

<p style="text-align: center;">DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENCINË KOSOVARE TË PRIVATIZIMIT</p>	<p style="text-align: center;">SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY OF KOSOVO RELATED MATTERS</p>	<p style="text-align: center;">POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODRNOSE NA KOSOVSKU AGENCIJU ZA PRIVATIZACIJU</p>
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13 March 2013

SCA-11-0030

Claimant

████████████████████
 Represented by ██████████ Attorney at law from ██████████

Vs.

Respondent

████████████████████
 Represented by Privatization Agency of Kosovo, Ilir Konushevci 8, Prishtinë/Priština

The first Panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Privatization Agency Related Matters composed of the Presiding Judge Alfred von Keyserlingk, Judge Shkelzen Sylaj and Judge Cerim Fazliji after deliberation held on 13.03.2013 issues the following

DECISION

- 1. The withdrawal of the request to be included into the Final List for Privatization is admitted.**
- 2. As to the other requests the claim is dismissed as inadmissible.**

Factual and procedural background

The Claimant by submission of 4 July 2012 requests the Special Chamber to review the decisions rendered by the Prizren Municipal Court and Prizren District Court and to render a decision granting to him unpaid salaries and other expenses from the privatization sale of the Enterprise starting from 18.05.1994 until the date of privatization 19.04.2007. He does not submit figures as to how many Euros he is requesting. Instead he requests that the court appoints an expert to establish the amount of salary due to him. The Claimant states that he is entitled to unpaid salaries pursuant to Prizren Municipal Court Decision dated 04.03.1998. He requests that the Special Chamber confirms this decision, claiming that without such confirmation of the Special chamber it would not be executed and respected. Further, the Claimant in his claim is seeking inclusion on the list of employees entitled to a share from the 20% of the privatization proceeds. The Claimant asks the Special Chamber to confirm that the Workers Council Decision dated 06.07.2004 on his appointment as the Director of the SOE was lawful and in accordance with the Statute of the Enterprise and the applicable law. The Claimant states he had 40 years work experience until he retired on 10.09.2007.

In defence to the claim of 21 September 2012 the Respondent states that the claim should be rejected as ungrounded. The Respondent states that the review of the employees list of the SOE is pending at the Special Chamber under SCEL-11-0053

and the Claimant has already filed a complaint, registered under number SCEL-11-0053-C0198. The Respondent states that the claim for unpaid salaries on the basis of Prizren Municipal Court Decision dated 04.03.1998 is time-barred pursuant to articles 371, 373 and 379 of LCT (Law on Contracts and Torts). The Respondent states that the request of the Claimant to have confirmed the validity of the Workers Council Decision appointing him as Director of the SOE and consequently his employment relation is ungrounded because with this Decision his employment relation was terminated.

The Prizren District Court by notification from 2 March 2011 submitted to the Special Chamber Prizren District Court Case Ac.no.236/2010 (appeal against Prizren Municipal Court Decision C.nr.999/09 dated 24 February 2010) stating that it has no jurisdiction.

On 14 June 2012 the Special Chamber removed the case Ac.no.236/2010 from the Prizren District Court to the Special Chamber for adjudication.

In the hearing of 27 February 2013 the Claimant, after having been made aware, that a workers list claim, in which he is Complainant, is pending at the SCSC (SCEL-11-0053- C0198) he withdrew his claim requesting inclusion in the Final list in this procedure SCA-11-0030.

The Respondent, although being advised that he must be represented by a lawyer and warned that without being represented by a lawyer a Default Judgment may be issued, appeared to the hearing without a lawyer. He assumes that the Special Chamber Law requiring a Lawyer is minor law in relation to the Code of Contested Procedure which requires no lawyer.

Regarding further details reference is made to the file.

Legal Reasoning

1.

The allegations of the Respondent are not to be taken into account because they were not submitted by a lawyer.

Before the Special Chamber every party, except for natural persons, must be represented by a lawyer (Annex Art 24 SCL 04/L-033). This also applies to SOEs represented by PAK. The wording of this provision lacks any indication why it should not apply. Art 73, 74, 85 and 86 Law on Contested Procedure (Law No.03/L-006, LCP), regulating who can be party, which actions can a party take and who can represent a party allows that parties and representatives who are not registered lawyers act in court but in relation to these provisions Annex Art 24 SCL is *Lex Posterior* and *Lex Specialis*. The Legislator issued Annex Art 24 SCL when the LCP already existed and it regulated by the Annex Art 24 SCL a special procedure in a special court, different from other Kosovo courts. The Annex Art 24 SCL supersedes also Art 29 Law on the PAK (04/L-034, PAKL) because it is issued later and regulates not representation generally, as does the PAKL but specifically representation in front of the SCSC. This also applies to Art 29.2 PAKL which regulates the Agency's "legal standing" to pursue any rights of an enterprise in a competent court on behalf of the concerned enterprise.

The Legal regulation that natural persons do not need a lawyer, but all others need a lawyer, does not violate Art 73 and 74 of the LCP. This is not possible because Art 73

and 74 do not apply. They are superseded by Art 24 SCL. The code of contested procedure is general and the Special chamber law is special law which prevails.

The requirement to be represented by a lawyer is not a violation of the constitutional right of Equality before the Law. It may remain open whether PAK as a “public body” (Art1.1 PAKL) can plead for the fundamental right of equality, which is historically and in its constitutional context a right of natural persons and private legal entities against the state, not a right for a state organ against the state. The Respondent has a right to be treated equal, but constitutional Equality does not mean that everybody is treated equally regardless if they are reasonably and non-discriminatory aspects of differentiation. It is neither unreasonably nor discriminatory to privilege natural persons compared to legal entities (or a public state authority) in front of the court. Often, if not even regularly, natural persons do not have the financial means to afford a lawyer. This under constitutional aspects is a sufficient reason for their privilege to appear before the SCSC without a lawyer.

As result it may be stated that the Respondent as everybody except for natural persons must be represented before the Special Chamber by a lawyer who is member of a bar association or a chamber of advocates. As the respondent was not represented by a registered Lawyer it has to be regarded as not having appeared in court.

2.

However no Default Judgement against the Respondent is rendered.

a.

As far as the Claimant withdrew his request to be enclosed into the final list of privatization the court had not to decide on the content of this request but just states that the claim insofar has been withdrawn(Art 261 Code of Contested Procedure)

b.

As for the other requests of the Claim they are not admissible and therefore a default judgement cannot be issued. (Art 52.2 Annex SCL).

The request to decide on salary of the Claimant from 18. 5. 1994 till 10. 7. 2007 is inadmissible because the Claimant did not designate how many Euros he is requesting and how his salary is calculated. They Claimant insofar proposed to the court to appoint an expert. But this is now issue for which the Expertise is needed. The Claimant himself or his lawyer must make clear how much money he requests and they must explain how they calculate the Claimants salary for time period from 18. 5. 1994 till 10 7. 2007.

Also the request to confirm the Judgment of the Municipal Court of 18. 5. 1994 is inadmissible. The Special Chamber has no jurisdiction to confirm a final judgment of 1994 which has been rendered by a court having jurisdiction Art.4.5 Special Chamber Law. If the validity of such judgement for execution is not recognized the Claimant may complain or could have complained in the procedure of execution to the court of execution.

The Claimant has no legal interest to have the court to decide that he has been validly appointed as a director of the SOE on 6 July 2004. At least he did not allege and specify any such interest. Therefore also this request is inadmissible (Art 254.2 Code of Contested Procedure)

Therefore the claim, as far as it has not been withdrawn had to be dismissed as inadmissible.

Court fees

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

Legal Advice

Against this decision within 21 days an Appeal can be submitted to the Appellate Panel of the Special Chamber. The Appeal shall also be served to the other 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 has served the Appeal also to the other party.

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

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

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

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

Alfred Graf von Keyserlingk, Presiding Judge

[signed]