

<p>DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENCINË KOSOVARE TË PRIVATIZIMIT</p>	<p>SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY RELATED MATTERS</p>	<p>SPECIJALNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODMOSE NA KOSOVSKU AGENCIJU ZA PRIVATIZACIJU</p>
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SCEL – 11 – 0005

Complainant

Z.P.

Represented by lawyer.T.B.

V.s.

Respondent

Privatization Agency of Kosovo,
“Ilir Konushevcı”, Street, no. 8, Prishtinë/Pristina

The Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, the Specialized Panel 1 composed of Esma Erterzi, Presiding Judge, Shkelzen Sylaj and Hysen Gashi, Judges, after the deliberation held on this 03.06.2013, issues the following:

JUDGMENT

The complaint of Z.P. is rejected as ungrounded.

Procedural and factual backgrounds:

The Complainant claims to be a former employee of the Social Enterprise SOE " M." in G., which was privatized by the Respondent.

The date of privatization of the SOE "M.", G., was 15 June 2006.

The final list of eligible employees was published on 09, 10 and 11 December 2010, in the daily newspaper Koha Ditore and Blic and the deadline for filing a complaint was 20 (twenty) days from the last day of publication of the final list.

On 20 December 2010, the Complainant filed a complaint with the Special Chamber against the PAK, seeking inclusion in the list of qualified workers to receive a share of the proceeds from the privatization of SOE "M." in G. The Complainant claimed that he worked in the SOE until on 12.06.1999. He emphasized that the workbook remained in the enterprise because he left G. and Kosovo, due to personal and family security reasons. He considers as legal basis the anti-discrimination law.

In the written observations dated 24.01.2011, the PAK claimed that the complaint should be rejected as ungrounded. The Complainant has not presented the workbook or any other relevant evidence to prove that he was under working relations with the SOE "M." or that he has been on the payroll of the employees at the time of privatization and therefore he did not support his claims with material evidence for discrimination.

On 15.06.2011, the PAK responded to the order of SC dated 31.05.2011, by enclosing details regarding the review committee of employees' list, the memorandum and the list of official publications.

On 10.04.2013, the PAK responded to the order of SC, by which it was required to provide a statement on the date of privatization of the SOE "M." in G.

On 17.04.2013, the Court issued an order and summoned the Complainant for the hearing of 24.04.2013. The Complainant did not appear, but the Respondent PAK did. There is no acknowledgment of receipt from the Complainant as to the receipt of the summons.

On 23.04.2013, the Court issued an order for Delegation of Competences of the Trial Panel to the Single Judge only with regard to the collection of evidence and conduction of the hearing.

On 24.04.2013, the Court served on the Complainant the written observations of PAK and requested from him to submit evidence with regard to his employment relation with the SOE M. in G.

On 24.04.2013, the Complainant's representative responded on the written observations of PAK stating the same allegations presented in the complaint dated 20.12.2010, and adding that the Respondent did not contest the fact that he was the director of the SOE. He, therefore, proposed to approve the complaint of the Complainant.

Regarding further details, the reference is made to the case file in the Special Chamber

Legal reasoning:

The Judgment is rendered without holding a hearing because the facts and legal arguments are sent very clear. The Panel does not expect other relevant information and argument from any hearing. Article 68.11 of the Annex to the Law 04/L-033 on the Special Chamber - SCL).

The complaint of the Complainant is ungrounded.

The Section 10.4 of the UNMIK Regulation 2003/13, as amended by UNMIK Regulation No. 2004/45, sets out the requirements that an employee must meet in order to be considered as eligible, while the Section 10 sets out the procedure for filing a complaint with the Special Chamber as follows:

10.4 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 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.

By the order of 24.04.2013, the Court gave the opportunity to the Complainant to submit evidence with regard to his employment relation with the SOE. However, in his

reply he offered no evidence proving he was an employee of the SOE "M." G., despite his allegation that he used to be an employee of the enterprise until 12.06.1999.

The Complainant's mere allegation in the complaint is not sufficient if not proved by documentary evidence such as the workbook or any other written evidence which can verify that the Complainant was an employee of the SOE "M." in G.

The Complainant's allegation that the Respondent, in the written observations dated 24.01.2011, did not contest the fact that the Complainant was a director does not stand because the Respondent in the same observations contested stating that the Complainant did not present any material evidence to prove that he was under employment relation with the SOE "M.".

As the Court could not prove that the Complainant had established employment relation with the SOE, it did not proceed further with regard to verification of discrimination.

Court fees

The court does not impose court fees to the Complainant, because the Presidium of the Court so far has not issued any written schedule adopted by the Kosovo Judicial Council (Article 57.2 of the Annex of the Law on the Special Chamber). This means that till now there is no sufficient legal basis to impose the costs.

Legal Advice

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

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

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

The other party may file a response with the Appellate panel within 21 days from the date he/she has been served with the appeal, submitting the response also to the appellant and other parties.

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

Esma Erterzi, Presiding Judge
Presiding judge