DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENCINË KOSOVARE TË MIRËBESIMIT	SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON KOSOVO TRUST AGENCY RELATED MATTERS	POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODNOSE NA KOSOVSKU POVERENIČKU AGENCIJU

SCEL – 09 – 0007

Complainants

1. [redacted]
2. [redacted]

vs.

Respondent

Privatization Agency of Kosovo
SOE "[redacted]", Prizren

The Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (Special Chamber/SCSC/Chamber), composed of Antoinette Lepeltier-Durel, Presiding Judge, Esma Erterzi, and Ilmi Bajrami, Judges, after deliberation held on 16 December 2010, issues the following

JUDGEMENT

1. The complaints of [redacted] for their inclusion in the list of eligible employees entitled to receive a share of the proceeds from the privatization of the SOE "[redacted], based in Prizren, **are approved**. The Privatization Agency of Kosovo **is ordered** to include the names of the above Complainants in the published list of eligible employees entitled to enjoy the share of 20% from the proceeds of privatization of the Socially Owned Enterprise "[redacted]", based in Prizren.

2. The period of time of the service of the workers with the SOE to be taken into account by the Agency in terms of Section 10.5 lit (b) UNMIK Regulation 2003/13 :

   a. for the Complainant [redacted] is from 22 November 1963 until 9 June 1999.

   b. for the Complainant [redacted] is from 15 June 1976 to 26 June 1992.

3. The Respondent is obliged to compensate to the lawyer [redacted], the representative of the Complainant [redacted], under No. 1 the costs of presentation at court hearing in an amount of €101.

4. The Respondent is obliged to compensate to the lawyer [redacted], the representative of the Complainant [redacted], under No. 2, the costs of presentation at court hearing in an amount of €101.

I. Factual and Procedural Background

The official list of eligible employees of the Socially Owned Enterprise (SOE) "[redacted]" from Prizren entitled to receive a share of the proceeds from the privatization of the said SOE issued by the Privatization Agency of Kosovo (PAK) was published on 7, 8, 9, 10, 11 May 2009, respectively in Albanian language publications of general circulation in Kosovo and Serbian language publications as well with a notice that the complaints against the list must be submitted to the Special Chamber within 20 days after the final publication in the media pursuant to subsection 10.3 of the UNMIK Regulation (REG) 2003/13.

On 26 May 2009, [redacted] the first complainant, submitted to the Special Chamber a complaint against the final list of eligible employees of the SOE "[redacted]" established by the Privatization Agency of Kosovo (PAK), acting as *de facto* administrator of the SOE. Then, [redacted], the second complainant, filed a complaint related to the same list. The last one was registered on 1 June 2009.

Pursuant to Section 67.7 of UNMIK Administrative Direction (AD) 2008/6, a copy of each complaint was served on the PAK by the Special Chamber. PAK *as the Respondent* provided its note of observations separately for each complaint claiming that none of the complainants was registered as a worker of the SOE at the time of the privatisation and therefore the complaints are to be rejected as ungrounded.

On 9 June 2009, the Chamber ordered the service of the responses of PAK on the complainants for their replies. Complainant [redacted] confirmed the receipt of the response of PAK on 22 June 2009; however, he did not file any reply. As to the service of the response on the Complainant [redacted], the Court confronted with obstacles to receive the acknowledgement of the receipt of the response, thus to set the hearing, as well. Finally, the Complainant sent the note of observations via fax that was served to him by the Court in order to show that he received it.

On 28 July 2009, the Judge in charge ordered PAK to submit:

1. The details on Review Committee of the Agency dealing with eligible workers list including the composition, names and the positions, confirmed by documentary evidence e.g. signed minutes of the Committee,
2. Copy of the SOE "[redacted]" SDR file.

PAK attached a copy of the report called "note of observations" dated July 2009, signed by the review panel and a copy of the SOE "[redacted]" SDR file to its response submitted on 31 July 2009. In the said "notes of observation", general information together with responses to the four complaints filed by [redacted] to the KTA Review Committee were provided reiterating that none of the them were eligible for 20% proceeds. At the end of the "notes of observations" the names of the PAK Review Panel composed of five members with their signatures were mentioned.

According to the "note of observations"; the SOE was sold by ordinary spin off of the Kosovo Trust Agency (KTA) privatization programme; its assets and liabilities were transferred to Newco L.L.C.; the contract for sale between PAK and the winning bidder was ratified on 18

December 2006; and the purchase price was 616.000.00 Euros.

It was stated in this report that the provisional list of employees was published on 3 and 5 May 2007 and the closing date for the submission of complaints to the Agency was 28 May 2007 as set out in UNMIK Administrative Direction 2006/17, Section 64.2, without providing any proof of that provisional list of the eligible employees that was published in the media in conformity with the UNMIK Regulation 2003/13 and UNMIK Administrative Direction 2006/17.

On 11 September 2009, the Judge in charge issued another order to the Respondent requesting the submission of

- the SOE Matrix book;
- the full employee list at the time of privatization;
- the proof that the list of eligible workers was published in the media pursuant to Section 10.3 of UNMIK Regulation 2003/13 and
- the whole copy of the file of the SOE '[redacted]' registered with the PAK related with the workers of the [redacted].

PAK provided the Special Chamber with the required documents except for the matrix book which was claimed not to be submitted to the Agency by the SOE management.

II. Legal Reasoning

A. Relevant Law

The privatization of the socially owned enterprises in Kosovo is carried out by Kosovo Trust Agency and/or by Privatization Agency of Kosovo *de facto* depending on the time the privatization process started. Both of them are the agencies established by different legislators to administer the SOEs in Kosovo; the first one was established by Special Representative of the Secretary General of the United Nations (with UNMIK Regulation 2002/12 on the establishment of the Kosovo Trust Agency, as amended), whereas the latter was done so by the Assembly of Kosovo after the declaration of the independence (with the Law on Privatization Agency of Kosovo No 03/L-067).

UNMIK Regulation 2003/13 regulates the transformation of the right of use to socially owned immovable property. Section 10 of the said Regulation is devoted to the entitlement of the employees of the socially owned enterprises.

Sections 10.2 and 10.3 of UNMIK Regulation 2003/13 set out the procedure to be applied by the Agency with regard to compiling the list of eligible employees. Initially, the representative body of employees of the enterprise, in cooperation with the Federation of Independent Trade Unions of Kosovo, establishes in a non-discriminatory basis the list of eligible employees and then submits it to the Kosovo Trust Agency. The Agency shall review the list and make such adjustments to ensure equitable access by all eligible employees to the funds to be distributed. Afterwards, pursuant to Section 67.2 of UNMIK AD 2008/6, the provisional list shall be published, together with a notice to the public of the right of any person to file a complaint within 20 days with the Agency requesting the inclusion in or challenging the list of eligible employees. Finally, pursuant to Section 67.5 of UNMIK AD 2008/6, after having duly addressed all requests and challenges, the Respondent shall, if necessary, adjust the list of eligible employees accordingly,

and by a decision of its Board of Directors in conformity with Section 10.2 of UNMIK Regulation 2003/13, which shall contain a reasoned justification for the inclusion or exclusion of each person on the list and the acceptance or refusal of other challenges to the list, officially establish the list of eligible employees. The list of eligible employees established as such shall be published in conformity with Section 10.3 of UNMIK Regulation 2003/13.

Sections 10.4 and 10.6(a) of UNMIK Regulation 2003/13 set out the requirements an employee has to meet to be considered as eligible for the list. Section 10.4 expressly provides that an employee shall be considered eligible, if such employee is registered as an employee with the socially-owned enterprise at the time of privatization and is established to have been on the payroll of the enterprise for not less than three years. The failure to fulfil such requirement shall not preclude the inclusion in the list of an employee who claims that he would have been eligible for the list, had he not been subjected to discrimination.

As to the discrimination, the Assembly of Kosovo, Pursuant to the Regulation No. 2001/9, of 15 May 2001, on the Constitutional Framework for Provisional Self-Government of Kosovo, in particular on the provisions of Chapters 3.1, 3.2 and 5.7 and further, on 30.07.2004, adopted the Anti-Discrimination Law No. 2004/3 which was also promulgated by the SRSG attached to the UNMIK Regulation 2004/32 issued on the promulgation of the Anti-Discrimination Law adopted by the Kosovo Assembly.

Section 8 on "Burden of proof" of the said Law reads as follows:

"8.1. When persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

8.2. Paragraph 8.1 shall not prevent the introduction of rules of evidence, which are more favourable to plaintiffs. Further, a complainant may establish or defend their case of discrimination by any means, including on the basis of statistical evidence."

Section 11 of the same Law states:

"11.1 When this law comes into effect it supersedes all previous applicable laws of this scope.

11.2. 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".

In order to verify the fact whether the Anti-Discrimination Law supersedes the UNMIK Regulation 2003/13, Section 10.6 (b) when dealing with the grounds of evidence requested to prove discrimination, the Chamber, on 28.10.2005, asked the Special Representative of Secretary General (SRSG) to provide a clarification of this issue. On 11 January 2006, the SRSG answered affirmatively. Especially, he added: "Pursuant to Section 11 of the Anti-Discrimination Law, Article 8 of this Law that was adopted subsequently, supersedes the section 10.6 (b) of UNMIK Regulation 2003/13."

If a complainant is not included in the list of employees as a result of discrimination, Section 8.1 of the Anti-Discrimination Law provides clearly that facts from which it may be presumed that

there has been direct or indirect discrimination shall be presented by the complainants. The Law clearly defines the obligation of the respondent to review the list and make such adjustments necessary to ensure equitable access for all the employees.

B. Evaluation of the published list and the admissibility of the complaints as timely

It is the obligation of the Respondent to compile a list of eligible workers of the SOE who are entitled to receive a share from the proceeds of the privatization of the enterprise and to publish it in major Albanian language publications of general circulation in Kosovo and major Serbian language publications on two consecutive workdays and the following weekend in conformity with Section 10.3 of UNMIK Regulation 2003/13.

Upon application by an aggrieved individual or aggrieved individuals, a complaint regarding the list of eligible employees as determined by the Agency and the distribution of funds from the escrow account provided for in subsection 10.5 of the same Regulation shall be subject to review by the Special Chamber, pursuant to Section 4.1 (g) of Regulation 2002/13. 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.

In this case, the Trial Panel observes that the final publication took place on 11 May 2009. Accordingly, taking into account Section 20.1 lit (a) of UNMIK Administrative Direction 2008/6, the period to file a complaint with the Special Chamber against that list expired on 31 May 2009. The Trial Panel observes that period ended on Sunday, so it should be extended until the end of the first following working day which corresponds to 1 June 2009.

The first complaint was submitted to the Special Chamber on 26 May 2009 and the second was on 1 June 2009. Accordingly, both the complaints are to be considered as timely.

C. Merits

1. With regard to the Complainant [redacted]

(a) The parties' submissions

The Complainant [redacted] submitted a complaint to the Special Chamber stating that he worked for the SOE '[redacted]' Prizren from 22 November 1963 until 9 June 1999. He claimed that he was subjected to discrimination when he was dislodged from Prizren. As evidence, he attached a copy of his workbook to the complaint. According to the workbook; he worked for the SOE '[redacted]' Prizren from 22 November 1963 until 9 June 1999. The Trial Panel observes that the workbook was closed on that date with this SOE. Afterwards, he worked in another SOE and had some other private engagements later on. He also submitted a document from Serbian Insurance Fund.

During the hearing, the complainant was represented by [redacted] in accordance with the power of attorney provided to the Court. The representative of the Complainant confirmed that the complainant was not working during the privatisation since he was Internally Displaced Person. The representative of the Complainant alleged that, at the time of privatisation, the Complainant was in central Serbia but his disqualification was basically the result of the

discrimination he experienced. To this end, she provided the copy of the ID of the Complainant showing him as an internally displaced person (IDP).

Respondent PAK, in its response to the claim, alleged that the complainant's workbook was closed on 9 June 1999 and afterwards it was reopened with other enterprises. PAK further claimed that although the Complainant alleged discrimination, he did not support his complaint with material evidence as required by UNMIK Regulation.

During the hearing, PAK Representative claimed that according to the original workbook the Complainant worked for the SOE until 1999. After then he created a new job and worked until 2008 over there. Accordingly, he was not on the workers list at the time of the privatisation and he did not apply to the KTA Review Committee. PAK repeated its arguments on that the complainant did not provide any evidence for the alleged discrimination.

(b) The Court's assessment

The Complainant alleged discrimination and also produced evidence for being internally displaced person, the fact that did not allow him neither to stay in Kosovo nor to work with the SOE after the war. The Trial Panel observes that his working relation with the SOE was terminated on 9 June 1999 which corresponds to the time of war.

As reiterated in many decisions of the Special Chamber, it is well know fact that after the war the management of the SOEs passed to the persons with Albanian origin. It was very difficult, even almost impossible, for those who hold Serbian ethnicity to work in an environment in a peaceful manner in the SOEs under the control of Albanians just after the war.

Before 1999, employees were, to a great extent, able to attend work without interruption. However, after the divisive conflict and the international intervention in 1999, people were mostly unable to safely travel within Kosovo. The effect is that employees belonging to minority groups, living in segregation from the Albanian majority were deprived of the opportunity to attend work without affirmative assistance of the governing body.

Given the legal and factual framework above, it is decisive to establish whether the circumstances in Kosovo prevented the Complainant from returning to work from June 1999 onwards. There is considerable amount of studies and reports referring to the actual situation in Kosovo, in particular to the positions of the workers of the socially owned enterprises after the conflict. The Chamber, without holding any prejudiced opinion on this issue simply refers to these studies and reports as to the discrimination alleged by the Complainant.

According to Eide, most of the SOEs employees belonging to minority communities were forced to stop working after being threatened or being exposed to violence in the period 1999-2000. The privatisation process of SOEs was initiated in 2003, long after the initial displacement of non-Albanian communities and just before the March 2004 violence the consequence of which was a new displacement wave. Eide further claims that UNMIK did not take into consideration the situation of IDPs/returnees when enacting UNMIK Regulation No. 2003/13, amended with Regulation No. 45/2004, which provides that "an employee is eligible if such employee is (...) registered as an employee with the Socially-Owned Enterprise *at the time of privatization*" (See Kai Eide, "A comprehensive review of the situation in Kosovo", UN, S/2005/635, pp. 2-3.) In

another study, it is alleged that UNMIK excluded most IDPs/returnees, since they were forced to leave Kosovo before 2003 and were no longer able to be SOEs employees at the time of the privatisation (see Kosovo under Security Council Resolution 1244- UNIJA- UNION, Federation of IDPs Associations-Submission to the UN Committee for Economic, Social and Cultural Rights, October 2008, See E/C.12/UNK/1, para. 168).

It is, of course, questionable to consider any of such studies as completely reflecting the whole truth without being biased, however, it is still a common belief and knowledge that the persons with Serbian ethnicity did not have freedom of travel within the Kosovo territory without intervention or escorting of KFOR staff after the war due to *de facto* situation in Kosovo. It is further impossible to expect from a worker holding Serbian ethnicity to ask for the assistance of international forces to secure his travel to and from the work place on a daily basis and no such staff could have been able to perform such protection on a regular basis for a long period of time.

Furthermore, it is acknowledged in a European Commission Report which can be considered as neutral that former SOE employees belonging to non-Albanian communities continued to contend in 2007 that they were unable to participate in and profit from the privatization process because of the discriminatory character of the regulatory framework (See, European Commission, *Kosovo (under UNSCR 1244) 2007 Progress Report*, Brussels, 2007, p. 26).

Under these circumstances the Chamber considers that the complainant's failure to present himself for work from June 1999 onwards was not in any way attributable to a desire on his part to be voluntarily absent from work, but of a kind deriving from the security problems he found himself in. Even if he could have been able to represent himself to the new management of the SOE, it is highly unlikely that he would have been hired by the new management composed of mainly directors with Albanian ethnicity which is another notorious fact. So, if he had not been discriminated, he would have been registered as a worker of the SOE at the time of the privatization and been on the payroll not less than three years as required by the UNMIK Regulation 2003/13.

2. With regard to the Complainant [redacted]

(a) The parties' submissions

In his complaint, the Complainant alleged that he was a worker of SOE during the privatisation. He also claimed that he was dismissed by Serbian regime in 1992 against which he initiated a court proceedings. He asked to be summoned to a hearing and to give a statement.

During the hearing, the complainant was represented by *Sezo Veliji* in accordance with the power of attorney provided to the Court. The representative of the Complainant confirmed that the contract of the complainant was terminated in 1992 based on discrimination. He pointed out that his client initiated a law suit against the termination of his contract before the competent court against SOE. He alleged that the proceedings lasted until a decision was made in the Municipal Court of Prizren wherein the Court decided to suspend the proceedings because of the privatisation of the enterprise. A copy of that decision was submitted to the Court accompanied with its translation into English.

Respondent PAK claimed that the Complainant worked until 1992 when his employment was terminated. PAK further alleged that there is no material evidence about the continuity of his

employment after 1992. PAK emphasized that at the time of the privatisation the Complainant was not on the payroll list of the SOE even though his workbook is still open. However, this allegation was contested by the representative of the Complainant stating that the work book was closed in 1992.

(b) The Court's assessment

The claimant attached a copy of his workbook according to which he worked for the SOE from 15 June 1976 to 26 June 1992. The workbook was closed with the SOE [redacted] on 26 June 1992.

The Complainant submitted his complaint supported with relevant documentation and allegation of discrimination. It was established with the original workbook and the statement of the representative of the complainant during the hearing that the Complainant was not a registered worker of the SOE at the time of privatisation. However, the Complaint claimed discrimination which took place during 1990s which resulted in his dismissal from work against which he initiated a court procedure. The fact that the workbook was closed with the SOE [redacted] in 1992 was confirmed by the Judge Rapportuer conducting the evidentiary hearing by means of checking the original workbook.

What is more important is that the Provisional Management Authority of the SOE [redacted] terminated the employment of the Complainant on 26 June 1992 pursuant to Article 8 paragraph 1/3 and 1/4 of the Law of Employment in Exceptional Circumstances (Official Gazette of the Republic of Serbia No 40/90) against which the Complainant initiated a lawsuit before the Municipal Court of Prizren. In the claim filed with the Municipal Court of Prizren, the Complainant asked to be returned back to his work. The proceedings ended up with the decision of the said Court C nr. 88/93, dated 26.06.2008, suspending the proceedings pursuant to Article 212 of Law on Civil Proceedings because of the fact that the SOE was privatised and thus the legal person as a party in the proceedings before that Court ceased to exist.

Apart from the workbook, the Complainant submitted to the Chamber the decision on termination of his employment, the objection he filed with the Provisional Authority of Tobacco Enterprise [redacted], the decision of the said body on his objection and the claim he filed with the Municipal Court against the decision of the Provisional Authority of Tobacco Enterprise [redacted] rejecting his objection, in accordance with the legal advise provided in the latter. The decision of the Provisional Authority on rejecting the Complainant's objection bears the date of 9 July 1992. In the claim filed with the Municipal Court of Prizren, the date of notification of the said decision was mentioned as 17 July 1992. The claim bears the date of 21 July 1992. It cannot be verified, of course, from this document when the claim was submitted to the Court. Although the decision of the Municipal Court, C. nr. 88/93, dated 26.06.2008, does not refer the date of filing the claim, the Special Chamber observes that the claim was not rejected as inadmissible by the Municipal Court on grounds of being out of time limit and that the proceedings lasted until the SOE was privatized. It was after then the Municipal Court of Prizren decided to suspend the proceedings due to the privatization of the SOE. Therefore, at the time of the privatization, the lawfulness of the decision of the Provisional Authority of the SOE [redacted] on the termination of the employment of the Complainant was still in question. The Court did not respond the question of whether the dismissal was in line with the law or not for a long period of time which itself may constitute an unreasonable delay in the conduct of the proceedings. The Special

Chamber observes that, after the privatisation of the enterprise, the Court to whom a claim was filed against the decision on the termination of the employment of the Complainant decided on the suspension. This decision however has not solved the main question in the proceedings which is whether the dismissal was illegal or not. So, the dismissal of the complainant has never been approved by the Court. The status of the worker remains unsolved. Thus, the Chamber considers that the delay in the proceedings and the fact that the SOE was privatized while the proceedings were still pending after so many years could not exclude the possibility of the Complainant to be returned back to his position in the enterprise and to be a worker of the said enterprise at the time of the privatisation. The complainant should not be the one who has to bear the consequences of the delays in the conduct of proceedings regardless of being reasonable or unreasonable. One may argue, of course, it is not up to the other workers of the SOE to bear the consequences of the delay in the court proceedings who already fulfilled the requirement of the law as to be considered as eligible. The inclusion of any other worker in the eligible worker list will eventually result in the reduction of the amount of the share to be received by those who are already on that list. However, what should be taken into account here is that the Complainant could have been registered as the employee of the SOE at the time of the privatization and could have been in the payroll of the SOE for not less than three years if the Court had decided on the relief sought by him before the enterprise was privatized.

Moreover, in his complaint filed with the Special Chamber, the Complainant explicitly claimed that he was discriminated in 1992 when the Serbian Government asked him to sign a special statement for accepting the former Serbian Government in Kosovo which he did not recognize. As mentioned above, the Complainant first objected to the decision on termination of his working relation with the SOE before the Provisional Authority of the SOE and then he challenged the lawfulness of those decisions before the competent Court and asked to be returned back to his work. Although the Complainant was not explicitly referring to any kind of discrimination in his claim submitted to the Municipal Court, it can be seen from the claim that he was complaining about arbitrary actions of the Provisional Management Authority. One may not expect, of course, in those years under those circumstances when all the judges with Albanian origins were dismissed from the profession to allege discrimination explicitly (for the dismissal of the judges, see Report on the situation of Human Rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapportuer of the Commission on Human Rights, pursuant to Commission Resolution 1992/s-1/1 of August 1992, A/48/92-S25341). The Complainant at least alleged therein that the provisional authority acted in an unlawful manner. In his objection submitted to the Provisional Authority, he even challenged the decision on termination of his contract with the following words "*it follows that the management authority understood the provisional measures as an introduction of the reign of terror among employees, who, literally cannot even go to the toilet without specific approval by the management authority*". The Chamber considers that the Provisional Authority mentioned here refers the management of the SOE during 1989-1999. Moreover, The Trial Panel of the Special Chamber construes the meaning of the provisional measures mentioned in that objection, bearing the date of 1 July 1992, submitted to the Provisional Authority of SOE [redacted] as the provisional measures adopted by the Serbian Parliament which are claimed to be, in some studies, imposition of a repressive and discriminatory regime that resulted in open discrimination on the basis of nationality, the expulsion of all Albanian managers from the leading positions of their enterprises, the abolition of Workers' Councils and dismissal of about 70% of Albanian employees. (See 'Research Report, 20 June 2002, International Conference on Privatization of the SOEs and the Reform of the Utilities in Kosova', June 27-29, 2002, Prishtina, p.25-26.) It is known that in those years the management of the SOEs

tended to indicate various reasons as to justify the dismissal of the Albanian workers but not the ethnicity. In the case at hand, the provisional management of the SOE in those times referred to some behaviours of the worker such as taking sick leave without prior notification, wilful departure from the workplace.

It is acknowledged by different sources that many Albanian were dismissed from their work within the regime forced in Kosovo from March 1989 and onwards, until the summer of 1999, the period called as Milosevic era (See Report on the situation of Human Rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapportuer of the Commission on Human Rights, pursuant to Commission Resolution 1992/s-1/1 of August 1992, A/48/92-S25341, para. 153-171, 26 February 1993; Florian Bieber and Zidas Daskolovski Understanding the War in Kosovo, Edits Florian Bieber and Zidas Daskolovski,, 2003, Great Britain MPG Books Ltd, page 64; Human Rights in Yugoslavia 1998 (Belgrade, Belgrade Center for Human Rights, 1999: Human Rights Violation in the Territory of former Yugoslavia 1991-1995, Belgrade HLC, 1997).

The ruling of the country during 1989-1999 and surrounding activities of the dominant group of that time have gained so much notoriety in the psyche and consciousness of the Kosovars that it have become a notorious fact, because they have developed into a prism of undisputable fact beyond questioning and challenge.

3. The final assessment of the Court

It should be stressed that the first complainant with Serbian ethnicity alleges discrimination due to the fact that he was dismissed from work during the war that took place in 1999 and the second complainant with Albanian ethnicity alleges the same occurred during Milosevic era.

Considering the time the Complainants were dismissed from work or had to leave their work in the SOE; and taking into account the ethnic origin of them; bearing in mind that the fact that employees with Albanian origin were subjected to discrimination during 1989-1999 and the same goes for employees with Serbian origin after 1999 due to the security conditions is a notorious fact, the Trial Panel is of the opinion that these complainants are to be considered as having established the facts from which it may be presumed that there has been direct or indirect discrimination and that they would have been eligible if they had not been subject to discrimination. The Trial Panel considers that the discrimination against the workers in the socially owned enterprises that took place during the period of 1989-1999 is a notorious fact which does not require to be proven with further evidence by the Complainant in the case at hand. On the other hand, the discrimination of the workers with Serbian ethnicity deriving from the security conditions in Kosovo after 1999 is another notorious fact.

Notorious facts are the means by which the court may take as proven certain facts without hearing evidence. When a fact is admitted as notorious by the judge, no proof of it is required, but it is often necessary to show that it is notorious, as the judge is not expected to know every notorious fact, and in general the person in authority, holding what is notorious to be certain and proved, requires no further information, and therefore, both may and ought to refrain from any judicial inquiry, proof, or formalities, which would otherwise be necessary. For these inquiries and formalities having as their object to enlighten the judge, are useless when the fact is notorious. Ordinarily the meaning of the notorious fact is equivalent to public, manifest, evident, known; all these terms have something in common, they signify that a thing, far from being secret, may be

easily known by many. Notoriety, in addition to this common idea, involves the idea of indisputable proof, so that what is notorious is held as proved and serves as a basis for the conclusions and acts of those in authority, especially judges. Whatever is easily shown and is known by a sufficient number of persons to be free from reasonable doubt is notorious in fact.

Notorious facts (i.e. matters of common knowledge) may be judicially noticed without inquiry; some other facts (e.g. matters that can easily be checked in a standard work of reference and are reasonably indisputable) may be noticed after inquiry. When judicial notice has been taken, evidence in rebuttal is not permitted (http://law.jrank.org/pages/20942/judicial-notice-(judicial-cognizance).html).

Just from a purely Anti-Discrimination Law point of view; both Complainants provided evidence to establish their working relation with the SOE [redacted] and provided necessary documents to establish, before the Special Chamber, the facts from which it may be presumed that there has been direct or indirect discrimination. Then, according to Anti-discrimination Law 2004/3, it shall be the Respondent to prove that there has been no breach of the principle of equal treatment however, the Respondent did not provide any evidence that there had not been a breach of the principle of equal treatment in the terms of Section 8.1 of the Anti-Discrimination Law.

On the basis of the reasons stated above the Chamber finds that:

The Complainants shall be accepted for their inclusion in the list of eligible employees since they would have been listed on the register of employees of the Enterprise at the time of the privatization in 2006 if they had not been discriminated against.

Based on the above considerations and in accordance with Section 4.1 (e) and 9 of UNMIK Regulation 2008/4 and Section 10.6 (a) of UNMIK Regulation 2003/13, and Section 67 of UNMIK Administrative Direction 2008/6, and Article 8 of Anti-Discrimination Law No. 2004/3, the Chamber decides as in the enacting clause of this Judgment.

III. Costs

The Respondent is obliged to accept the procedural costs for the attendance to the hearings of the Complainant's lawyers in an amount of 101 Euros each, total amount being 202 Euros (Advocate's Tariff of 11 June 2005, rendered based on the Law on Advocates, Official Gazette of Kosovo 48/79).

IV. Legal Advice

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 within thirty (30) days from the date of the service of the Judgment.

Antoinette Lepeltier - Durel, Judge,
EULEX _____

Esma Erterzi,
Judge, EULEX _____

Ilmi Bajrami, Judge _____

Tobias Lapke, Registrar