

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 ODNOSI NA KOSOVSKU POVERENIÇKU AGENCIJU
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ASC-09-0107

In the lawsuit of

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████████████████████, Kragujevac, Republic of Serbia

Complainant/Appellant

vs

Privatisation Agency of Kosovo

Str. Ilir Konushevci No.8
 10 000 Prishtinë/Priština

Respondent

The Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (SCSC) composed of Richard Winkelhofer, Presiding Judge, Torsten Frank Koschinka and Eija-Liisa Helin, Judges, on the appeal against the decision of the Trial Panel of 24 November 2009, SCEL-09-022 c - 15, after deliberation held on 17 August 2010, issues the following

DECISION

- 1. The appeal is rejected as ungrounded.**

- 2. The decision of the Trial Panel in the case SCEL-09-0022 C-15, dated 24 November 2009, is upheld.**

Procedural and factual background:

On 28 October 2009 the Complainant filed a complaint requesting the SCSC to include her in the final list of eligible employees of the SOE "██████████" in Ferizaj / Uroševac. The Complainant maintained that she was a worker of the SOE from 1 February 1992 until 18 July 1998.

In the decision SCEL-09-022 c – 15 dated 24 November 2009 the Trial Panel of the SCSC rejected her complaint as inadmissible, since the complaint was filed beyond the time limit as prescribed by Section 10.6 (a) of UNMIK Regulation 2003/13. The time period for filing complaints against the list ended 1 August 2009.

On 23 December 2009 the Complainant (herein after the Appellant) filed an appeal against the aforementioned decision. In her appeal she states that from 25 June 2009 until 8 October 2009 she was undergoing medical treatment at the hospital, therefore she were not able to submit her complaint within the time limit. In support of that, the Appellant filed a letter of dismissal from the hospital certifying the hospitalisation for the period she indicated.

On 2 February 2010 the Appellate Panel issued an order requesting the Appellant to submit within 14 (fourteen) days from the receipt of the order a copy of the appealed decision with indication of the date in which the decision was served on her, and the reasons why the letter of dismissal from the hospital was not presented at the time of filing the complaint on 28 October 2009 with the SCSC.

On 17 February 2010 the Appellant responded to the order by submitting a copy of the appealed decision and repeating that she was not able to file a complaint because she was under treatment. As for the reasons for non-submitting the letter at the time of the filing of the complaint, she stated that, because of ignorance of the procedure, she thought to present only documents that would attest her qualification as a worker of the mentioned SOE.

On 3 March 2010 the appeal and supporting documents were served on the Respondent, the Privatisation Agency of Kosovo (the PAK). In its defence the PAK requests the SCSC to reject the appeal as "ungrounded" since the Appellant submitted an uncertified copy of the letter of dismissal from the hospital which cannot be accepted as legal evidence. Moreover, the request of the Appellant to be reinstated to the previous state does not stand since in the PAK's opinion she could have authorised a lawyer to represent herself and to submit the documents within the time limit. Therefore, the decision of the Trial Panel should be upheld.

On 14 April 2010 the defence of the PAK was served on the Appellant, pursuant to Section 62 of UNMIK Administrative Direction 2008/6, with an advice concerning Sections 62.1 and 62.3 of the same AD, with regard to the possibility for the Appellant to file a further reply. Following that, no further submissions were filed.

Legal reasoning:

The appeal is admissible, but ungrounded.

The appeal in its essence deals with reasons to be seen as such for a request for restoration to the previous position: The Appellant requests to have her appeal considered in light of the fact that she was not able to submit the complaint on time because she was hospitalized from 25 June 2009 until 8 October 2009, a period of time during which the time limit for filing complaints against the list expired.

Section 10.6 of UNMIK Regulation 2003/13 states that "Upon application by an aggrieved individual (...) 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 shall be subject to review by the Special Chamber, pursuant to Section 4.1 (g) of UNMIK Regulation 2002/13. (a) 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 (...)".

The complaint of the Appellant was filed with the Trial Panel on 28 October 2009, way beyond the time limit for filing complaints which expired on 1 August 2009. The Trial Panel thus correctly rejected the complaint as inadmissible.

Article 118 paragraph 4 of the Law on Contested Procedure (herein after the LCP, Official Gazette of the SFRY 4/77 - 1478, 36/80 - 1182; 69/82 - 1596), applicable in virtue of Section 70, paragraph 3 (a) of UNMIK AD 2008/6, stipulates that, if a party fails to undertake some actions in the proceedings

within a time set and therefore loses the right to undertake that action, the court shall, upon a motion of that party, allow that party subsequently to undertake the action in question (restoration to the previous position) if it assesses that there are justifiable reasons for such a failure. Furthermore Article 118 LCP stipulates that the motion for restoration to the previous position shall be submitted with the court where the omitted action should have been taken within 15 (fifteen) days, counting from the day when the reasons for the omission cease existing, and if the party has learned of the omission only later, counting from the day when the party has learned of it.

While Article 118 paragraph 1 LCP on principle foresees the Trial Panel's competence to deal with applications for restoration to the previous position, those requests filed within appeals against decisions rejecting complaints / claims as untimely filed are to be heard by the Appellate Panel as the competent body to deal with appeals of whatever content.

In the case at hand, according to the documents submitted the Appellant was under hospital treatment during the time period, when her complaint should have been filed with the Trial Panel, and thus may have had justifiable reasons for filing her complaint with the Trial Panel after 1 August 2009. The Appellant was released from the hospital treatment on 8 October 2009 and it could have been possible that she also learnt of her omission later after that date.

Anyhow, Article 118 paragraph 3 of the LCP stipulates that after expiration of three months since the day of the omission, the restoration to the previous position cannot be requested anymore. The last day for filing a complaint with the Trial Panel was 1 August 2009 and thus the day of the omission was 2 August 2009. The three month's time period is thus counted from 2 August 2009 and ended 2 December 2009. The Appellant filed her complaint with the Trial Panel without giving any reason for her late filing and without explicitly requesting a restoration to the previous position. The reason for her late filing of the complaint with the Trial Panel was only given in her appeal to the Appellate Panel on 23 December 2009. For this reason, also a (separate) request for restoration to the previous position would have been unsuccessful.

Court fees

Pursuant to the Special Chamber's Additional Procedural Rules regarding the Court Fees as in force from 10 March 2010 (based on Section 57.2 of UNMIK AD 2008/6) proceedings in case concerning the List of Eligible Employees (Section 67 of UNMIK AD 2008/6 and the respective appeals proceedings are free of charge. Thus, a decision on court fees had not to be taken.

Richard Winkelhofer, EULEX Presiding Judge	signed
Torsten Koschinka, EULEX Judge	signed
Eija-Liisa Helin, EULEX Judge	signed
Tobias Lapke, EULEX Registrar	signed