appears that the employee was born on 19 October 1938 and though reached retirement age before the date of privatization: on 19 October 2003. On 29 April 2007 [REDACTED] died, after the date of privatization. In consequence the employee did not fulfil the requirements of Section 10.4 of UNMIK Regulation 2003/13 as amended as he was not employed with the SOE at the time of privatisation 22 May 2006. For that reason the complaint should be rejected.

It needs to be also noted in this place that the complainant should have provided the Court with the inheritance decision stating that she and other persons are inheritors after the late [REDACTED]. The documents attached by the complainant to the submission dated 26 April 2010 can not be seen as the proof for that circumstance. Only a decision of the Municipal Court is the document stating who inherited the legacy after the late Ali Vrajolli. Since the complaint is being rejected the Special Chamber did not insist on the complainant to submit that document.

The complaint of [REDACTED] was registered at the Special Chamber on 4 September 2009, while the date of submission of the complaint, sent by the regular post, is 3 September 2009. Since the submission at a first sight was presented after the deadline (28 August 2009), the Special Chamber on 1 April 2010 issued an order requesting the complainant to give in writing the reasons for filing the complaint after the deadline, when such reasons ceased to exist, as well as to submit any documents in support of his statement within 10 days from the acknowledgment of receipt of the order. The complainant replied to that order explaining that the reason that the complaint reached the Special Chamber late was the service of the Serbian Post. [REDACTED] indicated that on 24 August 2009 he posted the complaint with the Serbian Post in Belgrade, but it was returned to him undelivered. The envelope with stamps of the Serbian Post was attached to the submission dated 21 April 2010. Considering that the complainant justified his late submission the Special Chamber retained the complaint should be examined as submitted on time.

The complainant presented the certified copy of his employment booklet indicating that he was employed with the SOE for more than nine years from 12 March 1980 until 8 May 1989 when his contract was terminated. The fact that the employment relation between the complainant and the SOE was terminated 17 years before the privatization excludes

him from the group of eligible employees. The requirements indicated in Section 10.4: the registration as an employee at the time of privatization and being on the payroll of the Enterprise for not less three years are meant to be fulfilled both one in conjunction with another. The legislator, by using the word “and” indicated that both conditions shall be fulfilled jointly, cumulatively. Therefore, the complainant although he worked for more than nine years with the privatized Enterprise, cannot be included on the list, because he was not on the payroll of the SOE on the day of privatization: 22 May 2006. In consequence the Court assesses that the complainant does not fulfil the requirements of Section 10.4 of UNMIK Regulation 2003/13 as amended as he was not employed with the SOE at the time of privatisation 22 May 2006. For that reason his complaint has to be rejected.

According to Section 11 of UNMIK Regulation 2008/4 the Trial Panel has to decide on the allocation of costs of the proceedings in the case. Pursuant to the Special Chamber’s Additional Procedural Rules regarding Court Fees as in force from 10 March 2010 (based on Section 57.2 of UNMIK AD 2008/6) proceedings in cases concerning the List of Eligible Employees (Section 67 of UNMIK AD 2008/6) are free of charge. Thus, none of the parties is obliged to pay any fees to the Special Chamber nor to the opposite party.

For all the above mentioned reasons the Special Chamber decided as in the enacting clause.

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.

Anna Bednarek, Presiding Judge,
EULEX

[signed]

Antoinette Lepeltier-Durel, Judge,
EULEX

[signed]

Gyltene Sylejmani, Judge

[signed]

Tobias Lapke, Registrar,
EULEX

[signed]