SCSC-JD

Volume I

2016

# JURISPRUDENCE DIGEST

of the

## SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY OF KOSOVO RELATED MATTERS

published by

THE MEMBERS OF THE APPELLATE PANEL

Editor-in-chief: Ondrej Pridal
Albanian and Serbian editing: Agnesa Vezgishi
Conceptualization and English editing: Timo Knäbe

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The content is edited by the editorial team:

**Ondrej Pridal, Agnesa Vezgishi, Timo Knäbe**



# QUOTATION

SCSC-JD I, D[Decision/Judgment number of this Digest], e.g. the quotation for the third decision in this Digest, Decision of 14 May 2013 – AC-II.-12-0075: ***SCSC-JD I, D3***

# PREFACE

The ongoing process of privatization of socially-owned enterprises in the Republic of Kosovo and their assets registered as social properties is crucial for the society. As it is known, this process was commenced by Kosovo Trust Agency in 2002 and conducted until 2008, to be continued afterwards by the Privatization Agency of Kosovo.

Thousands of court disputes have resulted so far from the privatization of socially-owned enterprises, which are being resolved by the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (Special Chamber). This special court mechanism of the Kosovo Judicial System was established by law to deal with such disputes and to monitor the legality of this process.

The Special Chamber became operational and commenced to work in June 2003. Since then and until 31 March 2016, for approximately 13 years, this institution has received 42593 cases and resolved 20644 cases. The current number of cases pending with the Special Chamber is 21949 stemming from disputes arising among parties involved in the privatization of socially-owned enterprises and their assets.

The members of the Appellate Panel have chosen respective court decisions rendered on various legal matters from the court practice up to now, for this Jurisprudence Digest.

The Appellate Panel considers that these court decisions will be beneficial to a wide audience and could further lead to coherence and stability of the Court's practice for the resolution of cases in the future.

Especially the legal sentences summarizing the main points o of the decisions will, will hopefully provide for an important guidance.

The Appellate Panel concludes that this is the first endeavour to draft a Digest in this field and there is a need to continue this work in the future, reflecting the jurisprudence as it is evolving.

Therefore, it is believed that this modest undertaking from the members of the Appellate Panel, will be useful for judges, attorneys-at-law, members of the bar association, scholars and other legal professionals working practically and theoretically in this special civil field.

Mr.sc. Sahit Sylejmani
*President of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters*

# ABOUT THE DIGEST AND HOW WE WORKED

The aim of this Digest is to disseminate knowledge of the jurisprudence of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, the highest judicial instance for this specialized subject matter in order to further stabilize the continuity and coherence of its decisions. We collected and digested "leading cases", that is cases which are notoriously repeating before our Court and cases of high importance for the unification of the jurisprudence. The cases were chosen to display how the Appellate Panel is going to adjudicate similar cases.

The cases were digested by a formal procedure by the Appellate Panel. To reflect stability and coherence, we decided to include only decisions which are not seen controversially by the members of the Appellate Panel. We drew our inspiration from similar procedures which are common at the supreme-court-level in all countries indifferent of their legal systems. During the course of the project, we continued and further fostered the existing fruitful cooperation between Kosovo and Eulex Judges.

We believe that through this project, a wider public will gain insight into the Jurisprudence of the Supreme Court, allowing for an increased predictability of the decisions and a faster adjudication of cases for the benefit of all clients of our Court: the people of Kosovo, who will be made aware of the expected results of their claims as well as judges, lawyers and legal scholars, who may use this Digest as a guideline for their work.

Upon conclusion, this project will be handed over to the Kosovo Judges who will continue with the project and issue additional volumes as the jurisprudence of the Court will develop further.

Dr. Ondrej Pridal, Ph.D.
*Eulex Judge, Appellate Panel*
*Project Manager*

# ABBREVIATIONS

| | |
|---|---|
| **AIC** | Agricultural Industrial Combine |
| **AD** | Administrative Direction |
| **Agency** | Privatization Agency of Kosovo |
| **Annex to the LSC** | Annex to Law No 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters |
| **Art** | Article |
| **ECHR** | European Convention on Human Rights |
| **ECHR P[...]** | Additional Protocol to the European Convention on Human Rights |
| **ECtHR** | European Court of Human Rights |
| **JSC** | Joint Stock Company |
| **KTA** | Kosovo Trust Agency |
| **Law on POE** | Law no 03/L-087 on Publicly Owned Enterprises |
| **LBPR** | Law on Basic Property Relations |
| **LC** | Law no 03/L-199 on Courts |
| **LCP** | Law no 03/L-006 on Contested Procedure |
| **LE** | Law on Enterprises |
| **LLC** | Limited Liability Company |
| **LSC** | Law No 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters |
| **no** | number |
| **PAK** | Privatization Agency of Kosovo |
| **PAK Law2008** | Law no 03-L-067 on the Privatization Agency of Kosovo |

| | |
|---|---|
| **PAK Law2011** | Law no 04/L-034 on the Privatization Agency of Kosovo |
| **POE** | Publicly Owned Enterprise |
| **Reg** | Regulation |
| **SCSC** | Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters |
| **Sec** | Section |
| **SFRY** | Socialist Federal Republic of Yugoslavia |
| **SOE** | Socially Owned Enterprise |
| **UNMIK** | United Nations Mission in Kosovo |



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# JURISPRUDENCE

## 1.

## Prerequisites for Motion for Preliminary Injunction, Generally No Irreparability of Damages in Monetary Claims

Preliminary Injunction; Criteria for Preliminary Injunction; Burden of proof; fumus boni iuris; periculum in mora; probatio plena; probatio semiplena; Probability of right; Irreparability of damages; Monetary Claim

UNMIK AD 2008/6 Sec 55 (As of 1 January 2012: Annex to the LSC Art 55); LSC Art 14.1; LCP Art 297.1(a)

1. **The Claimant/Applicant asking for a Preliminary Injunction has to prove that it is probable, that 1. the right he/she claims to be endangered exists and 2. that this right – if the requested Preliminary Injunction is not issued –** is **under immediate risk of an irreparable loss or damage.**

2. **The proof required to be brought by the Claimant/Applicant is not to be understood as a full proof *(probatio plena)* in the sense of the one he has to provide to be successful with his main claim. But to grant a preliminary injunction, it is sufficient, if the Claimant only proves in the sense of a *probatio semiplena* a high probability that his/her Claim is grounded, respectively, that the claimed right exists.**

3. **Monetary claims, as a general rule, cannot be considered to be subject to irreparable loss or damage.**

*Decision of 1 December 2010 – ASC-10-0081 (First Instance: Decision of 4 October 2010 – SCC-10-0062)*

1 **Factual and Procedural Background:** On 2 April 2010, the Claimant filed a claim with the SCSC requesting the recognition of his ownership right over the immovable properties recorded as land plot ... with the area of ... ha and land plot no ... (now ...) with an area of ... ha in R. village in the cadastral zone of D., K./K. municipality, possession list no ... . He also requested the SCSC the same to be registered in the cadastral records.

2 Further, the Claimant requested the SCSC to issue a preliminary injunction prohibiting the Respondents to alienate or to take any other action over the objects of this dispute until the SCSC issues a final Decision.

3 As a proof of his allegations the Claimant submitted a certificate for the immovable property rights and the decision of the K./K. Municipality Commission of 26 February 1970.

4 On 13 April 2010, the SCSC requested the Claimant to submit the translations of the supplementing documents, proof that he has given notice of his intention to lodge a claim to the Agency and the proof of inheritance.

5 On 26 April 2010, the Claimant filed a death certificate concerning his alleged predecessor.

6 On 22 June 2010, the SCSC repeatedly requested clarification from the Claimant also targeting [correct: asking] whether he wishes to submit additional evidence supporting his request for the issuance of the preliminary injunction.

7 On 8 July 2010, the Claimant responded but did not file any additional evidence.

8 On 19 July 2010, the SCSC served the motion for Preliminary Injunction on the Respondents.

9 On 29 July 2010, the first Respondent requested the SCSC to reject the motion for Preliminary Injunction.

10 On 4 October 2010, the SCSC rejected the motion for Preliminary Injunction as ungrounded. The Trial Panel argued that the Claimant failed to give credible evidence that immediate and irreparable harm would happen if the preliminary injunction is not granted.



11 On 27 October 2010, the Claimant filed an Appeal requesting the Appellate Panel to set aside the Decision of the Trail Panel and to approve the motion for Preliminary Injunction. In his Appeal, the Appellant argues that he knows about several cases where the Agency has sold privately possessed land, and although there is no immediate danger of this happening he wishes his rights to be nonetheless safeguarded.

12 On 4 November 2010, the SCSC requested the Appellant to clarify his Appeal concerning the legal arguments he bases his Appeal on, quoting Sec 60.1(c) of UNMIK AD 2008/6 and, in addition, Art 353-356 of the LCP.

13 The Appellant, on 17 November 2010, filed a submission in which he argues that the Court should know that the LCP is no longer in force. He does not give any further explanation as to what are the legal arguments he arises [correct: brings forward] to challenge the appealed Decision.

14 **Legal Reasoning:** The Appeal is admissible, but ungrounded. Based on Sec 63.2 of UNMIK AD 2008/6 the Appellate Panel decided to dispense with the oral part of the proceedings.

15 The criteria as to when a preliminary injunction shall be granted are laid down in Sec 55.1 of UNMIK AD 2008/6, as stated above: A party shall give credible evidence that immediate and irreparable loss or damage would result if the request is not granted. These criteria are set in a way that if any of the above is missing the request shall be denied.

16 The requirement of the credible evidence comprises both, the *fumus boni iuris* (the probability that the claimed right exists) and the *periculum in mora* (the immediate danger for this right), as the immediate and irreparable loss or damage can only occur, if the claimed right in fact exists.

17 In other words: the claimant/applicant that asks for a preliminary injunction has to proof [correct: prove] that it is probable, that 1. the right he claims to be endangered exists and 2. that this right is, if the

requested preliminary injunction is not issued, under immediate risk of an irreparable loss or damage.

**18** This proof that is required to be brought by the claimant/applicant is not to be understood as a full proof *(probatio plena)* in the sense of the one he has to provide to be successful with his main claim. If he wants, and if he is in the position to bring this full proof, this would definitely be highly recommendable. But to grant a preliminary injunction it is sufficient, if the Claimant only proofs [correct: proves] in the sense of a probatio semiplena a high probability that his claim is grounded, respectively, that the claimed right exists. To ascertain this state of high probability it is sufficient to [take] recourse for example to documents from which, their authenticity presumed in this stage of the procedure, the claimed right may arise. In those cases, also the burden of proof has to be taken into consideration. If the Claimant is able to produce the required documents which verify the claimed right at a certain point in time (or if it even is uncontested), the burden of proof for a later change in this right might lie with the Respondent. In any case, the a-priori-ascertainment of those facts from the viewpoint of the required high probability does not prevent the court to come to a different conclusion later on during the main trial. The court, ascertaining certain facts for the purpose of the proceedings concerning a preliminary injunction, is in no way bound by this ascertainment for the following proceedings, as can easily be followed from the preliminary nature of such an injunction. If no specific other reason adds to this pure procedural ascertainment, a bias of the court towards one of the parties cannot be deducted from the Decision on a preliminary injunction.

**19** Concerning the *periculum in mora* it has to be noted in principle that no "irreparable" damage can derive to the party – *per definitionem* – as a consequence of the failure of the other party to pay a debt, which can be always compensated *per equivalentem* (i.e., with the payment of the same sum of money, plus interests, after the final judgment), because the damage itself is "reparable" with compensation, unless – in exceptional cases, to be strictly proved by the Claimant – the debtor clearly has not sufficient financial means to fulfil its obligations (that can happen, for example, to a company which went into bankruptcy, to an unemployed person, etc.). Insofar, it has to be clearly stated that the legal institution of the preliminary injunction is not aimed to ensure the enforceability of a possible future decision of the court granting



damages, but only to avoid an irreversible change in the legal or factual status of a right or a possession which is subject to the main claim the court has to deal with. Thus, monetary claims by their special nature, as a general rule, cannot be considered to be subject to irreparable loss or damage (ASC-09-0035). When it comes to the above mentioned exceptions from this general rule, no preliminary injunction granting a "preliminary satisfaction" of the applicant can be issued, but only a freezing of certain specified assets of the respondent can be ordered, naturally only if a sufficient deposit according to Sec 55.4 of UNMIK AD 2008/6 is made by the Applicant (ASC-10-0017).

The Claimant did not [provide] any evidence in support of his request. He did not indicate at all that at this given moment in time his possession would be endangered by the actions of the Respondents. He did not present – and he did not even allege – any indications, for example of a planned liquidation or privatization of the SOE, that could have been understood as a significant change which might lead to the necessity to issue such a preliminary injunction. **20**

Apart from the above-mentioned considerations, the probable loss or damage would have to be irreparable, which in the case at hand does not seem to be the fact. The (possible) loss of possession is not to be considered as irreparable. **21**

Concerning the *fumus boni juris*, the Claimant only alleges that he has the undisturbed possession of the land but he does not give any evidence (in the above described sense) concerning his ownership title. **22**

Concluding, the above listed arguments, since none of the criteria necessary to issue a preliminary injunction set forth by the quoted provision of the law is fulfilled, the Decision of the Trial Panel rejecting the requested preliminary injunction is upheld. **23**

**Editor's note:** This Decision further develops jurisprudence in regard to monetary claims, ASC-09-0035, and in regard to monetary security (as of 1 January 2012: Art 55.4 of the Annex to the LSC), ASC-10-0017.

## 2.

## Non-Referral of Cases With Primary Jurisdiction to Other Courts

Jurisdiction; Non-referral; Referred case

LSC Art 10.9, 4, 4.4; Annex to the LSC Art 60.2

1. **Since the entry-into-force of the LSC on 1 January 2012, the SCSC is not authorized to refer any request, case, procedure, or any specific case to other courts of Kosovo for which it has exclusive jurisdiction.**

2. **The Court has to ensure that parties have two instances available.**

*Decision of 13 December 2012 – AC-II.13-0007 (First Instance: Decision of 15 February 2012 of the Municipal Court of L./L. – C.nr.328/09)*

1 **Factual and Procedural Background:** On 1 March 2012, the Respondents 2 and 3, through their lawyer filed an Appeal against the Decision C.nr.328/09 of the Municipal Court of L./L. dated 15 February 2012, as it was said in the breach of contested procedure and wrong application of substantive law. The Municipal Court of L./L., with appealed Decision declared [itself] incompetent to decide in regard to this legal matter. On the contrary, the Appellants consider that the SCSC is not competent for this issue, because the contest is going on for a long time, since 1994, and the Municipal Court of L./L. is competent to decide on this case. This contest is ongoing upon the request of the municipal public prosecutor for annulment of the contract which is certified in the Municipal Court of L./L. Vr.nr. ..., dated 16 December 1960, and was entered between the now deceased *J K* and the first Respondent, and return into the possession on the second and third Respondent, the cadastral parcel no ... in a surface of ... ha.

2 This case was initially registered with the Specialized Panel of the SCSC with no C-III.-12-0775, but through an internal order this case was registered for the Appellate Panel of the SCSC.



3 On 13 December 2012, through their authorized lawyer *I D*, the Appellants filed one more proposal for the issuance of a Preliminary Injunction to prevent the PAK from the sale or alienation of the parcels in dispute.

4 **Legal Reasoning:** The Appeal is ungrounded.

5 Pursuant to Art 64.1 of the Annex to the LSC, the Appellate Panel decided not to proceed with the oral part of proceedings.

6 Pursuant to Art 10.9 of the LSC and Art 60.2 of the Annex to the LSC, the Appeal is not addressed to the first Respondent for a response.

7 The Respondents' Appeal is ungrounded, because the SCSC has exclusive competence to decide over this matter in conformity with Art 4 of the LSC.

8 Pursuant to Art 4.4 of the LSC, since the entry-into-force of this Law, the SCSC has no authority to refer to other courts of Kosovo any request, case, procedure, or any specific case which is within the primary jurisdiction of the SCSC; therefore, in this case the Specialized Panel of the SCSC shall decide on a retrial.

9 The contested procedure regarding this issue began in 1994, but never known to have been completed by any final decision. Indeed, the District Court of P./P., with Decision Ac.nr...., dated 6 October 2009, annulled Judgment C.nr...., dated 26 February 1999 of the Municipal Court of L./L., and returned the issue for retrial to the Municipal Court of L./L.

10 Although in regard to this issue, this Court has not decided on merits of the case, due to incompetence of the subject matter, but also because the Appellants already filed a proposal for issuance of a preliminary injunction, for the sake of respect of two instance proceedings in contested procedure for hearing the request, this case should be sent to the respective Specialized Panel of the SCSC for trial.

11 Therefore, in regard to all abovementioned reasons, and in accordance with Art 10.10 of the LSC, it is decided as in the enacting clause of this Decision.

## 3.

## No Jurisdiction Over Publicly Owned Enterprises

Inadmissibility; Parties; Respondent; POE; Procedural legitimacy

LCP Art 354.2, 17; UNMIK Reg 2000/47 Sec 2.3, 4.4; Law on Railways Traffic Safety Art 68, 94; LSC Art 4, 4.1.1.2, 5, 5.2; Annex to the LSC Art 28.2.2.1, 28.2.2.3; PAK Law2008 Art 5.1(a)(i), 3; Law on POE Art 5, 3.1

**If the sole Respondent is a POE, the SCSC does not have jurisdiction and the case is to be dismissed.**

*Decision of 14 May 2013 – AC-II.-12-0075 (First Instance: Decision of 4 November 2008 of the Municipal Court of K./K. – C.no 19/2004)*

1 **Factual and Procedural Background:** On 30 January 2007, the Claimants filed a claim with the Municipal Court of K./K., requesting the Court to oblige the Respondent to pay the amount of ... euros for the compensation of the damage. In the claim it was stated by the claimants that on 30 September 2002 in the road between K./K.-G., concretely at the railway crossing in K./K., a traffic accident happened between the car, type "Seat T" with [licence] plate no ...KS..., with the driver, the late *L C,* from K. e V. The late, after coming to the railway beams, at the railway crossing, was hit by the transportation train that was coming from P./P. The car was hit in the first door on the left side and it carried it 60.50 meters away, and the car driver died from the injuries that he received.

2 On 4 November 2008, the Municipal Court of K./K., with its Judgment C.nr. 19/2004, approved the claim of the Claimants, obliging the Respondent to pay the amount of ... euros in compensation of the damage for *L C* to the Claimants *P C, D C, V C, S C, I C* and *L C*, each with ... euros, for the spiritual suffering that they experienced with the death of their husband and father, with an interest of 3.5 percent, from 30 January 2004 until the final payment, the amount of ... euros for the



burial, with an interest of 3.5 percent, from 30 January 2004 until the final payment, for the loss of the car the amount of ... euros, with an interest of 3.5 percent, from 30 September 2002 until the final payment, for the loss of retention, the amount of ... euros, with an interest of 3.5 percent, from 30 September 2002 until the final payment, to the Claimants, *D, V, I* and *L C*, for loss of retention, the amount of ... euros for the future period, starting from 7 January 2008 until the existence of legal conditions for every month, also the Respondent is obliged to pay the procedural expenses in the amount of ... euros, under the threat of execution by force.

3 On 6 May 2009, the Respondent (hereinafter the Appellant) submitted an Appeal against the Judgment of the Municipal Court of K./K. C.nr.19/2004, dated 4 November 2008, with the District Court of P./P., due to, as it was stated: essential violations of the provisions of the contested procedure, erroneous and incomplete verification of the factual situation as well as wrong application of the substantive law. The Appellant states that the essential violations of the provisions of the contested procedure consists in the fact that the attacked Judgment is in violation with the Art 354.2 of the LCP, as read in conjunction with Sec 2.3 and Sec 4 of UNMIK Reg 2000/47, because at the time the accident happened, these were UNMIK's railways. As evidence the Certificate on Registration with provisional registration no ..., dated ....2002 of the business subject [correct: entity] under the name "NPTSH Hekurudhat e UNMIK-ut" (UNMIK Railways [correct: UNMIK administered Railways]) is presented. The Respondent in this case concludes that it lacks active [correct: passive] legitimacy to be a party, because at the moment when the accident happened, the Respondent was managed by UNMIK. According to the Respondent the UNMIK Railways were transferred to the Kosovo Railways on 21 December 2005, with business no ... .

4 The first instance Court has erroneously verified the factual situation, since it accepted the expertise from the expert traffic communication engineer, whereas it has been necessary for the expertise to be conducted by the professional expert, who possesses professional background, to be a graduated railway communication engineer, who has also passed the professional exam.

5 According to the Appellant in the appealed Judgment the substantive law is wrongly applied. According to the Art 68 of the Law on Railways Traffic Safety, the driver who approaches the road passing over the railway is obliged to drive with a speed that enables him/her to stop before the road crossing over the railway, also Art 94 of the same Law foresees that the crossing of the railway with that road, emphasizes that trains have priority of passing towards motoric vehicles or other equivalents in communication.

6 Therefore, he proposes to the second instance Court to quash the appealed Judgment as ungrounded and send the case for retrial.

7 On 19 May 2009 the Claimants submitted their Response to the Appeal, proposing to the Court to reject the Appeal of the Appellant as ungrounded, to uphold the appealed Judgment, maintaining that the Municipal Court of K./K. has not violated the procedural provisions as claimed by the Respondent, as the latter has verified the factual situation fairly and completely.

8 On 21 October 2010 the District Court of P./P. submitted to the SCSC the case file C.nr.19/2004 into its competences to decide in accordance with the Appeal filed by the Respondent. The case is registered with the SCSC under no ... . Afterwards with an internal order of the SCSC the case was registered with the Appellate Panel with no AC-II.-12-0075.

9 **Legal Reasoning:** The Appellate Panel has no competences to review the Appeal.

10 Based on Art 64.1 of the Annex to the LSC, the Appellate Panel has decided to dispense with the oral part of the proceeding.

11 Pursuant to Art 3 of the PAK Law2008 "Enterprise" means an enterprise over which the Agency has authority pursuant to Art 5.1(a)(i) of the PAK Law2008, which means that

*The Agency shall have the authority to administer Socially-Owned Enterprises, regardless of whether they underwent a Transformation.*



In the concrete case we are dealing with a request where the Claimants are natural persons against a POE, which falls under the jurisdiction of the regular courts of Kosovo.

12 POEs are regulated by the Law on POE applicable as of 13 June 2008. In this case, the Respondent is the JSC Kosovo Railways, which is a POE pursuant to Art 3.1 of the Law on POE, in which it is stated that "Each enterprise identified in Schedule 1 attached to the present law shall be a Central POE...", which shall be owned by the government of the Republic of Kosovo. A POE is a Respondent party, therefore it is not an Enterprise or Corporation, as requested with Art 4.1.1.4 of the LSC, neither a respondent, as stipulated in Art 5.2 of the LSC, therefore the SCSC has no jurisdiction in this case.

13 Pursuant to Art 5 of the Law on POE

*The Government shall have exclusive competence in the exercise of shareholder rights of the Republic of Kosovo in Central POEs ... .*

14 Therefore, based on the legal arguments mentioned above, respectively based on the new LSC, the Appellate Panel finds that the SCSC has no competence to continue with the adjudication of this case with this Appeal and thus this case shall be referred to the Court of Appeals in P./P.

15 Based on these reasons it is decided as in the enacting clause of this decision.

**Editor's note:** See also Decision of 5 November 2013 – AC-II.-12-0094 in which the Court determined the correct forum based on the LC.

## 4.

## Non-Suspension of Ownership Claim

Inadmissibility; Liquidation; Ownership Claim; Suspension; ECHR P1 Art 1; ECtHR; Liquidation procedure

UNMIK Reg 2005/18 Sec 9.3; UNMIK Reg 2005/48 Sec 30, 35, 44.1(e); UNMIK Reg 2001/6 Sec 44; UNMIK Reg 2008/4 Sec 10.5 (As of 21 September 2011: PAK Law 2011)

**An ownership claim is not to be suspended or dismissed because the liquidation procedure of the SOE has commenced.**

*Decision of 23 May 2013 – ASC-11-0116 (First Instance: Decision of 18 October 2011 – SCC-10-0207)*

1 **Factual and Procedural Background:** On 17 August 2010, the Claimant filed a Claim with the SCSC requesting to recognize the ownership and to issue a preliminary injunction preventing the sale of the shop "*K*", Shop no ..., situated in cadastral parcel no ..., in the Municipality G./G. Moreover, the Claimant stated that he worked for the SOE "*K*" as manager of the shop from 1983 until 1990, when the same was privatized by Serbia. After 1997, the Claimant stated he rented the said premises, and he maintains that the premises are located in the property of the Municipality G./G. The Claimant stated that after the war he built a new premise on that property, with the consent of UNMIK and the Municipality G./G., with a cost of ... euros and he continued the business as his personal business under the name "*D*".

2 On 17 September 2010, the Trial Panel of the SCSC issued a Decision rejecting the Claimant's request for issuance of a preliminary injunction with the reasoning that the Claimant failed to submit convincing arguments in support of his request.



3 The Trial Panel of the SCSC, with its Decision dated 18 October 2011 dismissed the Claim as inadmissible with the reasoning that the Respondent as of 15 May 2006, by a decision of the KTA Board, is under voluntary liquidation procedure. The PAK in its Response to the Claim requested the suspension of all proceedings related to the Respondent, in accordance with Art 9.3 of PAK Law2011.

4 On 21 November 2010, the Claimant (hereinafter the Appellant) filed an Appeal with the SCSC against the appealed Decision, SCC-10-0207, dated 18 October 2011, with a proposal for the Appellate Panel to annul the appealed Decision and to order the Specialized Panel to proceed with the proceedings, or in the alternative to suspend the Claimant's Claim.

5 The Appellant alleges that the Trial Panel of the SCSC erroneously dismissed the Claimant's Claim because according to the reasoning of the appealed Decision, the Trial Panel stated that the SOE "*K*" was under a voluntary liquidation procedure, and therefore it had to be dismissed as inadmissible, and according to the Appellant this is an erroneous conclusion reached by the Trial Panel.

6 On 6 July 2012, in its Response to the Appeal, the Respondent objected the entire Appeal as ungrounded since the Appellant failed to present any credible legal basis wherewith it would have concluded another factual situation than the one the Trial Panel of the SCSC assessed, and it proposed to reject the Appeal of the Appellant as ungrounded and to uphold the appealed Decision of the Trial Panel.

7 On 21 August 2012, the Appellate Panel of SCSC served on the Appellant the Respondent's Response to the Appeal in order to file a response on the response to the Appeal. The Appellant received the Order on 22 August 2012, whereas he did not provide any counter-response.

8 **Legal Reasoning:** The Appeal is admissible and grounded. Based on Art 64.1 of the Annex to the LSC, the Appellate Panel decided to dispense with the oral part of the proceedings.

9 The main question in the case at hand is whether the Court has to suspend or dismiss the ownership claims – pursuant to Sec 9.3 of UNMIK Reg

2005/18 – against an SOE due to the commencement of the liquidation procedure of the SOE. The Appellant alleges that the Trial Panel of the SCSC wrongly dismissed his ownership claim with the reasoning that the liquidation procedure of the Respondent had already started.

10 It is not contested that the PAK on 23 August 2010 in the submission responding to the request for Preliminary Injunction, notified the SCSC of the liquidation procedure of the SOE "*K*" in G./G. with the decision of the KTA Board, which was commenced with effect from 15 May 2006, and enclosed evidence pursuant to Sec 9.3 of UNMIK Reg 2005/18.

11 Sec 9.3 of UNMIK Reg 2005/18 states:

*Any legal action against an Enterprise subject to liquidation pursuant to this section shall be suspended upon application by the Agency to the court of the place where the action is filed. Such application shall be accompanied by:*

*(a) proof of submission of the notice described in section 39.3 of the Regulation on Business Organizations (when the object of the liquidation proceeding is a Corporation);*

*(b) proof of publication of information contained in such notice in a major Albanian language publication of general circulation in Kosovo once a week for two consecutive weeks, and a major Serbian language publication pursuant to criteria to be established by the Board;*

*(c) proof of appearance in the website of the Agency in Albanian, Serbian and English if a website exists at the time of liquidation; and*

*(d) proof of notification to entities which the Agency believes or should reasonably have believed have a claim against the Enterprise concerned.*

12 According to the wording of the above-mentioned sections, the voluntary liquidation of the enterprise prevents, in principle, any court proceedings from going forward when the liquidation procedure is initiated. The purpose of the liquidation is to ensure the equal (lawful) treatment of creditors, who shall not be able to pursue their individual interest regardless of other creditors any more, within the regular civil procedure. Instead of proceedings before the court the creditors have to file their claims according to Sec 30 of UNMIK Reg 2005/48 in the liquidation procedure. Pursuant to Sec 35 of UNMIK Reg 2005/48 the



administrator of the SOE in liquidation confirms the final claims list and submits it to the Court and to the Agency.

13 According to the provisions concerning the liquidation procedure (UNMIK Reg 2001/6) the liquidation committee of the enterprise seems to be entitled to sell all assets in the name of the enterprise without prior clarification whether the enterprise is the legal owner of the specific assets or not. At the end of the liquidation procedure the creditor would receive pursuant to Sec 44 of UNMIK Reg 2001/6 a distribution quota which will be determined according to the priority of claims. According to Sec 44.1(e) of UNMIK Reg 2005/48 the ownership claims rank far behind most of the other claims. Pursuant to Sec 10.5 of UNMIK Reg 2008/4 the legal owner of the property which has been sold in the liquidation procedure is not entitled to a remedy that would require the rescission of a completed transaction or the nullification of a contract validly entered into with a third party by the Agency in the liquidation procedure

14 Applying the mere wording of the provisions quoted above, a rightful owner of any property which still is registered in the name of an SOE in liquidation and which shall be sold in the liquidation procedure of the SOE, due to the suspending or dismissing as inadmissible of his ownership rights claim, would in fact lose the property and would be entitled only to a compensation which will not match, with high probability, the real value of his property, or in the worst case, might receive no compensation at all, due to the low priority of his claim.

15 In this context, a respective question arises: shall the ownership claim be suspended or dismissed as inadmissible in the same way as creditor claims, or would such a suspension or dismissal of the ownership claim violate the basic ownership rights of the proprietor guaranteed also in the ECHR and its First Protocol. Anyway, the wording of Sec 9.3 of UNMIK Reg 2005/18 is quite general and comprises, in principle, all types of claims.

16 The ECHR [correct: ECtHR], in its vast jurisprudence, (i.e. Appl. 28342/95; *Brumărescu v. Romania*, Appl. 33800/06 Maria Atanasiu and *Others v. Romania*, Appl. 27480/02 *Tarnawcyk v. Poland*, Appl. 1355/04 *Dichev v. Bulgaria*, Appl. 16651/05 *Czajkowska and Others v. Poland)*, determined more exactly the content of ownership rights and the conditions for legal interference with those rights. The basic requirement for the legality

of any deprivation of possession or ownership is that the interference be based on the law and be allowed only in the interest of the public or for a general interest. According to the jurisprudence of the ECHR [correct: ECtHR], it has to be interpreted in essence and in entirety whether an infringement of the right to property is violated and represents a de facto expropriation. If any measure in essence equaling an expropriation would meet the criteria of public or general interest, the compensation granted to the proprietor has to reflect the full market value of the property, except under very exceptional circumstances. According to the jurisprudence of the ECHR [correct: ECtHR] the criteria of lawfulness also presupposes that the applicable provisions of domestic law concerning expropriation are sufficiently accessible, precise and foreseeable in their application. In addition, the compensation has to be paid within a reasonable time and the uncertainty when the payment will be paid can also represent a violation of property rights.

17 Conclusively, and referring to the precedents of the SCSC [correct: Trial Panel] and the Appellate Panel (SCC-06-0010, ASC-10-0021 and ASC-[incomplete-]0002) the Appellate Panel finds that suspending or dismissing an ownership claim against a SOE in liquidation pursuant to Sec 9.3 of UNMIK Reg 2005/18 would not conform with the protection of the property rights according to Art 1, Protocol 1, of the ECHR and to the established jurisprudence of the ECtHR, as it would deprive the Claimants of their right to have their property rights adjudicated by an independent court. To suspend the adjudication of the property claim of the Claimants would constitute a violation of Art 1, Protocol 1 of the ECHR. In this aspect it does not make any difference whether the claim was filed before or after the initiation of the liquidation procedure. For this reason, the Decision of the Trial Panel to dismiss the Claim as inadmissible has to be annulled and the claim has to be returned to the respective Specialized Panel for retrial. The respective Specialized Panel shall proceed with the proceedings and shall take any measures necessary to clarify the claimed property rights.

Pursuant to Art 10.10 of the LSC, it is decided as in the enacting clause.

**Editor's note:** This Decision further develops jurisprudence in regard to the suspension of ownership claims in ASC-10-0021.



## 5.

## On Applicable Law and Advanced Procedural Stage

Appeal filed after legal deadline; Applicable law; Advanced procedural stage; Inadmissibility

UNMIK Reg 2008/4 Sec 9.5; UNMIK AD 2008/6 Sec 63.2, 28.2(d), 58.2, 67.1; UNMIK Reg 2002/13 Sec 4.1(c)

**A case has reached an advanced procedural stage in the sense of Art 14.1 of the LSC if it has reached the Appellate level before the entry-into-force of the LSC on 1 January 2012 and, therefore, the predecessor legislation applicable at the time of filing has to be applied for the adjudication.**

*Decision of 20 June 2013 – AC-II.-12-0120 (First instance: Decision of 4 December 2008 of the Municipal Court of M./M. – C.no 149/07.*

**Factual and Procedural Background:** On 14 January 2005, the Claimant filed a Claim with the SCSC requesting [it] to verify that the Claimant is the owner of the cadastral parcels no ... and ..., in a total surface of ... ha, according to possession list no ... CZ L./L. The Claimant claimed that he inherited this immovable property from his predecessor, whereas in 1963, by decision no ... of the Municipality M./M. the ownership right was taken from the Claimant and his name as the owner of such properties was erased from the cadastral books. The Claimant also stated that he filed an appeal and with the Decision of the Legal-Property Relations Review Committee of Municipality S./S., no ..., dated 5 August 1969, the previous decision was annulled as unlawful. Nevertheless, the property was not registered in the name of the Claimant's predecessor. 1

On 25 November 2005, the SCSC issued the Decision SCC-05-0010 referring the case to the Municipal Court of M./M. for adjudication. 2

3 On 13 April 2006, the Municipal Court of M./M. issued the Judgment C.no.... approving the Claimant's Claim as grounded and verifying that the Claimant was the owner of the cadastral parcels no ... and ..., in total surface of ... ha, according to the possession list no ..., CZ L./L., and obliging the Respondent to recognize this fact, and at the same time obliging the Directorate for Cadastre, Geodesy and Property, Municipal Assembly of M./M., to register it in the cadastral books in the name of the Claimant. The Court stated in the reasoning of this Judgment that with the decision no ..., dated 25 December 1963, on 22 December 1967 the contested immovable property was taken from the Claimant by the first Respondent. Against this decision was filed the petition for the extraordinary legal remedy, and according to the minutes of the public hearing dated 13 June 1969, held on site by the Municipal Assembly of S./S., the first decision through which the Claimant had been declared as usurper of this immovable property was annulled. Such examination resulted positively for the Claimant because with the other decision no ..., dated 15 August 1969, the Claimant's ownership right was recognized, however, this decision was never executed by the respective structures and the property therefore remained in the name of the Respondent.

4 The representative of the Municipality M./M. as well as the representative of the SOE objected the Claimant's Claim in its entirety as ungrounded due to the fact that the Claim is prescribed.

5 According to the opinion of the Court experts engaged for this case and the cadastral history records, the Court concluded that the cadastral parcels hold cadastral no ... at the place called "B. i M.", with a surface of ... ha, and the other parcel no ... at the place called "S. i M." with a surface of ..., and both are registered in the possession list no ... CZ L./L., in the name of the first Respondent. The Court also found that the second Respondent failed to prove during the proceedings as to what is the legal basis that it is holding this immovable property in its name.

6 On 12 June 2006, the Municipal Assembly, and, on 13 June 2006 the second Respondent filed an Appeal with the SCSC against the Judgment of the Municipal Court of M./M. due to erroneous and incomplete verification of the factual situation and due to a wrongful application of substantive law.



7 On 1 September 2006, the Municipal Court of M./M. by Decision C.no ... amended the Judgment dated 13 April 2006 amending point 2 of the enacting clause whereby the cadastral parcels no ... and ... should be replaced by cadastral parcel no ... and the possession list no ... should be replaced by no ... .

8 On 6 May 2007, the SCSC with Decision SCA-06-006 approved the Appeal as grounded and returned the case for retrial to the Municipal Court of M./ M.

9 On 4 December 2009, the Municipal Court of M./M. issued Judgment C.no.... approving the Claim of the Claimant as grounded and verifying that the Claimant was the owner of cadastral parcel no ... with a surface of ... ha, according to the possession list ..., CZ L./L., and obliging the Directorate for Cadastre, Geodesy and Property of the Municipal Assembly of M./M. to register the property in the name of the Claimant.

10 There is no essential difference in the reasoning of this judgment from the first judgment that was annulled by the SCSC.

11 On 1 March 2010, the PAK filed an Appeal against this Judgment of the Municipal Court of M./M. The PAK received the challenged Judgment on 30 December 2009. It stated that the Municipal Court of M./M. did not take into consideration the suggestions of the SCSC obliging it [to undertake] the retrial. According to the PAK, the Municipal Court should have verified in the retrial whether the administrative conflict was taken into consideration until the end and how it ended. This Court did not completely verify the factual situation and the enacting clause is in conflict with the reasoning and the presented evidence. The PAK states that the Claimant never contested the administrative act transferring the ownership legally to the Respondent.

12 On 26 July 2011, the Claimant's representative filed a Response stating that the PAK had filed the Appeal after the legal deadline and, therefore, the Appellate Panel should dismiss the Appeal as untimely. He stated that the deadline for filing the Appeal was 28 February 2010 and, since the last day of the deadline fell on a Sunday, the deadline became 1 March 2010, whereas the PAK filed the Appeal on 2 March 2010.

13 Further, the Claimant in the Response objects the statements of the PAK that the Claimant did not contest the administrative act transferring the contested property. According to Claimant's representative, which was done [i.e. they contested the administrative act] also by the decision no ... dated 15 August 1969, the property was returned to the Claimant, but it was not registered in the cadastral books.

14 **Legal Reasoning:** On 31 August 2011, the Assembly of the Republic of Kosovo adopted the LSC and its Annex which entered into force on 1 January 2012.

15 According to general judicial principles, the procedural laws and regulations, which are in force at the time of the adjudication, shall be applicable and used, providing that the new legislation does not foresee deviating provisions for a transitional period. According to Art 14.1 of the LSC, the SCSC may continue to apply the old Regulation and secondary legislation if a case pending before it has reached

*an advanced procedural stage and the proper adjudication of that case requires the continued application of earlier procedural provisions of the Special Chamber Regulation or of secondary legislation issued pursuant thereto.*

16 The Claimant filed the Claim with the SCSC on 14 January 2005, when the applicable legal framework was approved by UNMIK. Pursuant to Sec 4.1(c) of UNMIK Reg 2002/13, the SCSC shall have primary jurisdiction for

*claims, including creditor or ownership claims, brought against an Enterprise or Corporation currently or formerly under the administrative authority of the Agency, where such claims arose during or prior to the time that such Enterprise or Corporation is or was subject to the administrative authority of the Agency.*

17 In this case, the Claimant filed his Claim on 14 January 2005, whereas the Appeal was filed on 1 March 2010, and the proceedings have indeed reached

*an advanced procedural stage and the proper adjudication of that case requires the continued application of earlier procedural provisions of the Special Chamber Regulation or of secondary legislation issued pursuant thereto.*



For this specific reason, the Appellate Panel has to apply the previous [UNMIK] Reg of the SCSC and the secondary legislation – including the provisions concerning the court fees – on the whole handling of the case.

The Appeal of the PAK and the Assessment of the Appellate Panel

The Appeal of the PAK is inadmissible. 18

Pursuant to Sec 63.2 of UNMIK AD 2008/6, the Appellate Panel decided to dispense with the oral part of the proceedings. 19

The Appellate Panel when examining this case, in particular the timelines of the Appeal pointed out by the Claimant, concluded that the Appeal is untimely; therefore, it is dismissed as inadmissible. 20

The Respondent received the appealed Judgment on 30 December 2009, whereas it filed the Appeal against this Judgment on 1 March 2010, that is 61 days after the Respondent received the appealed Judgment. Pursuant to Sec 9.5 of UNMIK Reg 2008/4, applicable at the time, the appealed Judgment was issued and the Appeal was filed, "Within thirty days from the receipt thereof, a party may appeal to the appellate panel for a review of such Judgment or Decision". 21

Given that the appealed Judgment was served on the Respondent on 30 December 2009, whereas the Appeal was filed on 1 March 2010, it means that the period of 30 days ended on 30 January 2010, and the Appeal was submitted to the SCSC after the legal deadline, according to UNMIK Reg 2008/4 (see the judicial practice of SCSC on cases ASC-09-0096, ASC-10-0012, etc.). 22

Even if UNMIK AD [2008/6] would have been applied, the Appeal would be out of date because the deadline of two months until the Appeal was filed had already elapsed. 23

As a result of that, the untimely Appeal shall be dismissed as inadmissible, pursuant to Sec 28.2(d), 58.2 [of UNMIK AD 2008/6] as read in conjunction with 67.1 of UNMIK AD 2008/6. 24

**Editor's note:** This Judgment further develops jurisprudence in regard to the applicability of predecessor legislation in the sense of Art 14.1 of the LSC. The Appellant challenged the Decision of the Appellate Panel with the Constitutional Court, which declared it as inadmissible and rejected the request for interim measures (Decision of 8 May 2014 – no KI145/13).



## 6.

## SCSC Jurisdiction if State Public Body is one or sole Respondent

Jurisdiction; Competence; Municipality; Art 5.2 of the LSC

LSC Art 4, 5, 5.2.2.2, 5.2.2.5, 10.9, 10.10; Annex to the LSC Art 60.2, 28.2.2.1, 28.2.2.3, 64.1; UNMIK Reg 2008/4; UNMIK AD 2008/6

1. **If a municipality is the only respondent in a case, the SCSC has no jurisdiction.**

2. **A municipality can only be added as respondent if there is already, in the case pending before the SCSC, a/several Respondent/s that fall/s under Art 5.2 of the LSC.**

*Decision of 19 September 2013 – AC-I.-12-0040 (First Instance: Decision of 1 June 2012 – SR-11-0087)*

**Factual and Procedural Background:** On 20 December 2010, the Claimant submitted a motion for preliminary injunction to the Municipal Court of D,/D., seeking protection of possessory rights in relation to the cadastral parcels, described in the decision of the Municipality P., ...- no ... dated 20 May 1960. The Claimant SOE asserts that the Respondent by its decision, ... no ... dated 27 August 2009, annulled an earlier decision of 20 May 1960, and that all the disputed property [was] thereby reverted back to the Municipality. The PAK started the court proceedings in the Municipal Court seeking annulment of the dispute decision, ... .no ... dated 27 August 2009. 1

The Municipal Court of D./D. in its Decision C.no ... dated 4 May 2011, declared itself incompetent in this matter applying Art 4 of the LSC and ruled that the competent court was the SCSC and referred the case to it. 2

On 1 June 2012, the Specialised Panel decided that the SCSC had no jurisdiction to deal with the claim because the Respondent is a state 3

public body and the SCSC does not have jurisdiction over the claim by reason of Art 28.2.2.1 and 28.2.2.3 of the Annex to the LSC as read in conjunction with Art 5.2 of the LSC.

**4** On 19 June 2012, the Claimant (hereinafter the Appellant) filed an Appeal against the Decision of the Specialized Panel asking the SCSC to allow the Appeal by quashing the Specialised Panel's Decision and ordering a retrial by the Specialized Panel.

**5** On 11 July 2012 the Appellate Panel ordered the Claimant to provide a copy of the Decision appealed against and to prove that the Appeal was served on the Respondent. The Order was complied with.

**6** Legal Reasoning: The Appeal is ungrounded. The Appellate Panel has decided to dispense with the oral part of the proceedings under Art 64.1 of the Annex to the LSC, and to omit service of the Appeal on the Respondent under Art 10.9 of the LSC and Art 60.2 of the Annex to the LSC.

**7** Art 4 and 5 of the LSC lay down who can be a party in proceedings before the SCSC. A Respondent, by virtue of Art 5.2.2.2 of the LSC, is at the choice of the Agency or enterprise subject to the administration of the Agency or the Agency acting on behalf of the concerned enterprise.

**8** The SCSC may add as a respondent any person that it deems necessary or appropriate in order to ensure the full and complete adjudication of any case or matter before it (Art 5.2.2.5 of the LSC). Such joinder of a party presupposes a pending case or matter already before the SCSC.

**9** Thus, a Municipality can only be added as a respondent if there is already, in the case pending before the SCSC, a[/several] Respondent(s) that fall[s] within Art 5.2 of the LSC. The SCSC does not have jurisdiction over a claim where the Municipality is the only Respondent in the case.

**10** The only Respondent in the instant case is a Municipality and the SCSC has no jurisdiction.



**11** The proceedings were initially [initiated] according to UNMIK Reg 2008/4 and UNMIK AD 2008/6; however, the LSC entered into force on 1 January 2012, which altered the jurisdiction of the SCSC. The jurisdiction of the SCSC is properly determined in the LSC and its Annex.

**12** The Appellate Panel will therefore send the case file to the Basic Court in D./D., which is the competent court.

**13** Accordingly, the Appellate Panel pursuant to Art 10.10 of the LSC has made the Decision contained in the enacting clause.

## 7.

## Admissibility Criteria: Non-Contestation of Allegation Does Not Lead to Inadmissibility

Access to Court; Contested and uncontested facts; ECHR Art 6; Inadmissibility; Notice of intention to file a Claim

UNMIK Reg 2002/12 Sec 29.1, 29.3; UNMIK AD 2008/6 Sec 28.3, 28.2, 28.2(e)

1. **If a claimant alleges that he/she notified the PAK about the intention to file a claim and the PAK did not contest it, then the claim cannot be dismissed as inadmissible.**

2. **The duty of the Appellant to notify the PAK in advance adds an extra burden to him/her as to his/her access to court and such a provision must therefore be interpreted in a restricted way.**

*Decision of 31 October 2013 – ASC-10-0064 (First Instance: Decision of 26 August 2010 – SCC-09-0015)*

1 **Factual and Procedural Background:** On 20 April 2010, the single judge of the Trial Panel of the SCSC rejected the Claimant's Claim as inadmissible, Decision SCC-09-0015, arguing that the Claimant notified the Agency only after the claim was lodged, thus not in compliance with Sec 29.1 of UNMIK Reg 2002/12 read in conjunction with Sec 28.3 and 28.2 of UNMIK AD 2008/6.

2 On 17 September 2010, the Claimant (hereinafter, the Appellant) filed an Appeal (named the request for restoration to previous position) – in Albanian only – with the SCSC against the Decision of Trial Panel SCC-09-0015. By Decision of the Presiding Judge of the Trial Panel dated 22 March 2010, the Appellant's request for assistance in translation and for exemption from court fees was accepted. The Appellate Panel ordered the ex officio translation of the submission.



3 The Appellant in [her] submission requested restoration to the previous position (hereinafter: the Appeal) because she mistakenly considered that the deadline for appeal had expired since she received the Decision of the Trial Panel from her representative on 7 September 2010. From the acknowledgment of receipt of the Decision of the Trial Panel in the case file, the Appellate Panel found that the subject of the Appeal was received by the representative of the Appellant, *B E*, on 7 September 2010. The Appellant submitted that she had the intention to notify the Agency, and notified the Agency after the Claim was submitted, and thus fulfilled the legal requirement stipulated in Sec 29.3 of UNMIK Reg 2001/12. She asked the Appellate Panel to allow the Appeal of the Appellant as grounded and to quash the Decision of the Trial Panel SCC-09-0015, dated 26 August 2010.

4 On 2 November 2011, the Appellate Panel issued a clarification Order requesting the Appellant to clarify who is currently representing the Appellant, either the attorney *B E* (representative before the Trial Panel proceedings) or *M L*. Written evidence that the power of attorney for *B E* was revoked and the certified copy of the power of attorney, granting the representative the power to represent the Appellant before the SCSC; and written evidence that *M L* is a registered member of a bar association.

5 The Order of the Appellate Panel was served on the Appellant on 4 November 2011. The Appellant duly informed the Appellate Panel that she had revoked the power of attorney to her representatives, attorney *B E* and *M L* and that she had granted power of attorney to attorney *N U*.

6 *N U*, on 30 November 2011 was ordered to submit a statement certifying he confirmed and ratified [correct: approved] the content of the original Appeal filed on 17 September 2010 and of the supporting documents.

7 The Order was served on *N U* on 16 December 2011. By an Order dated 12 December 2011 the Appellate Panel allowed *N U* to examine the case file.

8 **Legal Reasoning:** The Appeal is admissible and grounded. The Appellate Panel has decided to dispense with the oral part of the proceedings under Art 64.1 of the Annex to the LSC, and omit service of the Appeal for response on the Respondent under Art 10.9 of the LSC and Art 60.2 of the Annex to the LSC.

Notification of the Agency

9 As already clarified by the Appellate Panel's case law (see ASC-09-0072, ASC-10-0050 etc.) the notice to the Agency about the intention to file a claim is among the admissibility criteria as set forth in Sec 28.3 of UNMIK AD 2008/6. Even though the admissibility criteria have to be examined ex officio at an earlier stage of the proceedings, without a respondent having been involved yet, the mere contention by a claimant that a proper notice was given is sufficient, as it is up to a Respondent's discretion not to contest the facts as stated by a claimant, including the question of the notification. Therefore, if a claimant maintains that a proper notification has been filed, the Trial Panel cannot dismiss the claim as inadmissible, based on the lack of proof of such notification. Unless the claim is inadmissible on other grounds, it has to give a Respondent the opportunity to take a stand on the claimed notification, alongside the merits of the case by serving the claim and other documents on a Respondent. It rests with a Respondent then to contest the facts as maintained in the claim, including the issue of the time of notification. Only if a respondent, represented by the Agency, contests the time of the notification, will a claimant be required to prove the notification.

10 In the instant case, the Respondent is not able to contest the notification. On 18 February 2009, the Appellant filed a Claim with the Trial Panel of the SCSC. According to the submitted documents, the Agency was notified about the Claim of the Appellant on 3 June 2009, which is almost 4 (four) months after the Appellant filed the Claim with the SCSC. The Appellant has therefore not complied with Sec 29.1 of UNMIK Reg 2002/12 and Sec 28.2(e) and 28.3 of UNMIK AD 2008/6. Under these circumstances no further necessity arose to involve the Respondent.

11 However, it is evident that from 3 June 2009 the PAK was aware of the Claim and did not elect [correct: chose] to enter into the proceedings as representatives of the Respondent. Bearing in mind, that the object of the notification provision is to inform the Agency about potential claims and to provide it with the opportunity to take the matter up on behalf of the SOE, that aim has demonstrably been met. In addition, it has to be taken into consideration that the duty of the Appellant to notify the Agency in advance adds extra burden to her as to her access to justice and the requirement provision must therefore be interpreted in a restricted way. In the circumstances, the [fact that the] Appellate Panel considers the notification out of time is without relevance to the adjudication of the Claim.

12 Thus, the Dismissal of the Claim as inadmissible was not appropriate. The appealed Decision, therefore, cannot stand and must be quashed. The Specialized Panel will try the Claim, refraining from any dismissal based on the same ground.

**Editor's note:** This Decision further develops jurisprudence in regard to admissibility criteria, ASC-09-0072, ASC-10-0023 and ASC-10-0050.

## 8.

## Inadmissibility of Further Legal Action Against Decision of the SCSC Appellate Panel

Appellate Panel Decision; Art 10.14 of the LSC; Extraordinary remedy; Inadmissibility; Protection of legality; Request for protection of legality

Annex to the LSC Art 64.1; LSC Art 10.14; UNMIK Reg 2008/4 Sec 10.10; UNMIK AD 2008/6

**Neither can an extraordinary remedy nor an appeal be used against a Decision of the Appellate Panel of the SCSC.**

*Decision of 31 October 2013 – AC-I.-13-0094 (Case* A: *Judgment of the Municipal Court of P./P., Decision of 19 July 2007 – C.no 1738/2007;* Case B: *Judgment of 27 December 2011 – SCA-08-0041;* Case C: *Judgment of 30 April 2013 – AC-I.-12-0055)*

1 **Factual and Procedural Background:** On 9 August 2013, the State Prosecutor has filed a request for protection of legality with the Appellate Panel, considering that in the Judgments, mentioned above under A, B and C on this legal matter, a violation of legal provisions has taken place.

2 The State Prosecutor concludes that said Judgments/Decisions are to be annulled and the matter is to be sent for retrial to the respective Trial Panel of the SCSC.

3 **Legal Reasoning:** The request for protection of legality filed by the State Prosecutor is inadmissible.

4 Pursuant to Art 64.1 of the Annex to the LSC, the Appellate Panel decided to dispense with the oral proceedings.



5 The Appellate Panel considers that pursuant to Art 10.14 of the LSC, all judgments and decisions of the Appellate Panel are final and not subject to any further appeal. In addition, the LSC and its Annex do not foresee any extraordinary remedy against such decisions or judgments of the Appellate Panel (such extraordinary remedy is neither foreseen by UNMIK Reg 2008/4 nor by UNMIK AD 2008/6).

6 The Appellate Panel finds that the cases at hand, as mentioned above under A, B and C are already decided and all legal remedies have been exhausted after the Appellate Panel's Decision of 30 April 2013 which became final on the same day. Therefore, the request for protection of legality, as an extraordinary remedy, may not be applied against such decisions; so, it is dismissed as inadmissible.

7 Based on the above mentioned arguments and pursuant to Art 10.10 of the LSC, the Appellate Panel decided as in the enacting clause of this Decision.

8 The request for protection of legality submitted by the State Prosecutor pursuant to provisions of the LCP on behalf of one party may apply for this extraordinary legal remedy against a final decision of lower instance courts, but not against a final decision of the Appellate Panel of the SCSC because, as it was mentioned above, Art 10.14 of the LSC prevents such possibility.

## 9.

## Appeals Against Final Decisions are Inadmissible

Appeal; Final Decision; Waiver of right to appeal; Adjudicated matter (res judicata); Inadmissible Appeal

LCP Art 176, 186; Annex to the LSC Art 10.6, 10.7

**"Appeals" filed against final decisions are inadmissible.**

*Decision of 19 December 2013 – AC-II.-12-0053 (First Instance: Decision of 14 February 2008 of the Municipal Court of M./M – N.no 13/2008)*

1 **Factual and Procedural Background:** By the challenged Decision of the Municipal Court of M./M. N.no ... dated 14 February 2008, on proposal of the Claimant, [to] the above was recognized a right to purchase an apartment located in the former *M T* str. no ..., entrance ..., ... floor/... , with a total area of ... sqm. According to the Court, this Decision shall supersede the contract on the purchase of the apartment and shall represent the basis for the acquisition of property.

2 Previously, the Claimant had concluded a contract with the Construction Material Trade Business Organization *D* – P./P. Basic Organization of Associated Labor , *S* – M./M., which gave the flat in use.

3 In a hearing held on 14 February 2008, the authorized person of the Respondent did not challenge the Claimant's proposal during administration [correct: the collection] of evidence or in his closing statement.

4 Since there were no objections by the Respondent, the Court issued the challenged Decision and wrote a clause instead of legal advice which reads "This decision is final, effective 14 February 2008, since the parties waived their right to appeal".



5 On 28 March 2012, the PAK had filed an Appeal against the final Decision, without providing any evidence as to when was the PAK informed about the challenged Decision.

6 In response to the Order of the Appellate Panel, the PAK has asserted that the Regional Office of the PAK in M. /M. was notified about this Decision on 19 March 2012, and there was a communication by email between a person named *M H*, representative of the PAK and *H B*, "head of cadastre".

7 **Legal Reasoning:** The Appeal of the PAK is inadmissible.

8 Based on Art 64.1 of the Annex to the LSC, the Appellate Panel decided to dispense with the oral part of the proceedings.

9 The Decision of the Municipal Court of M./M. N.no ..., dated 14 February 2008 has become final on the same date when it was issued. Instead of the legal advice, the Court wrote a clause on a finalization of decision instead of legal advice which reads "This decision is final, effective 14 February 2008, since the parties waived their right to appeal".

10 According to Art 177.2 of the LCP,
*[t]he party can withdraw the complaint up to the moment when the second level court issues the decision.*
*[editor: the appellant may withdraw his or her appeal before the court of second instance has rendered its judgment.]*

11 The representative by a power of attorney of the Respondent did not deny the claim during the hearing in the first instance, therefore used the legal right to waive the appeal.

12 The PAK's Appeal was filed against a final decision (adjudicated matter), as such it shall be dismissed as inadmissible.

13 The Appellate Panel reminds the PAK that it is obvious that the use of a legal remedy "the appeal", even against final decisions *(res judicata)* is contrary to the law and constitutes an abuse of procedural rights by causing delays and unnecessary delays and prolongation of the

procedure. If the PAK will further continue [to act] against trust and conscience, to abuse procedural rights, without any reasonable chance to success to the detriment of others seeking justice with this Court, the Appellate panel shall apply monetary fines, or even other legal measures, pursuant to Art 10.2 of the LCP.

14 The PAK is also reminded that the referral made repeatedly to a Decision of the SCSC, SCA-07-0030 dated 20 November 2007 is not appropriate and that the Decision does not represent present jurisprudence of the Appellate Panel; therefore, the procedural abuse cannot be justified by referring to this obsolete decision.

**Editor's note:** This Decision reverses Decision SCA-07-0030 of 20 November 2007.



10.

## Art 70.4 of the Annex to the LSC Contains an Exhaustive List of Actions and Does Not Permit to Refer the Case Back to the Liquidation Authority for Re-Exercising Discretion

Exhaustive Actions; Applicable law; Challenge to the decision of a liquidation authonity

Law on Associated Labour Art 608; Annex to the LSC Art 70.4, 70.2

1. **In proceedings against complaints of decisions of the Liquidation Authority, Art 70.4 of the Annex to the LSC contains an exhaustive list of actions - to "uphold", "revoke", or "amend" the challenged decision - to be undertaken by the Court.**

2. **Art 70.4 of the Annex to the LSC does not authorize the Court to refer the case back to the Liquidation Authority for re-exercising administrative discretion. The Court shall decide on its own on the merits of the complaint and decide over the concerned claim.**

*Decision of 20 February 2014 – AC-I.-13-0233 (First instance: Judgment of 12 November 2013 – C-IV.-12-0039)*

**Factual and Procedural Background:** On 4 December 2013, the **1**
Respondent (Appellant) filed an Appeal against the SCSC's Specialized Panel Judgment C-IV-12-0039, dated 12 November 2013, by challenging it as incorrect and ungrounded. According to the Appellant, the decision of the Liquidation Authority is not unclear, and that by the challenged Judgment was violated Art 70.4 of the Annex to the LSC and that case was disallowed to be referred back to the Liquidation Authority for re-trial [correct: re-exercising administrative discretion].

By the challenged Judgment, the SCSC's Specialized Panel repealed **2**
the decision of the Liquidation Authority, which was claimed to have

been unclear and confusing, in the enacting clause and its reasoning. The Liquidation Authority rejected the Claimant's request for compensation of unpaid salaries on the grounds that the request was prescribed and no evidence was attached in order to proof [correct: prove] that the decision on his termination [correct: dismissal] was appealed.

3 On 23 December 2013, the Appellate Panel of the SCSC served the Appeal on the Claimant for response.

4 On 3 February 2013, the Claimant in its Response asserted that the PAK's Appeal was ungrounded since it contains the same allegations as in the challenged Decision. The Claimant asserts that PAK's rejection is based on Art 608 of the Law on Associated Labour, that the Claimant allegedly failed to file any evidence on [correct: in regard to its] challenge to the decision on termination or submission of the request.

5 [The Claimant further alleged that on] 10 July 1992, the Claimant has once again filed a Claim with a Response attached whereby he challenged the termination of [his] work relationship. He alleges that he exhausted all legal remedies with regard to his dismissal.

6 **Legal Reasoning:** The Appeal is grounded.

7 By virtue of Art 64.1 of the Annex to the LSC, the SCSC's Appellate Panel decided to dispense with the oral hearing.

8 The Appellate Panel holds that no provision of applicable Law [applicable by the] SCSC determines the possibility of sending for re-trial [correct: re-exercising administrative discretion] (with the Liquidation Authority) cases which shall be adjudicated as per parties` requests against the Liquidation Authority's decisions.

9 By the challenged Judgment, the SCSC's Specialized Panel decided to send the case back [f]or re-trial [correct: re-exercising administrative discretion] with the Liquidation Authority, not grounding such decision by any legal provision.

10



10 Proceedings on complaints against decisions of the Liquidation Authority are governed by Art 70 of the Annex to the LSC. Paragraph 4 of this Article is an exhaustible provision [correct: provision with an exhaustive list], which does not provide any other possibility to the Court expect [correct: except], "upholding, invalidating or modifying the decision of the Liquidation Authority". The SCSC's Specialized Panel nullified the decision of an administrative body (Liquidation Authority), on the grounds that the above decision was "unclear and inconsistent". In this regard, the SCSC's Specialized Panel should have decided on the merits of the Appeal, and not to refer it "for re-trial" [correct: re-exercising administrative discretion]. The Court's referral for re-trial [correct: re-exercising administrative discretion] with an administrative body is not a requirement of Art 70.4 of the Annex to the LSC. The matter in dispute is not an administrative matter which shall be resolved based on the law on administrative conflicts, based on which the court may, among others, return it for re-trial [correct: re-exercising administrative discretion] to the administrative body. This is a substantive matter of the SCSC jurisdiction, and it shall be initially resolved through administrative proceedings by the PAK Liquidation Authority and when the party's legal remedies in administrative proceedings are exhausted, by virtue of Art 70.2 of the Annex to the LSC, proceedings shall be initiated by the SCSC's Specialized Panel for Liquidation. The Panel shall render a decision to "uphold", "revoke", or "amend" the challenged decision. By its specific nature, this provision does not give the Court the authority to refer the issue back to the administrative body as it is the case with administrative conflicts, but it shall decide on its own on the merits of the complaint and decide over the concerned claim.

11 In consequence of that and also for other procedural reasons on decision-making of a Specialized Panel (an entirely procedural matter was decided by Judgment), the challenged "Judgment" cannot stand as such; therefore, it shall be revoked and the case shall be sent for re-trial [to the Specialized Panel].

12 The Specialized Panel should have decided for a re-trial [based] on the merits of the Complaint, requesting the parties to specify and clarify the matters which were unclear to the Specialized Panel.

## 11.

## Jurisdiction of Municipal Court (now Basic Court) after Entry-Into-Force of the LSC

Referred case; Jurisdiction of Municipal Court (now Basic Court); Send for retrial

LSC Art 10.9, 4.4(i); Annex to the LSC Art 60.2

**If the court to which the matter has been referred after the entry-into-force of the LSC has not taken any substantive decision (substantive decision is to be understood as the scheduling of a main hearing) with respect to the matter, such court shall no longer have any jurisdiction and shall forward the case to the SCSC.**

*Decision of 27 February 2014 – AC-II.-12-0169 (First Instance: Judgment of 21 May 2012 of the Municipal Court of M./M. – C.no 278/06)*

1 **Factual and Procedural Background:** On 19 July 2006, the Claimant filed a Claim with the SCSC seeking ownership rights over cadastral parcel, no ... with a surface of ... ha "A. e B.", cadastral parcel no ... at "F." with a surface area of ... ha, cadastral parcel no ... at "S." with a surface of ... ha, cadastral parcel no ... at "S." with a surface of ... ha and cadastral parcel no ... at "S." with a surface of ... ha, each of the said cadastral parcels registered according to possession list no ... .

2 The SCSC, by the Decision, SCC-06-0334 dated 10 October 2006, referred the claim to the Municipal Court of M./ M. with right to appeal to the SCSC.

3 On 29 March 2007, before the Municipal Court, the first group of Intervenors, *J M, H M, N M, Z M* and *S M,* each represented by attorney *A M* applied to join the case as they had a [commonly shared] property and legal interest over the subject claim of the claimant.



4 On 7 November 2009, the Claimant submitted an addition to the Claim and sought to add as Respondents to the Claim *M R M, Z O M, V M, Sa M, H M* and *N M*.

5 On 21 May 2012, the Municipal Court of M./M. in Judgment C.nr. ..., recognized the Claimant's ownership right over the cadastral parcels no ... with a total surface of ... ha and cadastral parcel no ... with a total surface of ..., according to possession list no ..., cadastral zone M./M.

6 Appeals were submitted by the PAK on 11 July 2012 supplemented on 31 December 2013, by Interveners *J M, H M, N M, Z M* and *S M* on 19 July 2012 and finally by the Interveners *Z M* and *M M* on 20 July 2012.

7 The Appellants by their Appeals, contested the jurisdiction of the Municipal Court over the dispute Claim and challenged the factual background based on which the challenged Judgment was based. The Appellants sought the quashing of the Judgment of Municipal Court and a retrial before the SCSC.

8 The Appeal of the first Appellant before the SCSC was registered, with no AC-II.-12-0184. By Decision of the Appellate Panel, dated 23 November 2012, the Appeal case is re-joined with subject Appeal case AC-II.-12-0169.

9 By the Orders of the Appellate Panel, dated 13 September 2012, all Appellants were requested to comply with the usual appeal procedures and each Appellant duly complied with the formalities.

10 **Legal Reasoning:** The Appeals are admissible and grounded.

11 Based on Art 64.1 of the Annex to the LSC, the Appellate Panel decided to dispense with the oral part of the proceedings and omit service of the Appeal on the Respondent under Art 10.9 of the LSC and Art 60.2 of the Annex to the LSC.

12 The Judgment of the Municipal Court of M./M., has to be quashed.

The Merits of the Appeal and Assessment of the Appellate Panel

13 The appealed Judgment cannot stand, because it appears from the case files that the Municipal Court did not have jurisdiction over the Claim at the time it purported to determine the Claim. Those proceedings are a nullity.

14 By the Decision of the SCSC of 10 October 2006 the Claim was referred to the Municipal Court of M./ M. with a right to appeal [to] the SCSC. The Municipal Court failed to try the cases until May 2012, five months after the LSC entered-into-force on 1 January 2012.

15 Art 4.4(i) of the LSC makes it clear that in relation to any claim, matter, case or proceeding ...

*referred prior to the effective date of the present law: (i) if the court to which the matter has been referred has, as of the effective date of this law, not taken any substantive Decision with respect to the matter, such court shall no longer have any jurisdiction over the matter and shall return all concerned documents and case files to the Special Chamber.*

16 The Municipal Court of M./M. substantially decided by Judgment on 25 May 2012, more than 5 (five) months after the LSC entered in the force. The Municipal Court should not have adjudicated the Claim and should have returned the case to the SCSC for adjudication.

17 For these reasons and pursuant to Art 4 of the LSC and Art 5 of the LSC, the SCSC in May 2012 and thereafter has exclusive jurisdiction over the Claim. The Municipal Court proceedings are a nullity and are quashed [correct: Judgment is quashed].

18 On that finding and pursuant to Art 10.10 of the LSC, it is decided as in the enacting clause of this Decision.



## 12.

## No Jurisdiction over Joint Stock Companies

Jurisdiction; JSC; Send for retrial; Respondent

LSC Art 4, 5, 4.1.1.4, 2; PAK Law2008 Art 3, 5.1(a)(i)

**If the sole Respondent is a JSC, the SCSC does not have jurisdiction and the case is to be dismissed.**

*Decision of 16 April 2014 – AC-II.-13-0030 (First Instance: Decision of the Municipal Court of P./P. of 20 September 2011 – C.no 163/2008)*

**Factual and Procedural Background:** On 10 October 2011, the Claimant (Appellant) filed an Appeal against the Decision of the Municipal Court of P./P., declaring it incompetent and sent the case to the SCSC at further competence [correct: as competent Court]. 1

The Appellant claims that the SCSC does not have jurisdiction over this legal matter as this party is a JSC whereas, upon deliberating, the Court has not clarified this significant fact. 2

The Claim in this legal matter was filed with the Municipal Court of P./P. on 3 September 2008, claiming confirmation of ownership over the business premises which the Claimant alleges that he had attained based on a contract on merging of financial means concluded with the Self-Managing Community of Interest on Housing in P./P., no ..., dated 8 June 1984. This contract was certified in 2006 at the Municipal Court of S./S. [now in the Federation of Bosnia and Herzegovina]. 3

In its Response dated 18 February 2014 with regard to the Appeal, the PAK did not provide any proof except for the declarative aspect that the Respondent SOE "*S C*" is under administration of the PAK. 4

**5** **Legal Reasoning:** The Appeal is grounded.

**6** Pursuant to Art 64.1 of the Annex to the LSC, the Appellate Panel decided to dispense with the oral part of the proceedings.

**7** The SCSC jurisdiction is regulated by Art 4 of the LSC, whereas Art 5 of the LSC determines who shall be claimants and respondents in the proceedings before the SCSC.

**8** Art 4.1.1.4 of the LSC, reads that the SCSC shall have exclusive jurisdiction over

> *a claim against an enterprise or corporation that is alleged to have arisen during or prior to the time that such enterprise or corporation is or was subject to the administrative authority of the KTA or the Agency.*

**9** According to Art 2 of the LSC, the term "enterprise" used in this law has the meaning specified in Art 3 of the PAK Law2008. Art 3 of this Law reads that the term "enterprise" means an enterprise over which the Agency has authority pursuant to Art 5.1(a)(i) of the present law.

**10** According to Art 5.1(a)(i) of the PAK Law2008, it is specified that,

> *[t]he Agency shall have the authority to administer socially owned enterprises, regardless of whether they underwent a Transformation.*

**11** In the concrete case in the proceedings with the Municipal Court of P./P., the parties in the proceedings are a natural person as a Claimant and an enterprise from S./S., Federation of Bosnia and Herzegovina.

**12** In its Response filed against the Appeal of the Claimant, the PAK asserted that PAK is the administrator of this asset and it supports the appealed Decision as a proper and a legal one. PAK does not provide any proofs that would satisfy the Court that this asset is under its administration.

**13** On the other hand, the Appellant has provided proofs, such as: the contract on merging of financial means between the self-managing community of interest on Housing and "S C" from S./S. [now in the Federation of Bosnia and Herzegovina], a certificate concerning this



merger – requested by the KTA on 4 May 2006, the sales contract, concluded on 27 June 2006, between the Claimant and "S C" regarding the contested business premises. Based on the certificate from the Court registry, no ..., dated 4 June 2008, it is obvious that the Respondent is registered as a JSC.

**14** Pursuant to Art 5.1(a)(i) of the PAK Law2008, the PAK has legal authority to administer only SOEs, regardless whether they underwent a transformation, which are in Kosovo. This provision does not authorize the PAK to administer enterprises that are outside of Kosovo, even if such enterprises are SOEs.

**15** In the case at hand, it is obvious that the Respondent is not included in the aforementioned provisions; therefore, it cannot be a party in the proceedings before the SCSC.

**16** Based on the facts elaborated above, but also based on the hitherto jurisprudence of the Appellate Panel, where parties in the proceedings were entities that were not from Kosovo (see cases: AC-II.-12-2012, AC-II.-12-0058 etc.), the Appellate Panel does not have jurisdiction to adjudicate such cases; therefore, the Appeal of the Claimant is grounded and the case must be resolved at the Basic Court of P./P.

**17** Based on these reasons and according to Art 10.10 of the LSC, it is decided as in the enacting clause.

## 13.

**Against Decisions and Judgments of the Appellate Panel, a Request for Protection of Legality is Not Admissible**

Request for protection of legality; Extraordinary remedy; Appellate Panel Decision; Appellate Panel Judgment; Art 10.14 of the LSC; Protection of legality

LSC Art 1.3, 10.14; LCP Art 245, 247; LC Art 21, 22.1.2

1. **Requests for protection of legality constitute the Supreme Court's review of a final decision of any inferior court (first or second instance) in order to redress specific substantial violations of procedural rules or the erroneous application of substantial law.**

2. **Decisions rendered by the first instance panels of the SCSC, which became final because no appeal has been duly filed, might be considered as rendered by an inferior court and are consequently included in the scope of requests for protection of legality.**

3. **The SCSC is part of the Supreme Court of Kosovo. Therefore, decisions and judgments issued by the Appellate Panel of the SCSC are not rendered by an inferior court but by the Supreme Court itself.**

*Decision of 12 September 2014 – AC-I.-14-0077 (Second Instance: Judgment of 13 September 2012 – ASC-09-0084; First Instance: Judgments of 15 October 2009 – SCC-05-0080, SCC-06-0029, SCC-06-0470, SCC-06-0482, SCC-06-0524)*

1 **Factual and Procedural Background**: On 23 October 2012, the Applicant filed a request for protection of legality against the Judgment of the Appellate Panel of the SCSC, ASC-09-0084 of 13 September 2012.



2 In the Request, the Applicant alleged erroneous application of substantive law and proposes the Appellate Panel to annul the Judgment of the Appellate Panel ASC-09-0084 of 13 September 2012 and the Judgments of the first instance SCC-05-0080, SCC-06-0029, SCC-06-0470, SCC-06-0482, SCC-06-0524, all dated 15 October 2009 and to send the case back for re-trial.

3 **Legal Reasoning:** The request for protection of legality is inadmissible.

4 Pursuant to Art 10.14 of the LSC, all judgments and decisions of the Appellate Panel of the SCSC are final and not subject to any further appeal. The appeal is an ordinary remedy (Chapter XIII of the LCP).

5 The LSC and its Annex do not contain a reference to any extraordinary remedy against decisions or judgments of the Appellate Panel. Such extraordinary remedy is neither foreseen by UNMIK Reg 2008/4 nor by UNMIK AD 2008/6.

6 Though this omission does not necessarily mean that it was the legislator's will to exclude all extraordinary remedies from the procedure in front of the SCSC, the Appellate Panel holds that a request for protection of legality is not admissible against decisions and judgments of the Appellate Panel of the SCSC.

7 Requests for protection of legality constitute the Supreme Court's review of a final decision of any inferior court (first or second instance) in order to redress specific substantial violations of procedural rules or the erroneous application of substantial law (Art 245 and 247 of the LCP and Art 22.1.2 of the LC.

8 Art 22.1.2 of the LC, clearly state that the Supreme Court (including its special branches)

> *is competent to adjudicate requests for extraordinary legal [remedies] against final decisions of the courts of Republic of Kosovo, as provided by Law*

Pursuant to Art 1.3 of the LSC and Art 21 of the LC, the SCSC is part of the Supreme Court of Kosovo.

9 The Decisions rendered by the Trial Panels (as the first instance panels of the SCSC were called before 1 January 2012), Specialized Panels, Sub-panels or Single Judges of the SCSC, which became final because no appeal has been duly filed, might, accordingly to the special organization of the SCSC, be considered as rendered by an inferior court and consequently included in the scope of requests for protection of legality. However, in the case at hand, the Judgments and Decisions of the Trial Panels were appealed by the regular legal remedy in accordance with the provisions of the LSC. [Based o]n these Appeals, the Appellate Panel rendered its final judgments. Therefore, the Trial Panel's Judgments in question cannot be subject to the review as per request for protection of legality.

10 Decisions and Judgments issued by the Appellate Panel of the SCSC are not rendered by an inferior court but by the Supreme Court itself. A request for the protection of legality is meant as a review by the Supreme Court of a decision rendered by an inferior court, not as a self-review. Consequently, decisions passed by the Appellate Panel are excluded from the scope of requests for protection of legality.

11 Therefore, the Request for Protection of legality filed against the final judgment of the Appellate Panel ASC-09-0084 dated 13 September 2012 and the Judgments of Trial Panels SCC-05-0080, SCC-06-0029, SCC-06-0470, SCC-06-0482, SCC-06-0524, all dated 15 October 2009 should be dismissed as inadmissible.

12 For these reasons, it is decided as in the enacting clause.



## 14.

## Against Decisions and Judgments of the Appellate Panel, Revision is not Admissible

Request for revision; Extraordinary remedy; Appellate Panel Decision; Appellate Panel Judgment; Art 10.14 of the LSC

LSC Art 1.3, 10.6, 10.14; LCP Art 211.1, 212, 214, 229; LC Art 21, 22.1.3

1. **Revision means the review by the Supreme Court of a judgment issued by a second instance court not open to further appeal, in order to redress a substantial violation of procedural rules or an erroneous application of substantive law.**

2. **Appellate Panel decisions and judgments cannot be subject to revision because they are not issued by a second instance court but rather by the Supreme Court itself.**

*Decision of 12 September 2014 – AC-I.-14-0078 (Second Instance: Judgment of 13 September 2012 – ASC-09-0084)*

**Factual and Procedural Background:** On 18 October 2012, the Applicant requested the revision of the judgment of the Appellate Panel of the SCSC, ASC-09-0084 of 13 September 2012, which he had received on 28 September 2012. 1

The Applicant alleged that the Court had violated the LCP as the provision was not understandable and contradictory to the reasons of the Judgment and because contradictions existed in the weighting of crucial facts. It was further of the opinion that a criminal court was the correct forum for the trial. 2

In his Request for Revision the Applicant proposes the SCSC to annul the opposed Judgment and reject the claims as ungrounded, or send the case back for retrial to another competent court. 3

4 **Legal Reasoning:** The request for revision is inadmissible.

5 Pursuant to Art 10.14 of the LSC, all judgments and decisions of the Appellate Panel are final and not subject to any further appeal. The appeal is an ordinary remedy (Chapter XIII of the LCP).

6 The LSC and its Annex do not contain a reference to any extraordinary remedy against decisions or judgments of the Appellate Panel of the SCSC. Such extraordinary remedy is neither foreseen by UNMIK Reg 2008/4 nor by UNMIK AD 2008/6.

7 Though this omission does not necessarily mean that it is the legislators will to exclude all extraordinary remedies from the procedure in front of the SCSC, the Appellate Panel holds that a revision is not admissible against decisions and judgments of the Appellate Panel of the SCSC.

8 Revision foresees the review by the Supreme Court of a judgment issued by a second instance court not open to further appeal (Art 229 of the LCP) in order to redress a substantial violation of procedural rules or an erroneous application of substantive law (as per Art 211.1, 212 and 214 of the LCP and Art 22.1.3 of the LC).

9 Pursuant to Art 1.3 of the LSC and Art 21 of the LC, the SCSC is part of the Supreme Court of Kosovo. Art 22.1.3 of the LC, clearly states that the Supreme Court (including its special branches)

*is competent to adjudicate revision against second instance decisions of the courts on contested issues, as provided by Law.*

10 Decisions and judgments of the Specialized Panels, Sub-panels or Single Judges of the SCSC are, according to the special organization of the SCSC, first instance decisions and judgments and can be appealed (Art 10.6 of the LSC). Consequently, they are excluded from the scope of revision.

11 Judgments issued by the Appellate Panel of the SCSC are excluded from the scope of revision as well. Appellate Panel decisions and judgments are not issued by a second instance court but rather by the Supreme Court itself. Revision is constructed as being a review by the Supreme Court of a judgment rendered by an inferior court, not as a self-review. Consequently, decisions and judgments of the Appellate Panel cannot be subject to revision.



12 Therefore, the request for Revision of the Respondent filed against the final judgment of the Appellate Panel ASC-09-0084 dated 13 September 2012 should be dismissed as inadmissible.

13 For these reasons, it is decided as in the enacting clause.

## 15.

## Non-General Exclusion of the Applicability of Laws that Entered-Into Force after 22 March 1989/Role of Workers' Council in Privatization Process/Assessment of SOE's Assets

Establishment of JSC/LLC; Applicability of laws passed after 22 March 1989; Transformation of SOE's socially owned capital into JSC

LE Art 94, 100, 36.1, 47.1, 50; Law on Social Capital (SFRY Gazette 46/90) Art 4, 1b.2, 1b, 2a; Law on Circulation and Management of Social Capital (SFRY Gazette 84/89) Art 4, 2a; LSC Art 10.10; UNMIK Reg 1999/24

1. **If a law passed after 22 March 1989 does not contain discriminatory elements – such as the Law on Social Capital of 20 August 1990 –, it can be determined to be applicable in line with UNMIK Reg 1999/24, which was necessitated by the discriminatory nature of some of the subsequent SFRY legislation.**

2. **A workers' council of a SOE has exclusive authority to decide on the initiation of the privatization process through transformation. However, as a party to the privatization, the workers' council has no authority to decide on the value of the capital to be generated through the distribution of shares.**

3. **A balance sheet valuation is not a substitute to a proper assessment of a SOE's assets.**

4. **Even if an accredited valuation agency did not exist or was not available when a workers' council adopted the decision on transformation, such does not add legal value to the council's decision to substitute the official assessment with any other kind of report.**

5. **An assessment approved by the accredited valuation agency constitutes a kind of administrative act. As a general principle, no person – natural or legal – is allowed to substitute any administrative act by their own will.**

6. **A transformation is a multi-stage process where the validity of each step is determined also by the validity of previous steps. A substantial failure in one stage renders the whole process void even if no other failures have occurred.**

*Decision of 18 September 2014 – AC-I.-14-0102 (First Instance: Decision of 7 March 2014 – SCC-08-0124)*

**Factual and Procedural Background:** On 5 May 2008, the Claimant filed a Claim with the SCSC seeking to be recognized as a JSC by 100 percent of shares, providing evidence dating from 1991 until 2003. On 27 March 2013, the Claimant filed a request amending the claim, withdrawing the claim against the KTA and requesting now only 58 percent of the shares. **1**

The PAK's Response

On 30 October 2013, the PAK filed a Response to the Claim and stated the following: **2**

Based on the additional documents submitted by the Claimant it may be concluded that:

i) There has been no assessment of social capital before the transformation process.

ii) In the case file there is no evidence related to the payment of the shares using the company's bank account as required by the Law on Enterprises (Law 77/88 Art 94 and Art 100).

iii) The internal shares were registered based on the enormous increase of wages for employees with retroactive basis.

iv) No financial document has been presented that can prove the financial transformations from social owned enterprise into joint stock company.

v) No evidence has been presented on the made investments in enterprise as a result of the sale of capital.

vi) No evidence has been presented on the effective payment of shares that represents one of the main conditions for the validity of the transformation.

The PAK proposed the SCSC to reject the Claimant's Claim entirely as ungrounded in the law.

Claimant's Counter Response

3 On 26 December 2013, the Claimant responded to the submission of the PAK. According to the Claimant, the transformation procedure took place as follows:

1. Workers' Council decision to transform an enterprise into a JSC or a LLC

4 In the 1990ies, an SOE as an enterprise in social ownership was able to establish a JSC or LLC pursuant to Art 36.1 of the LE which states:

*One or several social legal entities may found a joint- shares company or a limited liability company, as an enterprise in social ownership.*

According to Art 47.1 of the LE, the managing body of SOEs shall be a workers' council, or a managing body corresponding to it in terms of position and function. The workers' council shall make decisions by a majority of the vote of all members of the workers' council, unless another quorum was provided for by the by-laws of the SOE for deciding in individual matters (Art 50 of the LE).

2. Court Ruling on Registration issued by the Commercial Court of G./Đ.

3. Valuation of the Socially Owned Capital of the Enterprise.

5 According to Art 4 of the Law on Social Capital when deciding to sell an enterprise or a part thereof or to settle debts, the managing body of an enterprise or corporation shall proceed from an estimated value of that enterprise. The value of an enterprise shall be estimated by a legally authorized agency.

6 In fact, Serbia never set up an accredited valuation agency. However, the necessary valuations were officially approved by the competent court.

4. The decision on issuance and allotment of internal shares.



7 A SOE may issue shares through the sale of shares conveying the right of ownership. Shares' issuance was regulated by the Law on Securities.

8 According to Art 1b.2 of the Law on Social Capital, the internal shares acquired the characteristics of shares cited in the Law on Securities, on condition that the whole amount was paid and that other conditions envisaged by that law are fulfilled. However, employees were entitled to a distribution [correct: a share] of 30 percent of the shares without compensation, plus an additional percentage amount based on years of employment (plus 1 percent per each year of work experience).

5. Proves [correct: Proofs] that the shares were paid for by the shareholders

9 *E* JSC afterwards became the owner of the identified assets. In general, only the machinery, buildings and closely associated lands were transformed, whereas the agricultural lands were not included.

10 The most useful analysis as a basis to understanding the cases is the excellent report prepared by a team of three lawyers acting for the KTA predecessors. This 17-page report (attached to this case) provides a legal and historical background that is essential to understand the allegations.

11 On 20 August 1990, the Law on Social Capital was passed in the then SFRY. Although the date of this law was after 22 March 1989, the date stipulated in UNMIK Reg 1999/24 (on the applicable law in Kosovo), [it] was the applicable law during the early 1990ies and the company registrations that took place in 1990-1991 were legitimate. UNMIK Reg 1999/24 was necessitated by the discriminatory nature of some of the subsequent SFRY legislation. It should be emphasized that the Law on Social Capital of 1990 contains no element of discrimination.

12 This law was applied throughout Yugoslavia but its implementation began in G./Đ., Kosovo, which was briefly the most active business area until the interim measures of Milošević were introduced and interfered with the process.

13 The Claimant respectfully claims from the SCSC to issue a judgment confirming that E is a legally constituted JSC and 58 percent of the shares are privately owned by the 185 shareholders who have paid for shares. The remaining 42 percent of the shares are socially owned and under the administration of the PAK.

Judgment of the Specialized Panel

14 On 7 March 2014, the Specialized Panel rendered Judgment SCC-08-0124, rejecting the Claim of the Claimant as ungrounded.

15 In the reasoning of this Judgment, it was stated that the Claim in question is declaratory in nature. Subject to litigation is the correct answer of the question: "Has *E* SOE from G./Đ. been lawfully transformed into a JSC and 58 (fifty-eight) percent of its capital assigned to private ownership of shareholders". The time-line of the alleged transformation began on 23 April 1991 and should have ended at any time in the 1990ies before the deployment of the International Administration in Kosovo.

16 E was initially organized as a business system providing different types of manufacturing and services. On 19 March 1990 the system was divided into six entities and only one of those – the Claimant's Company – preserved the name *E*. The new *E* Entity was to provide managerial legal and administrative services for the remaining five. On 23 April 1991, a workers' council of all six entities decided (decision no ..., dated 30 April 1991) to transform them into JSCies. Following that on 30 April 1991 the workers' council of the E Entity passed a decision on transformation and re-organization. With this decision a new management structure was established as well as the option of all 185 workers to purchase shares of the company via internal subscription. The council decided also on the amount of the capital to be transformed – ... dinars. As the decision reads, this value was directly taken from the last balance sheet of the Entity. On the same day the same workers' council passed decision no ... on the Issuance of internal shares. By this decision, all workers were invited to buy shares and were informed on their right to receive shares in lieu of salaries.

17 Later on, a submission for registration was filed with the competent court – Commercial Court of G./ Đ. On 20 June 1991, this Court



rendered the decision approving the request to enter changes into the entities' registry, namely – change to the status of the *E* Entity and establishment of shareholders' association. The name under which the newly established Entity was to operate was "SOE for Circulation Services Informatics and Marketing *E*, JSC in G./Đ.". The name was to reflect the transitory status of the entity, because the registration did not finalize the transformation process. This process should have then advanced with the actual purchase of shares.

18 The workers' council of a SOE has an exclusive authority to decide on the commencement of the privatization process via transformation. However as a party to privatization the employees' had no authority to decide on the value of the capital they were going to purchase [correct: generate] through shares distribution. For that reason the federal lawmaker of the former SFRY adopted Art 4 of the Law on Circulation and Management of Social Capital (SFRY Official Gazette 46/1990). According to this provision the managing body (that is the workers' council), when deciding on the transformation shall proceed from the estimated value of the social capital. This value was to be established by organization authorized by the Law. This organization – an agency - was defined by Art 2a of the same Law. The Agency had authority to appoint a body to make a current evaluation of the capital and then to approve it.

19 In virtue of all workers' councils' decisions presented as evidence, including the decision of the Commercial Court on registration, it is obvious that no such assessment was provided for. Instead, the last balance sheet was used as a substitute of assessment and later submitted to the Court. It is unclear why the Commercial Court admitted this substitution, as it is evidently defined with provision of Art 4 – the decision has no reasoning. The issue of the missing assessment was considered by parties and the Court. The Claimant, with its submission of 26 December 2013 explained that the workers' council did not address the agency because such an agency "never existed in Serbia". But in the last hearing the Respondent furnished a copy of a certificate that bears Registry no ... . This document was issued in the name of "Republic Agency for the Valuation of Social Capital". It was not specified when that agency was established, before or after the transformation of this SOE.

20 The Claimant's representative did not challenge the authenticity of the document but facing [correct: confronted] with this evidence he changed his statement. Now, his objection is that the agency could have existed in Serbia as a Serbian body, but Kosovo did not have its agency.

21 The Court finds that the certificate at hand (enclosed to the evidence) proves the existence of the agency in 1991 and persons that were in charge of the transformation of *E* simply did not file an application for the capital assessment.

22 Even if the agency did not exist or was not available when the workers' council adopted the decision on transformation such a fact does not add any legal value to the council's decision to substitute official assessment with any other kind of report. Thus, an assessment approved by the agency constituted a kind of administrative act. As a general principle no person – natural or legal - is allowed to substitute any administrative act with their own will. This was exactly the case when the workers' council collected the latest balance sheet instead of official assessment. The balance sheet, as financial report and the valuation provided in the balance sheet have completely different purposes and cannot be considered a proper assessment of the socially owned capital.

23 Due to this substantial breach against the latter and against the principle of the law, both, the workers' council decision on transformation and the subsequent Court Decision on the registration of transformation shall be considered of no legal effects [correct: as not having any legal effect]. This legal failure [correct: error] determines the validity of the entire process of the transformation of the SOE *E* into a JSC. Transformation is a multi-stage process where the validity of each step is determined also by the validity of previous steps. A substantial failure in one stage renders the whole process void even if no other failures have occurred.

24 The Claimant failed to provide relevant evidence on the existing payment of shares. The Claimant's representative states that the company's archive was destroyed during the last war in Kosovo. However, the fact of destruction should be proven by the Claimant who furnished no evidence in support of it. Furthermore, any payments if properly executed and registered should have been reported to the official authorities and



this registration could still be obtained. The only data on payments can be derived from the Commercial Court of G./Đ. decision that reads ... dinars had been paid before registration. Nevertheless – on the reasons expressed above - these payments did not have a transformative effect.

25 The Claimant was also not able to clearly establish the way alleged amount of 58 percent of the capital transformation was fixed. The only document that read for 58 percent transformation is a submission of the former respondent KTA dating of 2 July 2012. This statement could indeed be treated as part consent to the claim. However, the consent is neither evidence nor is it binding for the Court or the remaining Respondent – PAK. In this case both KTA and PAK took part on the Respondent's side from the outset and operated independently until the claim was withdrawn against KTA.

The Appeal and Procedural Aspects of the Appellate Panel

26 On 2 April 2014, the Claimant (Appellant) filed an appeal against this Judgment, which it calls as incorrect and ungrounded, and requested the Appellate Panel to render a judgment confirming that E has been transformed legally and it has the status of a JSC, respectively to confirm that 58 percent of shares are in private ownership and that the 185 shareholders, who paid their shares, are the owners of those shares.

27 The Appellant elaborated the alleged transformation in the Appeal consisting of eight pages. Although all evidence was provided in the previous proceedings of the first instance, the Appellant reiterated everything mentioned in the Claim in relation to the status of the enterprise.

28 On 29 April 2014, the PAK filed a Response to the Claimant's Appeal objecting it entirely as ungrounded. The PAK reiterated the same objection to the Appellant's allegations about *E* as a JSC, challenging it entirely for the same reasons as stated in the Response to the Claim.

29 The PAK also stated that "by the decision of the agency's Board of Directors it was decided to establish a special specialized group for analysing the alleged transformation of this enterprise".

30 With regard to this statement of the PAK, on 28 May 2014, the Appellate Panel requested the PAK to specify when this decision was

taken, who are the experts who will examine the possible transformation of this enterprise and which is the stage of research reached by this group, and whether there is any official initial assessment related to it. On 6 June 2014, the PAK submitted a response via mail and a document titled "comprehensive report" dated 15 October 2010, wherein the procedure related to transformation of property in the above-mentioned enterprises in the 1990ies until to date was described. The names of four members of the group and two advisors are indicated in this working group. There are no signatures of these members.

31 **Legal Reasoning:** The Appeal is ungrounded.

32 The Appellate Panel decided to dispense with the oral proceedings, pursuant to Art 64.1 of the Annex to the LSC.

Appeals Allegations and Findings of the Appellate Panel

33 The Appellate Panel, after examining the allegations in the Appeal, the appealed Judgment and the entire material evidence in the case file, found that the Appeal is ungrounded, and, consequently the appealed Judgment of the Specialized Panel is upheld.

34 With regard to the evidence provided by the Appellant concerning the decision of the workers' council on transforming the enterprise into a JSC or LLC, the Court's Decision on Registration issued by the Commercial Court of G./Đ., nothing is disputable because the evidence is examined and not contested in the first instance either.

35 The Appellant, both in the Claim and in the Appeal, emphasizes on Art 1b.2 of the Law on Social Capital (without mentioning which number), which according to the Appellant, employees are automatically entitled to a discount of 30 percent of the shares' price, plus 1 percent for each year of their work experience.

36 Although the Appellant did not clearly specify the law it was referring to, the Appellate Panel in conformity with its legal authority has examined the allegations in the Appeal. Pursuant to findings of the Appellate Panel, other crucial stages for the transformation process of the property are not met, such as: assessment of social capital of the



enterprise, decision on issuance and distribution of internal shares, Attestation on payment of shares by the shareholders. No other actions undertaken by the management and the employees will be regarded as valid evidence.

Assessment of the Social Capital

37 As it is concluded by the Specialized Panel in the appealed Judgment, the workers' council of the SOE had an exclusive authority to decide on the initiation of the privatization process through transformation. However, as a party in privatization, the workers' council had no authority to decide on the value of the capital, which they wanted to buy [correct: generate] through the distribution of shares. Thereupon, the federal lawmaker of the former SFRY adopted Art 4 of the Law on Circulation and Management of Social Capital (SFRY Official Gazette 46/1990 [correct: 84/89]). According to this provision, the managing body (namely the workers' council), when deciding on transformation, shall proceed from an estimated value of the socially owned capital. This value will be determined by an organization authorized by law. This organization, agency, was mentioned in Art 2a, of the same law [the Law on Social Capital]. The agency had an authority to appoint a body to execute the current assessment of the capital and then to approve it. The core matter in this case is whether a proper legal assessment of the social capital was performed, which was to be transformed into a JSC.

38 In virtue of all the decisions of the workers' council filed as evidence and from the Commercial Court's decision on registration, it is obvious that no such assessment was presented. Instead of that, the balance sheet was used in lieu of the assessment of social capital to be submitted later to the Court. The balance sheet provides only the financial position of the enterprise but not the assessment and registration of all assets of the enterprise.

39 Initially, the Claimants stated that the workers' council did not address the agency because such agency never existed in Serbia. In the hearing, the Respondent presented a copy of the certificate containing Registration no ..., which was issued by the Republican Agency for Valuation of Social Capital.

40 This proves that according to Art 4 of the Law on Social Capital [correct: Law on Circulation and Management of Social Capital], applicable at that time, the assessment of social capital for a SOE could have only been performed by an agency specialized in that field, and not by a body of the SOE. Furthermore, such assessment was never performed by anybody in this enterprise, apart from the financial balance, which is absolutely irrelevant to the social capital of the enterprise having in mind the fact that the SOE capital comprises of numerous assets, funds [or] other means necessary for production.

41 No other evidence about this process was provided in the Appeal, thus there is no reason for the Appellate Panel to disagree with such an assessment and with these findings of the Specialized Panel.

Issu[ance] and Purchase of Shares

42 The decisions issued by the workers' council on the issuance of internal shares, according to the personal income payment base, such as: the agreement allowing a free purchase of internal shares, the decision on issue of internal shares and capital sale, call for registration and purchase of internal shares, were taken on the same date 30 April 1991. It is difficult to consider this fact from the current perspective but it is necessary to raise the question why these actions were undertaken rapidly. All these procedures were set forth by the laws existing at that time, which are mentioned hereupon and will be elaborated herein with the reasoning

43 Another disputed matter that was not verified by the Claimant is the fact how it was possible that all of these actions of the workers' council, with regard to the purchase of shares were carried out despite the interim measures applied by the Assembly of Serbia to this enterprise one day after such transformation was registered in the Commercial Court of G./Đ. on 21 June 1991, wherein the then management was replaced by the management imposed by the Serbian State authorities. The Appellant emphasized in the Appeal that "the issuance of interim measures by Serbia, the issue of shares and operation of these enterprises was stopped. Consequently, the purchase of shares was not completed entirely". Despite this very important fact that was accepted by the Appellant itself, it alleges that transformation took place.



44 Moreover, in the reasoning provided in the Appeal concerning the payment of shares, the Claimant emphasized that the payment was made based on a deduction from incomes, by increasing the incomes enormously. This is quite challenging and suspicious, because at the time when there is a new management, how is it possible to increase the incomes and organize the purchase of shares by an inexistent management, respectively, who was competent to increase salaries and sell the shares.

45 With regard to the alleged payment of shares in the amount over 58 percent, this was not proven by evidence, but by some notes written manually and by computer, without any ensuring and official element that could convince the Court that such payment really took place. These computer records were titled "the Book of Shares for 1990 and 1991". This document indicates that it is in contradiction to the decisions on transformation of socially owned property into JSCies issued on 30 April 1991 and the Decision of the Commercial Court of G./Đ. dated 20 June 1991, because it could not have shares in 1990 (retroactively), while this enterprise did not even initiate the transformation into a JSC. On the other hand, this procedure of payment was concluded for a little more than a year, even though it was foreseen to last at least 10 years. These aspects also determine a situation that this process could not be ordinary and based on the law.

46 In Art 4 of the decision on issuance of internal shares, it is stated, inter alia, that

*the SOE, now a JSC in a mixed ownership, issues 736 internal shares of ... Dinars, which are called on behalf ..., with the right of purchase of the shares at the same time by:*

*1. Employees employed in the enterprise*
*2. Employees who worked for the enterprise for more than two years, respectively the retired employees of the enterprise, who worked for more than two years before they retired*
*3. Other natural persons*
*4. Retirement and Disability Insurance Organization.*

47 In the minutes of the hearing, it is stated the judge's question on the number of employees with this enterprise, to which the Claimant replied "as many as the shareholders are", that is to say 185 employees. If it is like that, the retired persons, other natural persons and

the Retirement Organization have been excluded, as set forth with the above-mentioned decision. This shall mean that it is about an action in contradiction to decision [correct: decide] itself on [the] issu[ance] of internal shares.

48 Given that in Art 4 of this decision it was stated that this JSC issues 736 shares, in Art 7 of this decision it is stated that "the overall number of issued shares is 898", which is in contradiction to the previous number determined in Art 4.

49 In Art 7 [of this decision,] there were also determined the elements of shares, among which there are: registration of the buyer of the share, the note that the share is named or about the bearer, the time of payment of the dividend.

50 In the case file, there is no data about the issued shares, or the names of the buyers of shares or the model of payment of the dividend. In the case file, there is only one internal share and a voucher for payment of the dividend signed by the "Main Director" and it is sealed, but with no name of a person who eventually executed the payment. According to Art 8 of the decision on issuance and delivery of internal shares, according to the basis of payment of incomes, it was stated that "the payment of dividend is executed to the cashbox of the enterprise, wherein the employee is obliged to present the voucher on payment of the dividend". No evidence is available for this either, making the process unfinished and incomplete.

51 In Art 11 [of this decision,] it is stated that the procedure of sale and payment of shares shall be concluded completely within 10 years.

52 Art 16 [of this decision,] states that payment can be executed through a reduction from a part of employees' revenues, directly to the cashbox of the enterprise, or to the account of the enterprise that is registered in the Social Accounting Department in G./Đ.

53 Moreover, in Art 9 of the call for registration and purchase of internal shares, it is stated that the payment of internal shares bought and registered will be executed in dinars, in monthly instalments for the



next 10 years, effective from the conclusion of the contracts on purchase of internal shares.

54 There is no evidence that this payment was executed according to the decisions following the transformation and according to the laws applicable at that time. Moreover, there is no evidence that registration of these purchased shares took place. However, the Claimant alleges that this process was concluded; furthermore, that it was paid [correct: that it generated] more than it was supposed to, which was done within one year. However, in addition to allegations, the Claimant is required to prove that the transformation process was conducted in a proper legal manner, because the burden of proof, as defined by law, is on the Claimant.

Relations Between the KTA and the PAK

55 The Claimant uses one analysis or report compiled by a team of three persons who acted on behalf of the KTA from 2002 as evidence for the completion of the transformation process of the enterprise. By this report of 17 pages, it is alleged that the process of transformation was already concluded and that over 58 percent of the shares were transferred to the private owners. This report seems to have served also for filing the claim of the Claimant. As assessed by the Specialized Panel "this statement could indeed be treated as partial consent to the claim by the KTA, however, this consent is neither evidence nor it is binding for the Court or the remaining Respondent, PAK".

The Appellate Panel, upon examination of this report found that the report is only a private, unauthorized point of view of some so-called experts of the KTA, and it was never recognised [as having] the value of an expertise that could be decided by the Court. Moreover, the report is generalised and it does not contain any specific assessment, respectively no specific recommendation to the Claimant *E* and even more it is not mentioned by name at all.

56 On the other hand, there is another report of the PAK in the case file, which is compiled by a group of experts assigned by the PAK on 15 October 2010 which is completely different to the one of the KTA. Among others, it was stated that transformation proceedings of this enterprise had many deficiencies, making the process unsuccessful. This report mentions the lack of assessment of the value of social capital in

line [with] the laws of the time, there is no evidence on the payment of shares, using the bank account, as foreseen by the LE (77/88, Art 94 and 100), there is no financial document that would prove the financial transformation from the SOE to a JSC, there was no evidence found on investment in the enterprise, as a result of the sale of capital. It is clear that the PAK built its defence in this case exactly on the findings of this report.

**57** By analysing these contradictory reports of the predecessor and the successor of the SOE's administrator, the Court considers that none of them has a valid merit of evidence, despite the fact that the PAK's report is clearer and more concrete, concretely based on the lack of full compliance with the legal procedures on transformation of an enterprise.

Decision of the Commercial Court of G./Đ.

**58** The Appellant alleges that the Commercial Court of G./Đ., by its decision, confirmed that the process of transformation was concluded, because before such decision was taken, the Court, based on the undisputable legal documents possessed by the Claimant, has assessed or should have assessed whether the transformation was concluded.

**59** The Appellate Panel considers that the Decision of the Commercial Court of G./Đ. was based on law existing at that time, because it decided on the legal requirements for the initiation of the transformation process. However, there is no court assessment whether other criteria for the complete transformation have been met; respectively there is no assessment on the flow of proceedings after the Court Decision rendered on 20 June 1991. This cannot be a court decision determining that these proceedings were concluded successfully. Therefore, the reference made by the Appellant on this decision is not determinant for the SCSC, because this decision does not indicate the complete flow [correct: chain of actions] and the compliance with procedures occurring later on in this enterprise. The decision of the Court further indicates a transitional name of this enterprise as SOE and JSC, and contains no references affecting the flow of the process for completion of transformation, which should have been done pursuant to laws existing at that time.



**60** Finally, the other evidence in the case file, lacking assessment of social capital, lacking evidence on purchase of shares indicate this process was failed [from] the very beginning of the transformation process, respectively as of the moment the interim measures were introduced to these enterprises. All other efforts to prove by some [pieces of] evidence that this process was concluded are more indicative and fictive proofs, which the Court does not consider as credible legal evidence.

**61** Therefore, based on these reasons and pursuant to Art 10.10 of the LSC, it was decided as in the enacting clause.

## 16.

## Inadmissibility of an Appeal Filed Against a Final Judgment of a Regular Court

Final Judgment; Final Decision; Regular court Decision; Admissibility of Appeal; Inadmissibility; Extraordinary remedy

LCP Art 17, 18, 19, 182.2(f), 245, 232, 214.4, 194; UNMIK Reg 2008/4 Sec 4

1. **An Appeal against a final judgment or decision of a regular court is inadmissible.**

2. **Final judgments or decisions of the regular courts may be challenged by extraordinary remedies only.**

*Decision of 4 December 2014 – AC-II.-14-0015 (*Case A: *Judgment of Municipal Court of P. of 18 February 2009 – C.no 192/08;* Case B: *Judgment of District Court of P. of 11 September 2009 – Ac.no 255/2009)*

1 **Factual and Procedural Background:** On 25 March 2008 the Claimant filed a Claim with the Municipal Court of P., claiming from the Respondent recognition of the ownership right over the cadastral parcel no ..., registered with the possession list no ..., CZ – P., at the place called "V. A.".

2 On 11 September [correct: 18 February] 2009, the Municipal Court of P. rendered Judgment C.nr. 192/08 whereby the Claim of the Claimant was granted, with reasoning that the Claimant acquired this right by adverse possession, because the Claimant is in possession of this property with no interference since 1972. This Decision was rendered by the Court upon examination of numerous proofs which were not contested by anyone.

3 On 4 May 2009, the Respondent filed an Appeal with the District Court of P. through the Municipal Court of P.



4 On 11 September 2009, the District Court of P., issued Judgment Ac.no 255/2009, whereby [it] has rejected the aforementioned Appeal as ungrounded. Pursuant to the reasoning of this Judgment, no breach of provisions of the contested procedure was ascertained, as alleged by the Appellant.

5 On 6 October 2009, on the Respondent ..., was served the Judgment of the District Court of P.

6 On 20 October 2009, the PAK as administrator of the SOE, filed an Appeal with the SCSC, claiming annulment of the Judgments of regular courts, because they were rendered by incompetent bodies.

7 In the Appeal it is stated that with their Decisions the Municipal Court and District Court of P. decided in [correct: despite] the lack of jurisdiction and as a consequence have breached Art 17, 18, 19 and Art 182.2(f) of the LCP, as well as provisions of Sec 4 of UNMIK Reg 2008/4. These Courts were obliged *ex officio* to announce themselves incompetent to adjudicate this matter.

8 On 19 November 2009, the Presiding Judge of the SCSC Trial Panel issued an Order to request from the Municipal Court of P. case file C.no 192/08 and on 3 December 2009, the Municipal Court of P. submitted the case file C. no 192/08 to the SCSC.

9 On 5 March 2010, the Claimant submitted the response against the Appeal considering it as ungrounded.

10 The Specialized Panel, upon examination of the documents, provisions of the LSC and the Decisions of the SCSC Presidium for this particular case rendered to close the case file and refer the case to the Appellate Panel by giving a new number to the case.

11 On 6 August 2014, the Appellate Panel served the PAK's Appeal on the Claimant for response. The Claimant responded to the Order [serving the Appeal] on 26 August, and stated that the PAK's Appeal is based only on paraphrasing but not on legal grounds. According to the Claimant, the PAK was part of the Court hearings together with the Respondent and have [correct: it has] used all legal challenging remedies

permitted by law. However, it has failed to exercise extraordinary legal remedies within the legal timeframe. As a consequence, according to the Claimant, the Judgment is now in force and due to legal security matter [correct: legal certainty], this Judgment cannot be quashed, because the SCSC has this kind of approach, by paraphrasing Decision SCA-10-0036. The Claimant notifies the Court once more that his family uninterruptedly used the property since 1971, which is subject to this matter, on which their family house was constructed. The Claimant states that registration of the property in the name of the SOE does not itself determine the ownership.

12 The Claimant has attached to this Response some photos of the house and fence of the house, which is an old house, as well as a statement of *R K* who testifies that his father has purchased this property from *N (l) M*, who later on has sold it to *H (S) K*. A copy of a contract drafted in the Serbian language to confirm the statement of the witness is also attached.

13 On 6 August 2014, the Appellate Panel submitted an Order also to the PAK, whereby it is requested confirmation of the date when the PAK was called to take part in the court hearing summoned by the Municipal Court of P. and when it has received the objected Judgment of the District Court of P.

14 The PAK, on 20 August 2014, submitted a Response, stating that the PAK and the Respondent in the proceeding with the Municipal Court of P. has never been duly summoned. In addition, pursuant to legal provisions applicable at the time when the decision was rendered, no regular court had an authority (jurisdiction) to decide related to disputes on socially-owned properties, without having the case preliminarily referred by the SCSC.

15 Concerning the request of the Appellate Panel on the time when the PAK received the objected Judgment, the answer is as follows: "... the judgment bears the receipt stamp of 9 October 2009, but this is unimportant because the PAK's Response of 20 October 2009, is related to jurisdiction of the courts who decided for the case", and suggests the SCSC to apply Art 4.5.1 of the LSC.



**Legal Reasoning:** The Appeal is inadmissible. 16

Pursuant to Art 64.1 of the Annex to the LSC, the Appellate Panel decided to dispense with the oral part of the procedure. 17

The PAK's "Appeal" to set aside the final Judgment is inadmissible because the Appeal was filed against a final Judgment before the regular courts. Pursuant to applicable law, the final judgments may be challenged by extraordinary legal remedies only. In the case at hand, the PAK's Appeal cannot be interpreted according to its content as any extraordinary legal remedy as it does not contain the necessary elements required for such challenging remedy. It may not be considered as a request for protection of legality because such request shall only be filed by the State Prosecutor (Art 245 of the LCP). It cannot be considered as a request for re-opening of the proceedings because of lack of any ground set out in Art 232 of the LCP. Finally, the submission of the PAK cannot be considered as a revision with any chance to success, because the grounds set in Art 214.4 of the LCP are not given. It is due to the fact that the Respondent neither raised the question of missing jurisdiction in his Appeal to the District Court of P. nor is the jurisdiction a legal question which is examined *ex officio* by the Court of second instance (see Art 194 [of the LCP] where the jurisdiction according to Art 182.2(f) [of the LCP]) is not mentioned). 18

Therefore, in line with Art 10.10 of LSC, it is decided as in the enacting clause of this Decision. 19

**Editor's note:** This Decision further develops the jurisprudence established with Decision SCA-10-0030.

## 17.

## No jurisdiction over Cases in Execution Procedure

Execution procedure; Jurisdiction

LSC Art 4.1, 4.6; UNMIK Reg 2002/13 Sec 4.3; UNMIK Reg 2008/4 Sec 4.3; LC Art 18

1. **Whether a case falls in the jurisdiction of the SCSC is to be decided exclusively by the SCSC pursuant to Art 4.6 of the LSC.**

2. **The SCSC does not have jurisdiction to decide over cases in the execution procedure.**

*Decision of 5 February 2015 – AC-II.-14-0047 (First instance: Decision of Municipal Court of P. of 2 December 2011 – E.no 1366/11)*

1 **Factual and Procedural Background:** On 14 July 2011, the Creditor filed a petition to allow coercive enforcement of the final judgment of the Municipal Court of P./P. C.no ... of 2 October 1991 and to oblige the Respondent, Debtor "*P E*" in P./P., respectively, to hand over to it free possession and use of cadastral parcel no ... CZ D., with an area of ... are, on behalf of implementation of [correct: in order to implement] the contract on exchange of immovable properties OV.no ... dated 3 July 1971.

2 On 2 December 2011, the Municipal Court of P./P., by Decision E.no 1366/11, dismissed the proposal for execution of the Creditor *R S* against the Debtor AIC "*P E*" P./P. as impermissible [correct: inadmissible], stating in the enacting clause that it is an adjudicated matter, *res judicata*. The execution judge in the reasoning of the challenged Decision stated that the Judgment for which the execution is requested is inappropriate for execution.

3 On 30 December 2011, the representative of the Claimant/Creditor filed an Appeal with the District Court of P./P. against this Decision, asking the Court of Second Instance to approve the Appeal as grounded, to amend the challenged Decision or to send the case back to the same for retrial-execution of the Judgment of the Municipal Court of P./P. C/no ... of 2 October 1991, to complete the execution procedure and, that the Debtor acknowledge its obligation arising from the final Judgment.



4 On 25 June 2012, the District Court of P./P. transmitted the case files Ac.no ... and the case files of the Municipal Court of P./P. E.no 1366/2011, to the SCSC [to decide] on the Appeal.

5 On 24 October 2014, the Specialized Panel of the SCSC closed the case as per this Appeal, registered as C-III-12-1101 and, ordered the Registry to register the case for the Appellate Panel which took the no AC-II.-14-0047.

6 By an Order dated 26 November 2014, the Appellate Panel served the Appeal and the supporting documents on the Respondent/Debtor for a reply to the Appeal.

7 In Response to the Appeal, the Respondent/Debtor entirely contested the Appellant's Appeal as not founded in law. PAK fully supports the Decision E.no 1366/11 dated 2 December 2011, considering it as fair and based on law. It is not clear for the Respondent as to what statutory relation is the Claimant with [his] predecessor. The claim was filed contrary to the procedural principle "*legitimacio ad causam*". The Claimant lacks active legitimacy for the proceedings with the legal action because he failed to prove that he is an heir of his predecessor. According to the Respondent, the Appeal filed contains procedural violations of Art 27.2(e) of the Annex to the LSC, and Art 253 of the LCP, since the Appeal does not contain essential elements an Appeal should contain and does not contain the legal arguments upon which the claim is based upon. It is not clear for the Respondent which disputed parcel is in question because the Claimant failed to enclose the contract upon which he claims to realize his right. Also, the Respondent asserts that the Appeal was filed contrary to the principle of res judicata. Therefore, it proposed the Court to dismiss the Appeal as inadmissible and to affirm the Decision C.no ... dated 2 October 1991.

8 **Legal Reasoning:** The Appellate Panel has no jurisdiction to consider the Appeal.

9 Pursuant to Art 64.1 of the Annex to the LSC, the Appellate Panel decided to dispense with the oral part of the procedure.

Lack of jurisdiction of the Special Chamber to Consider the Appeal

10 The Municipal Court of P./P., by Decision E.no 1366/11 dated 2 December 2011, dismissed the proposal for execution of the final Judgment of the Municipal Court of P./P., C. no ... of 2 October 1991 as impermissible [correct: inadmissible], of the Creditor *R S* against the Debtor AIC "*P E*" in P./P., stating that the case is an adjudicated matter, *res judicata.*

11 On 25 June 2012 the District Court of P./P. transmitted to the SCSC the Appeal of the Claimant/Creditor filed against the challenged decision E.no 1366/2011 dated 2 December 2011, as well as the case files Ac.no ..., and the case files of the Municipal Court of P./P. E. no 1366/2011 for deciding as per the Appeal.

12 According to Art 4.1 of the LSC, the SCSC shall not have jurisdiction to decide over cases in the execution procedure.

13 The Appellate Panel estimates [correct: holds] that Sec 4.3 of UNMIK Reg 2002/13, in conjunction with Sec 4.3 of UNMIK Reg 2008/4, to which provisions the District Court of P./P. is referring, is not dealing with the regular remedies of the Appeal, including the Appeal which in this case is filed against a procedural Decision of the Municipal Court of P./P. in the execution procedure. The case was never referred from the SCSC; thus, this provision which the former District Court of P./P. was referred to is not applicable for the case at hand.

14 Whether a case falls under the jurisdiction of the SCSC or not is to be decided exclusively by the SCSC pursuant to Art 4.6 of the LSC. As per the above legal provision, it is clear that the SCSC has an exclusive authority in deciding whether a particular case falls within its jurisdiction. Therefore, pursuant to Art 4.6 of the LSC, the SCSC is the ultimate authority to settle the matter of jurisdiction. As in the case at hand



we are dealing with an execution matter, the Appellate Panel decided to send back the case to the Court of Appeals of P./P.

15 Pursuant to Art 18 of the LC, the Court of Appeals retains jurisdiction to adjudicate the Creditor's Appeal filed against the challenged decision of the Basic Court in P./P. issued in an execution procedure.

16 In light of the foregoing, it is decided as in the enacting clause.

## 18.

## Applicable Law for Complaints Against Decision of a Liquidation Authority/Prescription

Decision of PAK Liquidation Authority; Special law (lex specialis); Prescription; Unpaid salary; Information letter; Applicable law; Liquidation procedure

PAK Law2011; LSC Art 10.4.1; Law on Associated Labour Art 608; UNMIK Reg 1999/24 Sec 1; LE

1. **For complaints against decisions of a liquidation authority in regard to requests for unpaid salaries, the PAK Law2011, which regulates the liquidation procedure and satisfaction of creditor claims, is the special law (lex specialis) and takes precedence over the prescription provisions in the Law on Associated Labour, which is a general law (lex generalis).**

2. **The letter by which the PAK notifies employees on the termination of their employment and that the unpaid salaries remain the responsibility of the employer suspends prescription.**

*Decision of 4 March 2015 – AC-I.-14-0323 (First instance: Judgment of 25 September 2014 – C-IV.-14-1201)*

1 **Factual and Procedural Background:** On 9 July 2013 the Claimant S B from P./P. filed a complaint against the decision of the Liquidation Authority for SOE *D* (in liquidation) no PRN..., dated 6 June 2013, whereby his request for compensation of unpaid salaries in an amount of ... euros was rejected.

2 On 25 September 2014, the SCSC Specialized Panel by Judgment C-IV.-13-1201 granted the Claimant's complaint as grounded and set aside the PAK/Liquidation Authority decision no PRN..., dated 6 June 2013. By this Judgment the Respondent was obliged to pay the Complainant – *S B* –, compensation for unpaid salaries covering the period March - November 2006 in the amount of ... euros within 15 days from the date the Judgment becomes final.



3 The Specialized Panel reasoned that the Claimant's complaint is grounded and shall set aside the appealed [correct: contested] PAK's decision given that the Complainant's request for compensation of unpaid salaries was rejected with no grounded reasons, and the reasons provided were not grounded and admissible for the Court. Further, the Specialized Panel reasons that the justifications are unclear and meaningless for the parties. According to the Specialized Panel, the Respondent – PAK – by its defence against the complaint and counter-response filed against the Complainant's Response did not contest the fact that the Complainant has worked for the SOE covering the period March - November 2006, until when the Complainant's employment with the SOE by the PAK's notice, dated 17 November 2006, was terminated. By this notice the Complainant was made aware that the salaries pending to be paid pursuant to the contract of employment with the employer remain to be reviewed in the liquidation procedure, for which he will be informed about the commencement of these procedures. Further, the Specialized Panel has reasoned that [it] has not accepted the PAK/Liquidation Authority's Defence that the Claimant's request is prescribed given that such request was not filed with the Court within 3 years, nor the consideration of the Respondent that Art 608 of the Law on Associated Labour shall apply. The Specialized Panel replied to this Respondent's Defence by an opinion that the PAK Law2011 and its Annex is a special law (*lex specialis*) and by this law is regulated the liquidation procedure including the way of meeting creditor requirements, namely those for the employees of SOEs in liquidation.

4 On 24 October 2014, the Respondent filed an Appeal against the Decision of the Specialized Panel C-IV.-14-1201 dated 25 September 2014, which contests the Judgment over procedural grounds and based on merits. The Respondent by the Appeal alleges that the procedural background prescribed in the appealed Judgment is incorrect and consequently the outcomes [correct: reasoning] of the Specialized Panel are wrong. Moreover according to the Respondent, this Judgment failed to meet requirements [of] Art 10.4.1 of the LSC. The Respondent by the Appeal further contests the appealed Judgment over the matter related

to grounds of the case. The Respondent alleges that the legal opinion of the Specialized Panel was wrong that Art 608 of the Law on Associated Labour may not apply, which according to the Respondent is still applicable pursuant to UNMIK Reg 1999/24 (Sec 1). The Respondent in [its] Appeal contests the legal opinion of the Specialized Panel, that the complaint's prescription is not a matter of the case in hand. The Respondent repeats that the Claimant filed a request which has been prescribed and that the Claimant provided no evidence that [he] has requested from any court to be compensated for his unpaid salaries. According to the Respondent, the letter sent to the Claimant on the termination of employment relationship, says that the Complainant was only notified for his right to apply for the 20 percent proceeds from privatization, and this letter has no effects on salary matters and alleges that the conclusion of the Specialized Panel is incorrect to consider this letter as to make aware the Claimant that his request for [the unpaid] salaries based on employment agreement will be reviewed after the commencement of the SOE liquidation. The Respondent requests from the Appellate Panel to set aside the appealed Judgment of the Specialized Panel or to adjudicate the case over on grounds [correct: merits] and to reject the Claimant's complaint against the decision of the Liquidation Authority or to uphold the Liquidation Authority's decision of the SOE *D*.

On 24 November 2014 the Claimant filed a Response to the Appeal
5 whereby he requested from the Appellate Panel to reject the Respondent's Appeal and to uphold the Judgment of the Specialized Panel as correct and legally grounded. Moreover, the Claimant by a Response to the Appeal stated that the Law on Associated Labour is no longer applicable which is abrogated by the LE; therefore, he contests the Respondent's assertion concerning the prescription of the request in virtue of Art 608 of the Law on Associated Labour. The Claimant stated that the conclusions and legal reasoning of the Specialized Panel are correct and therefore the appealed Judgment shall be upheld.

**Legal Reasoning:** The Appeal is admissible but ungrounded.

6

Based on Art 64.1 of the Annex to the LSC, the Appellate Panel
7 decided to dispense with the oral part of the proceedings.

Merits of the Appeal and the Assessment of the Appellate Panel



The appealed Judgment of the Specialized Panel is correct in the outcome and in the legal reasoning; therefore, it shall be upheld. 8

The Appellate Panel considers that the conclusions reached and legal reasoning utilized by the Specialized Panel in the appealed Judgment 9
is correct and as such is accepted by the Appellate Panel. The Claimant by his request filed with the Liquidation Authority has requested unpaid salaries from March – November 2006. None of the parties contest the fact of the Claimant's employment and the unpaid salaries for said period. The Respondent stands by the assertion that the Claimant's request for the unpaid salaries is prescribed pursuant to Art 608 of the Law on Associated Labour. However, this reason used in its decision when rejecting the request is incorrect. The letter dated 17 November 2006 which the Respondent served on the Claimant, whereby [it has notified] the Claimant on the termination of the employment on the date the SOE was sold, namely 17 November 2006, and also informs the Claimant that the salaries owed pursuant to the contract of employment with the employer remain the responsibility of the employer whereas such requests will be reviewed in accordance with liquidation procedures for which he will be notified. This letter in fact notifies the Claimant that it is the employer's responsibility to deal with the employees' salaries if they were not paid. In view of these reasons, the Specialized Panel has correctly decided when granting the Claimant's complaint as grounded and set aside the decision of the Liquidation Authority for the reasons stated in the Judgment, the reasons which are also accepted by the Appellate Panel.

The Appellate Panel disagrees with the allegations of the Respondent
10 that the appealed Judgment has an incorrect procedural background and because of this the conclusions and reasoning of the Specialized Panel ended up to be wrong. The Judgment of the Specialized Panel did not breach Art 10.4.1 of the LSC, as it is alleged by the Respondent in the Appeal considering that reasons are provided and the matters are clearly and convincingly clarified for the parties. The Respondent also in the Appeal raised the matter of prescription of the Claimant's request. The Appellate Panel considers that the request's prescription is not applicable for the case at hand, given that the Law on PAK which regulates the liquidation procedure and the way to fulfil creditors' requirements as a special law shall apply for this case in relation with the

Law on Associated Labour which is a general law. The Appellate Panel disagrees with the Respondent's assertion that the information letter dated 17 November 2006 served on the Claimant, was of a nature of notification only for the 20 percent entitlement. This letter does not expressively address the 20 percent entitlement issue, although it can be understood [in such way], but it refers to salaries and other creditor claims which the Claimant may have against the SOE in liquidation. Therefore, for said reasons the Respondent's assertion is inadmissible that this letter has not impacted on the realization of the right of the Claimant for unpaid salaries by the SOE.

From the above and pursuant to Art 10.10 of the LSC, it is decided
11 as in the enacting clause.



## 19.

**Procedural and Material Aspects of Procedures Dealing with Discrimination of Workers of SOEs**

Discrimination; SCEL; Workers list; Provisional list; Albanian worker; Serbian worker; Equal treatment; Minority; Interim measure; Final list; Ethnicity; Inadmissibility; Failure to challange provisional list

UNMIK Reg 2003/13 (amended by UNMIK Reg 2004/45) Sec 10.4; Anti-Discrimination Law no 2004/3 (adopted on 30 July 2004, promulgated by UNMIK Reg 2004/32) Art 8, 8.1; Law on Labour Relations under Special Circumstances (Official Gazette of the Republic of Serbia 40/90); Law on Interim Measures for the Social Protection of Self-Management Rights and of the Social Property (Official Gazette of the Socialist Republic of Serbia no 49 of 28 October 1989, not applicable as containing discriminatory elements as defined in UNMIK Reg 1999/24); UNMIK AD 2008/6 Sec 67.2

1. **To claim discrimination, a complainant against the non-inclusion in a final employees list of an SOE needs only to establish the specific facts from which it can be presumed that there was discrimination - direct or indirect.**

2. **The reverse of the burden of proof requires the respondent to prove the contrary, i.e. that there was no violation of the principle of equal treatment.**

3. **Persons presumed subject to discrimination are workers who were not included in the final lists of employees to benefit from a 20 percent share of the proceeds due to their ethnicity, political and religious beliefs. Depending on the period, these were in particular:**
   a) **workers of Albanian, Ashkali, Roma, Egyptian, Gorani, and Turkish ethnicity, who were dismissed for discriminatory reasons between 1989 and 1999 and**

**b) workers of Serbian ethnicity, who did not report to work after June 1999.**

**4. Failure to challenge the provisional list does not render a complaint against the final list inadmissible.**

*Judgment of 12 March 2015 – AC-I-14-0023 (First instance: Judgment of 14 January 2014 – C-II.-13-0040)*

1 **Factual and Procedural Background:** The SOE "*G*" in D./D., was privatized by the PAK on 6 November 2006.

The final list of employees eligible to a 20 percent share of proceeds from the privatization of the SOE was published on 11 April 2013, and the deadline for submission of complaints with the PAK against the final list was 4 May 2013.

2 On 14 January 2014, the Specialized Panel of the SCSC rendered Judgment C-II.-13-0040 and decided the following:

3 I. The complaints of the complainants below are approved as grounded. These employees shall be included in the final list of employees eligible to a 20 percent share of proceeds from the privatization of SOE "*G*", in D./D.[:] 1. *I G* (C 0004), 2. *S (I) M* (C 0005), 3. *M B* (C 0009), 4. *R (R) T* (C 0020),

4 II. The Complaints of the Complainants below are rejected as ungrounded,: *I I* (C 0001), *B (D) G* (C 0002), *I Q* (C 0003), *N (M) M* (C 0007), *K H* (C 0008), *S (X) R* (C 0011), *Z (S) B* (C 0012), *N K* (C 0013), *X (U) I N* (C 0014), *G (I) F* (C 0015), *K (H) B* (C 0016), *R (I) Q* (C 0017), *T (S) H* (C 0018), *H (Z) T* (C 0019), *R O – D./D.,* (C 0021), *X (S) V* (C 0022), *S C-M* (C 0023), *S T* (C 0024), *R S* (C 0025), *M B* (C 0026), *S N* (C 0027), *H I (C0028), M L (C 0029), H I (C 0030), J O (C 0031), M T (C 0032), N G* (C 0033), *N P* (C 0034), *A T* (C 0035), *Z U* (C 0036), *I D* (C 0037), *R R* (C 0038), *S N* (C 0039), *R K* (C 0040), *A (A) A* (C 0041), *I (H) L* (C 0042), *H A* (C 0043), *I B* (C 0044), *M J* (C 0045), *K (U) M* (C 0046), *X (B) J* (C 0047), *A (T) I* (C 0048), *R (D) M* (C 0049), *X (S) A* (C 0050), *Z (S) I* (C 0051), *X (A) C* (C 0052), *B (S) S* (C 0053), *D (S) C* (C 0054), *C (B) I L* (C 0055), *K (M) D* (C 0056), *E L* (C 0057), *K (H) B* (C 0060), *B (R) D* (C 0061), *N (A) F* (C 0062), *X (S) N* (C 0063), *S G* (C 0064), *H (H) B* (C 0065), *H (I) K* (C 0066), *T (B) H* (C 0067), *L (M) O* (C 0068), *A (U) M* (C 0069), *D (I) T* (C 0006), *M (H) O* (C 0010).



III. The Complaints of the Complainants *M G* (C 0059), *T D* (C 0070), *M S* (C 0071), *H H* (C 0072), *G (T) F* (C 0058), are dismissed as [being] out of time. 5

By a [correct: In the] challenged Judgment, the Specialized Panel of the SCSC approved as grounded the Complainants' Complaints in point I of the enacting clause and decided to include them in the final list, because the Complainants claimed discrimination and the Respondent failed to prove by any evidence that the principle of equal treatment of the workers of the SOE was not violated[. B]ased on that ground, the SCSC Specialized Panel assessed that the above complainants have met the requirements of Sec 10.4 of UNMIK Reg 2003/13, amended by UNMIK Reg 2004/45, for inclusion in the final list eligible to a of 20 percent [share]. 6

In point II of the enacting clause of the challenged Judgment, the Specialized Panel rejected the Complainants' Complaints on the grounds that the above failed to meet legal requirements pursuant to Sec 10.4 of UNMIK Reg 2003/13. 7

In point III of the enacting clause of the challenged Judgment, the Specialized Panel dismissed the Complaints as inadmissible, on the grounds that the Complaints were filed out of the time limit provided by law. 8

There are 14 Appeals filed by the following Appellants against this Judgment: 9

The Appellant A 0001, *H (Z) T*, on 28 January 2014 filed an Appeal against Judgment C-II.-13-0040 of 14 January 2014. The Appellant requested the Appellate Panel to review the challenged Judgment, approve his Appeal as grounded and include him in the list of workers eligible to a 20 percent share of proceeds from the privatization of the SOE.

The Appellant stated that he worked with the SOE since 18 August 1987. On 1 April 1993, Serbian interim measures [were] imposed and, as in most enterprises, even in their enterprise; dismissal of workers due to ethnicity was put in place [correct: started]. In 1998, the Appellant was also dismissed in an arbitrary manner by the same

management. The Appellant asserts that after the war in Kosovo, he reported several times to continue to work in the factory, but due to the factory's damage and due to the non-operation of the factory, he remained in the workers` waiting list until the privatization of the SOE, as many other workers. The Appellant further asserts that he feels discriminated against even now by non-inclusion in the final list and unequal treatment of the employees. The Appellant adds that in the appealed Judgment [it] is not rightly determined the factual situation[. T]he factual situation is reflected in his Workbook and in the Matrix Book, which indicates that they are not closed, and no decision was ever taken by the SOE to terminate employment relationship. The Appellant attached as evidence a copy of the Workbook, which is open and a certificate issued by the former management of the SOE, [stating that] due to non-functioning of the factory [he] was left in the workers' waiting list until its privatization, Matrix Book no ..., opened, payroll dated 30 April 1993, personal income list, statement on discrimination.

The Appellate Panel, by Order dated 6 June 2014, served the Appellant's Appeal and supporting documents on the Respondent for a response. The PAK received the Order on 12 June 2014, however, no response to the Appeal was filed.

**10** The Appellant A 0002, *K (H) B*, on 31 January 2014, filed an Appeal against Judgment C-II.-13-0040 of 14 January 2014. The Appellant requested the Appellate Panel to review the appealed Judgment, to approve the Appeal as grounded and to include her in the list of eligible employees, entitled to a 20 percent share of proceeds from the privatization of the SOE. The Appellant requested the annulment of the challenged Judgment, namely point II of the enacting clause.

The Appellant alleged that she worked in the SOE from 15 May 1987 to March 1998, when she was dismissed based on the Serbian interim measures in a discriminatory manner. The Appellant asserts that PAK's ascertainment that she did not work after the last war in Kosovo are unstable [correct: unreasonable]. The Appellant alleges that she has an employment contract no ..., dated 15 September 2002, which is attached to this Appeal. The Appellant added that the factual situation in the appealed Judgment is not correctly determined. The Appellant alleges that she had worked in the SOE until its privatization. The Appellant proposes to hear the witness Mr *M A*, SOE Manager from G.



village, Municipality D./D., *D C, H I* both from D./D. and *S S*, [from] L. village, Municipality D./D.

The Appellant asserts that all documents indicating her work relationship with the SOE can be found in the first instance file. **11**

The Appellate Panel, by Order dated 6 June 2014 served the Appellant's Appeal and supporting documents on the Respondent to file the response to the Appeal. The Order was served on [correct: received by] PAK on 6 December [correct: 12 June] 2014, but no response to the Appeal was filed thereto.

On 5 July 2014, the Respondent (hereinafter: Appellant) A0003, filed an Appeal against the Judgment of the Specialized Panel, C-II.-13-0040, partly challenging the appealed Judgment, namely point –I– of the enacting clause of this judgment, whereby the Complaints of 4 (four) Complainants were approved. **12**

The Appellant alleges that in the appealed Judgment, there was a wrong application of substantive law and a wrong determination of the factual situation. The Appellant further alleges that with the appealed Judgment, the Complainants' Complaints were approved as grounded without any relevant fact, on the basis of which discrimination could have been proved, and the Complainants did not provide facts and proofs from which direct or indirect discrimination could have been established. The Appellant further alleges that the Complainants did not provide sufficient documents to prove their work relationship with the SOE, and that the above did not meet requirements set forth in Sec 10.4 of UNMIK Reg 2003/13. Thus, according to the PAK, the wrong application of substantive law and the incorrect interpretation of the discrimination resulted in the ungrounded approval of entitlements of Complainants mentioned in point –I– of the challenged Judgment. According to PAK, none of the Complainants included in point I of the [enacting clause of the] challenged Judgment was able to provide relevant facts, on the basis of which could have been proved the fact of inequality and the grounds for application of direct or indirect discrimination pursuant to Art 8.1 of the Anti-Discrimination Law. The Complainants failed to provide facts on discrimination and the Respondent could not provide [correct: bring forward] its counter-arguments on discrimination. According to the PAK, in the reasoning of the challenged Judgment, regarding a number of Complainants included in point I of

the Judgment's enacting clause, it was ascertained that a number of former employees did not possess a decision on the termination of the work relationship. Even this time, the PAK refers to the Judgment of the Trial Panel of the SCSC in the case of the SOE "*R/M*", on the basis of which the burden of proof on discrimination rests with the Complainants, who shall provide facts on direct or indirect discrimination, as well as a Judgment in regard to the SOE "Kooperativa *B*" – F./U., SCEL-10-0013 dated 28 December 2012. The above judgments, as stated before, do not follow a constant line of the Appellate Panel of the SCSC on the manner of interpretation of discrimination.

**13** The PAK proposes the Appellate Panel to approve the Appeal as grounded, to set aside point I of the enacting clause of the challenged Judgment, and to reject the Complainants' Complaints as ungrounded.

**14** The Appellate Panel, by Order dated 6 June 2014 served the PAK's Appeal on the Complainants [mentioned] in point I of the enacting clause of the challenged Judgment. The Response to the Appeal was provided by the following Complainants: *S M, I G* and *R (R) T*, who entirely rejected the PAK's Appeal as ungrounded, requesting the Appellate Panel of the SCSC to reject this Appeal as ungrounded and confirm point I of the challenged judgment as correct and legally grounded. The Complainant *R T*, in the Response to the Appeal proposed the Court to schedule a hearing in order to prove his allegations.

**15** Appellant A 0004, *X (U) I-N*, on 7 February 2014 filed an Appeal against Judgment C-II.-13-0040 of 14 January 2014. The Appellant requested the Appellate Panel to review the challenged Judgment, to approve her Appeal as grounded and to include her in the list of eligible employees for a 20 percent share of proceeds from the privatization of the SOE, the annulment of the challenged Judgment, respectively point II of its enacting clause. The Appellant asserted that she worked with the SOE from 15 May 1987 until the privatization of the enterprise. The Appellant maintained that her Workbook was still open. She provided to the SCSC, as evidence, the following documents: Statement on acceptance of rights and responsibilities determined by general normative acts of the Factory no ..., dated 13 January 1989; decision concerning the use of the annual leave no ..., dated 16 May 1990; decision concerning the use of annual leave no ..., dated 19 June 1989; decision



on assignment of duties and responsibilities in the workplace no ..., dated 13 January 1989; Workbook no ..., opening date: 5 May 1987, unclosed, Matrix Book of employees, in which she is listed under no ... . She attached to her Appeal the payroll for 1988, 1989, and 1990 in original. The Appellant feels to have been subjected to discrimination by her non-inclusion in the final list.

**16** The Appellate Panel by Order dated 6 June 2014, submitted the Appellant's Appeal and supporting documents on the Respondent for filing a response. The PAK received the Order on 12 June 2014; however, it did not file any response to the Appeal.

**17** Appellant A0005 *X (S) N*, on 7 February 2014 filed an Appeal against Judgment C-II.-13-0040 of 14 January 2014 because of a wrong and incomplete determination of the factual situation and a wrong application of substantive law.

The Appellant requested the Appellate Panel to review the challenged Judgment, to approve her Appeal as grounded and to include him in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE, by the annulment of the challenged Judgment, namely point II of the enacting clause of the Judgment. The Appellant alleged that he worked with the SOE from 18 August 1987. The Appellant asserted that all documents confirming his work relationship, as evidence, were submitted to the First Instance. The Appellant alleges that he feels discriminated toward his fellow workers who are included in the final list. He has now attached a copy of the Matrix Book to his Appeal, in which the Appellant is listed under no ..., statements of personal income for the Appellant and other employees of the SOE and the list of personal incomes for 1989. Also, a notice dated 11 November 2013 signed by the SOE manager *M A* and managers of the syndicate [correct: trade union]: *J D, S S, M N* and attorney *Q F*.

**18** On 11 February 2014, the Appellant submitted five Workbooks which are damaged, and 21 photographs of the offices in which were kept the personal files of employees who appealed with the Court. The Appellant stated that these documents [serve] as evidence to prove that during the war in Kosovo, the offices were demolished and personal files were destroyed. Therefore, he requested the Court to consider

such circumstance, because a number of Appellants could not provide their complete files of their work relationship.

The Appellate Panel, by an Order dated 6 June 2014 served the Appellant's Appeal and supporting documents on the Respondent for filing the response. The Order was served on the PAK on 12 June 2014, however no response to the Appeal was filed.

**19** The Appellants A 0006 *I I, B (D) G, I Q, D (I) T, N (M) M, K H, M (H) O, S (X) R, Z (S) B, N K, G F, T (S) H, R (S) O, X (S) V, S (C) M, S T, M L, H S, M T, N P, A T, Z U, R R, S N, R K, A (A) A, I (H) L, H A, M J, I B, X (B) J, R (D) M, X (S) A, X (A) C, K (M) D, E L, B (R) D, N (A) F-S, S G, H (H) B, H (I) K, T (B) H, L (M) O, A (U) M* from [village] *S. i E./G. S., D./D.* filed an Appeal on 7 February 2014, against Judgment C-II.-13-0040 of 14 January 2014, due to erroneous and incomplete determination of the factual situation and wrong application of substantive law.

Appellant I I requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to include him in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE. The Appellant requested the annulment of the challenged Judgment, namely point II of the enacting clause. The Appellant asserted that he worked for 26 years with the SOE. [As h]e could not provide a copy of the Workbook because it was burned during the war, the Court should have considered it as vis major. The Appellant did not file an appeal against the provisional list because he is illiterate and was not aware that he should file an appeal against the provisional list. Therefore, he requested approval of his Appeal as grounded.

**20** Appellant *B (D) G* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to include him in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE, and requested the annulment of the challenged Judgment, namely point II of the enacting clause. The Appellant asserted that his Workbook was burned during the war in Kosovo, [when he was working] in the Factory of Massive Furniture within the SOE, "*G*" D./D. During the war, there were deployed Serbian military and police forces and they destroyed and burned the files they found in the factory. The Appellant claims that he submitted all the documentation that he possessed for a confirmation



of his employment relationship in the first instance such as: Report on injury at work; confirmation of the delivery of application-cancellation of insurance, decision no ... dated 7 April 1994, document no ... dated 4 October 1994, decisions concerning the use of annual leave, statement no ... dated 15 October 1987, the decision on job assignments and responsibilities ... dated 15 October 1987, decision on unpaid leave with a duration of one year, no ... dated 30 April 1990, decision on unpaid leave for a period of two months no ... dated 19 June 1991, personal incomes list for May and June 2003. [Furthermore, he submitted a] brief protocol, which indicates him listed in no. ... ... [of the Matrix Book] dated 13 November1997, no ... dated 2 April 1998 and the other one dated 26 March 1997.

**21** Appellant *I Q* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to include him in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that his Workbook was burned during the war in Kosovo, [when he was working] in the Factory of Massive Furniture within the SOE "*G*" in D./D. During the war, there were deployed Serbian military and police forces and had destroyed and burned the files they found in the factory. The Appellant asserted that he submitted all the documentation that he possessed for the confirmation of his employment relationship in the first instance such as: a copy of Workbook ..., opening date 15 August 1987, closed on 23 August 1990 again opened on 23 October 1990, unclosed. The Appellant asserted that he is listed ... in the Matrix Book which is with the PAK. According to the Appellant, the allegation of the Respondent that the Appellant's Workbook is closed on 23 August 1990 does not stand because it was again opened on 23 August 1990.

**22** Appellant *D (I) T* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to include him in the list of eligible employees entitled to a 20 percent share of the proceeds from the privatization of the SOE. and to annul the challenged Judgment, namely point II of the Judgment's enacting clause.

The Appellant stated that he started his employment with the SOE on 15 October 1987 for an indefinite period of time.

The Appellant asserts that he possesses a decision on job assignment, no ... dated 15 October 1987; a certificate on vocational training dated 21 July 1986; a decision on annual leave of 1988, no ... dated 17 September 1988; a decision on annual leave of 1991, no ... dated 6 May 1991, a copy of the Matrix Book in which he is listed under no ... . The Appellant alleges that he worked with the SOE even after the war until the privatization of the enterprise, although his Workbook was closed. Further[, he] states that after the war, his work experience is not counted in. In this regard, he proposes the hearing of manager *M A*. He presented to the Court the Workbook, which indicates that it was closed in 1993. The Appellant asserted that he is listed under no ... in the Matrix Book, which is with the PAK.

**23** Appellant *N (M) M* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he started working with the SOE on 5 May 1987 for an indefinite period of time. The Appellant asserts that he possesses a decision on job assignments and responsibilities of 1987, a certificate on completion of vocational training dated 21 July 1986, a decision on annual leave of 1987, no ..., a decision on unpaid leave, a decision on annual leave of 1989 from 21 June 1989 no ... . The Appellant further alleges that there is a note in the list indicating the termination of his employment relationship on 16 April 1991; however, he maintained that, "I worked in the enterprise also after the war, until its privatization".

**24** Appellant *K H* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged judgment, namely point II of its enacting clause. The Appellant asserted that he started working with the SOE from 5 May 1987 for an indefinite period of time. He added that he provided sufficient evidence to the first instance to support his complaint. He stated that [he was listed] in the Matrix Book under no ..., the original copy of which is with the PAK. The Appellant asserts that the Workbook was burned.



**25** Appellant *M (H) O* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He started his employment with the SOE from 5 May 1987 to 20 May 1998. After the war, he returned to work performing job assignments as before the war, and worked there until the privatization of the SOE.

**26** Appellant *S (X) R* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without a determination of the factual situation. He started his employment with the SOE on 5 September 1988 [and has been working until] 3 April 1998. After the war, he returned to work on 6 July 1999 performing job assignments as before the war, and worked there until the privatization of the SOE. The Appellant stated that he submitted to the Court a copy of the Workbook registered under no .... and file no ... .

**27** Appellant *Z (S) B*, requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started employment with the SOE on 28 July 1987. His Workbook was closed on 1 April 1998, however he claims that the work experience after the war was not counted in. He added that after the war, he returned to work in 1999 performing job assignments as before the war, and worked there until the privatization of the SOE.

28 Appellant *N K* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started his employment with the SOE on 5 May 1987, which is confirmed by a certification issued by the competent authorities of the enterprise, on 16 April 2013, which he attached to the Complaint [submitted in the] in First Instance. The Appellant added that after the war, he returned to work on 6 July 1999, performing assignments as before the war, and worked there until the privatization of the SOE. The Appellant further alleged that his Workbook is damaged, since during the war in Kosovo, Serbian military and police forces were deployed in the factory premises, and for that reason personal files of many employees were destroyed or burned.

29 Appellant *G F*, requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that she provided sufficient material evidence to this Court to prove her work relationship with the SOE. She asserts that her Complaint was rejected without correct determination of the factual situation. She started employment with the enterprise on 28 July 1987 [and has been working until] 1998. She added that after the war, in 1999, she returned to work, performing job assignments as before the war, and worked there until the privatization of the SOE. The Appellant stated that she provided a copy of the Workbook to the Court of first instance, registered under no ..., according to which her work experience is 17 years and 1 day.

30 Appellant *T (S) H* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged



Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started his employment with the SOE on 16 May 1990, according to the decision ... which is in the case file. He added that after the war, he worked in the SOE, in job assignments as before the war, and worked there until the privatization of the SOE.

31 Appellant *R (S) O* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started his employment with the SOE on 18 August 1987. His Workbook is not closed. He added that he continued to work in the SOE even after the war, starting from 6 July 1999, performing job assignments as before the war, and worked there until the privatization of the SOE.

32 Appellant *X (S) V* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started working with the SOE on 28 July 1987. The Workbook is not closed. He added that the Workbook was closed on 3 March 1993, however it was again opened on 1 April 1993, after the factory was given a new name "*H*" "*G*" "FMN DD D./D". He worked until 1998; his Workbook is not closed. After the war, in 1999, he also worked with the SOE, performing job assignments as before the war and worked there until the privatization of the SOE. The Appellant alleged that he presented the Court sufficient material evidence to prove his work relationship.

33 Appellant *S (C) M* requested the Appellate Panel to review the appealed Judgment, to approve her Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that she provided sufficient material evidence to this Court to prove her work relationship with the SOE. She asserts that her Complaint was rejected without correct determination of the factual situation. She started employment with the SOE on 5 May 1987 [and has been working until] 31 March 1993. The Workbook was opened on 1 April 1993 after the factory was given a name "*H*" "*G*" "FMN DD D./D", [that is different from the one] inherited from the former Factory of Massive Furniture.

34 Appellant *S T* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of the enacting clause of the Judgment. The Appellant alleged that he presented to the Court sufficient material evidence to prove his work relationship with the SOE. He asserted that his Complaint was rejected without correct determination of the factual situation. According to him, he started employment with the SOE on 2 September 1989.

He also worked with the SOE after the war [from 1999], performing job assignments as before the war and worked there until the privatization of the SOE.

35 Appellant *M L* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without a correct determination of the factual situation. He started employment with the SOE on 18 July 1987 for an indefinite period of time. He worked with the SOE until March 1998; however, because of the war his employment was terminated; and it was again



continued after the war, in 1999; [he was] performing job assignments as before the war and worked there until the privatization of the SOE.

36 Appellant *H S* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started working with the SOE in 1986 and worked in this enterprise until 15 March 1998, up until the war in Kosovo. After the war, as of 8 July 1999, he performed job assignments as before the war and worked there until the privatization of the SOE. The Appellant asserts that it is a well-known fact to the citizens of D./D. that in a time of war in Kosovo, in the premises of the enterprise were deployed Serbian military and paramilitary forces, and during their deployment in this enterprise they have destroyed and burned most of employees' personal files, including the Appellant's file. According to the Appellant, the only evidence remained was the decision on annual leave of 1990 no ... dated 30 April 1990.

37 Appellant *M T* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of the enacting clause of the judgment. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started working with the SOE from 1 August 1976, and continued with his work relationship until 4 December 1990 and up until the war in Kosovo. After the war, on 6 July 1999, he continued work performing job assignments as before the war and worked there until the privatization of the SOE. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. The Appellant asserts that it is a well-known fact to the citizens of D./D. that in a time of war in Kosovo, in the premises

of the enterprise were deployed Serbian military and paramilitary forces, and during their deployment in the enterprise, they destroyed and burned most of employees' personal files, including the Appellant's file.

**38** Appellant *N P* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and requests the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started working with the SOE from 1986 and continued with the work relationship until 31 March 1998 and until the war in Kosovo. After the war, he continued work, performing job assignments as before the war and worked there until the privatization of the SOE. The Appellant asserts that it is a well-known fact to the citizens of D./D. that in a time of war in Kosovo, in the premises of the enterprise were deployed Serbian military and paramilitary forces, [which] during their deployment in the enterprise, have destroyed and burned most of employees' personal files, including the Appellant's file.

**39** Appellant *A T* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE[. He] requests the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started employment with the SOE in 1986 and continued until 31 March 1998 and until the war in Kosovo. After the war, he continued performing job assignments as before the war and worked there until the privatization of the SOE. The Appellant asserts that it is a well-known fact to the citizens of D./D. that in a time of war in Kosovo, in the premises of the enterprise were deployed Serbian military and paramilitary forces[, which] during their deployment in the enterprise have destroyed and burned most of employees' personal files, including the Appellant's file.



**40** Appellant *Z U*, requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE. [He] requests the annulment of the challenged Judgment, namely point II of its enacting clause.

The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without a correct determination of the factual situation. He started working with the SOE from 5 May 1987 for an indefinite period of time. He is listed under no ... in the Evidence [correct: Matrix] Book.

After the war, he continued performing job assignments as before the war and worked there until the privatization of the SOE.

**41** Appellant *R R* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE. [He] requests the annulment of the challenged Judgment, namely point II of its enacting clause.

The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started employment with the SOE in 1982 for an indefinite period of time. After the war he continued performing job assignments as before the war and worked there until the privatization of the SOE. The Appellant alleges to have the same status as the employees who are included in the list of 20 percent.

**42** Appellant *S N* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE. [He] requests the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started employment with the SOE in 1988 and continued working relation until 20 March 1998 and until the war in Kosovo. Af-

ter the war, in 1999, he continued performing job assignments as before the war and worked there until the privatization of the SOE.

The Appellant asserts that it is a well-known fact to the citizens of D./D. that in a time of war in Kosovo, in the premises of the enterprise were deployed Serbian military and paramilitary forces[, which] during their deployment in the enterprise have destroyed and burned most of employees' personal files, including the Appellant's file.

**43** Appellant *R K* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE. [He] requests the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started employment with the SOE on 18 July 1987 for an indefinite period of time, and in the Evidence [correct: Matrix] Book is registered under no ... . After the war, he continued performing job assignments as before the war and worked there until the privatization of the SOE. The Appellant asserts that it is a well-known fact to the citizens of D./D. that in a time of war in Kosovo, in the premises of the enterprise were deployed Serbian military and paramilitary forces and during their deployment in the enterprise have destroyed and burned most of employees' personal files, including the Appellant's file.

**44** Appellant *A (A) A* requested the Appellate Panel to review the appealed Judgment, to approve her Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE. [She] requests the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that she provided sufficient material evidence to this Court to prove her work relationship with the SOE. She asserts that her Complaint was rejected without correct determination of the factual situation. She started employment with the SOE on 28 July 1987, [and has been working] until 1998. She adds that after the war in 1999, she continued performing job assignments as before the war and worked there until the privatization of the SOE.



**45** Appellant *I (H) L* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE. [He] requests the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant stated that he started employment with the SOE in 1998. After the war, he continued performing job assignments as before the war and worked there until the privatization of the SOE. He added that all documents were destroyed without his fault.

**46** Appellant *H A* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE. [He] requests the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started employment with the SOE on 1 June 1977 for an indefinite time. He worked in the SOE until 31 March 1998, when his work relationship was terminated because of the state of war. After the war, in 1999, he continued performing job assignments as before the war and worked there until the privatization of the SOE. The Appellant asserts that it is a well-known fact to the citizens of D./D. that in a time of war in Kosovo, in the premises of the enterprise were deployed Serbian military and paramilitary forces[, which] during their deployment in the enterprise have destroyed and burned most of employees' personal files, including the Appellant's file.

**47** Appellant *M J* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE. He requests the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started employment with the SOE on 15 October 1987 for an indefinite period of time. After the war, in 1999, he continued perform-

ing job assignments as before the war and worked there until the privatization of the SOE. The Appellant asserts that it is a well-known fact to the citizens of D./D. that in a time of war in Kosovo, in the premises of the enterprise were deployed Serbian military and paramilitary forces, and during their deployment in the enterprise, they have destroyed and burned most of employees' personal files, including the Appellant's file.

**48** Appellant *I B* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE. He requests the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started his employment with the SOE on 28 July 1987 for an indefinite period of time. After the war, in 1999, he continued to work, performing job assignments as before the war, and worked there until the privatization of the SOE. He alleges that the work experience after the war was not counted in.

**49** Appellant *X (B) J* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started his employment with the SOE on 1 April 1982 for an indefinite period of time. He was employed with the SOE until the beginning of the war in Kosovo. After the war, in 1999, he continued to work, performing job assignments as before the war, and worked there until the privatization of the SOE.

**50** Appellant *R (D) M* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged



Judgment, namely point II of its enacting clause. The Appellant asserts that the PAK's allegation that [he] established a work relationship with another enterprise is not accurate. The Appellant attached his Workbook to his Appeal, page 8 of which reads that the Workbook was closed on 19 July 1990, and it was opened again on 22 August 1990, and it was open. He asserts that his Complaint was rejected without correct determination of the factual situation, and that he was employed with the SOE until its privatization.

**51** Appellant *X (S) A* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started employment with the SOE from 5 May 1987, [initially] for an indefinite period of time, and up until 31 January 1993. On 1 April 1993, a new column was added to his Workbook under no ..., when the name of the Factory was changed from Factory of Massive Furniture to JSC "*H*" "*G*" "FMN DD" in D./D. According to the Appellant, the above data are correct, and can be confirmed in the workers' Matrix Book, which is with this Court. After the war, in 1999, he continued performing job assignments as before the war, and worked there until the privatization of the SOE.

**52** Appellant *X (A) C* requested the Appellate Panel to review the appealed Judgment, to approve her Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and requests the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that she provided sufficient material evidence to this Court to prove her work relationship with the SOE. She asserts that her Complaint was rejected without correct determination of the factual situation. She started her employment with the SOE on 3 May 1989, and continues working until 20 March 1998, and then it was terminated until 12 June 1999.

The Appellant asserted that in August 1999, after the war, she returned to work, performing job assignments as before the war, and worked there until the privatization of the SOE.

**53** Appellant *K (M) D* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and requests the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without a correct determination of the factual situation. He started his employment with the SOE on 5 May 1987 for an indefinite period of time. He worked with the SOE until its privatization. The Appellant asserts that he provided sufficient material evidence to prove his allegations. The Appellant claims to be in possession of Statement no ..., dated 15 October 1987, decisions on annual leave no ..., dated 26 July 1989, dated 12 March 1990, the decision on job assignments and responsibilities, ..., dated 15 October 1987.

**54** Appellant *E L* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and requests the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started employment with the SOE in 1975 for an indefinite period of time. On 20 March 1998 his work relationship was terminated, when the war began. He continued his work relationship on 20 July 1999, and worked there until its privatization. The Appellant asserts that it is a well-known fact to the citizens of D./D. that in a time of war in Kosovo, in the premises of the enterprise were deployed Serbian military and paramilitary forces, and during their deployment in the enterprise, they have destroyed and burned most of employees' personal files, including the Appellant's file.



**55** Appellant *B (R) D* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and requests the annulment of the challenged Judgment, namely point II of its enacting clause.

The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. According to employees' Matrix Book, the Appellant is registered under no ..., the original copy of which is with the PAK. The Appellant stated that he was violently dismissed from work by the interim management of the Factory. As a consequence of his persistence to continue to work, the former deputy-commander of the Police Station in D./D., his first name is *M*, [he] cannot recall his last name, forced him out of the Factory three times. The Appellant asserted that at that time, he was the president of the independent trade union and the representative of the wood industry before the independent trade unions of Kosovo for the Municipality D./D. His allegations can be proved by *I K*, from M. Village, Municipality D./D., who was acting director of the Factory of Massive Furniture, *J D* from C. i E. village, Municipality D./D., member of the management in the Factory of Massive Furniture in D./D., *H I* and *M N*, workers of Factory of Massive Furniture in D./D.

**56** Appellant *N (A) F-S* requested the Appellate Panel to review the appealed Judgment, to approve her Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and requests the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that she provided sufficient material evidence to this Court to prove her work relationship with the SOE. She asserts that her Complaint was rejected without a correct determination of the factual situation. She started employment with the SOE on 5 May 1987. The Appellant stated that, as she mentioned in the First Instance Complaint, during the time of the war, Serbian military and paramilitary forces were deployed in the premises of this factory from May until 12 June 1999; and during that time, they have destroyed and burned most of the employees' files, including the Appellant's file. She added that after the war she continued her working [relationship] with the SOE until its privatization.

57 Appellant *S G* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and requests the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started his employment with the SOE on 20 August 1987, for an indefinite period of time. He added that he provided the first instance court sufficient evidence to establish his work relationship, such as: a copy of vocational training certificate, dated 12 November 1987; a copy of decision no ..., dated 28 September 1988. He continued his work relationship on 6 July 1999, and worked until its privatization.

58 Appellant *H (H) B* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started employment with the SOE on 18 August 1987, as it is indicated in the copy of the Workbook and the Matrix Book no .... Then on 16 May 1990, he established a work relationship for an indefinite period of time, based on decision .... As it is indicated in the Workbook, his work relationship was not terminated. As result of the war circumstances, his work relationship was terminated on 20 March 1998, after war began. His work relationship continued on 6 July 1999 and [he] worked until its privatization.

The Appellant further asserts that he was detained on 5 April 1989 in the District prison in P./P. for 4 months, namely until 5 August 1989, then he was released after pleading not guilty. He stated that he was suspended from work after his release from prison.

59 Appellant *H (I) K* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds



from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started his employment with SOE on 18 August 1987. He added that his Workbook was closed on 11 September 1991; however, after the war he was reinstated in July 1999 until its privatization. According to him, such fact can be confirmed by a former manager of the SOE.

60 Appellant *T (B) H* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and requests the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant stated that he provided sufficient material evidence to this court to establish his work relationship with the SOE. He asserted that the complaint was rejected without correct determination of the factual situation. The Appellant asserted that he was employed with [Organization of Associated Labour] OAL "*G*" D./D., [Basic Organization of Associated Labour] BOAL "*P F*" with seat in D./D., [where he] was employed from 11 June 1979, and until 5 November 1990, namely 11 years 4 months and 24 days, while in the SOE Factory of Massive Furniture in D./D. he worked from 6 November 1990 to 3 March 1993. He also claims that on 4 March 1993, the Factory of Massive Furniture was given a new name Holding "*G*" FMN in D./D., and a new number was added to the Matrix Book and new column to the Workbook.

61 Appellant *L (M) O* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. The Appellant asserted that he worked with AOL "*G*" in D./D., BAOL "*P F*" with its seat in D./D. since 1986. In 1988, his work relationship with BAOL "*S*" was terminated and he was then employed with the Factory

of Massive Furniture in D./D., for an indefinite period of time. He worked in the Factory until 1991. From 20 March 1998 to 22 June 1999, military and police forces were deployed in the premises of this Factory, and destroyed and burned the workers' files, which would confirm [his] work relationship in this SOE.

The Appellate Panel, by Order dated 6 June 2014, served the Appellant's Appeal and supporting documents on the Respondent, for filing a response. The PAK was served with the Order on 12 June 2014, but no response to Appeal was filed.

**62** Appellant *A (U) M* alleged that until the beginning of the war in Kosovo, he worked in the capacity of seasonal worker, and by 6 July 1999, he started to work again in the SOE and kept working there until his retirement in June 2007. According to him, as all the documents in the SOE were destroyed by the Serb forces, he was not able to attach any material evidence to the Appeal.

**63** Appellant A 0007 *K (H) B,* on 7 February 2014, filed an Appeal against Judgment C-II.-13-0040, dated 14 January 2014. The Appellant requested the Appellate Panel to review the appealed Judgment, to approve her Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and requested the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant alleged that she worked with the SOE from 28 July 1989 [until] 22 March 1998, due to the war in Kosovo, she was compelled to end her employment along with other workers. The Appellant further alleged that she worked with the SOE even after the war, in July of 1999, where she worked until the privatization of the SOE. The Appellant stated that in the Matrix Book she is listed under no ... . Further, she stated that regarding allegations of the PAK, she enclosed to this appeal the confirmation upon receipt of postal delivery by PTK, in its original as indicated[. The] Appeal was served on 3 May 2013, she also attached an accompanying list of [shipments] registered with the Post in D./D., where it is indicated that the Appeal was registered under no ..., no ... . Also, the Appellant asserted that at the time of the last war in Kosovo, in the premises of the Factory were deployed Serbian military and police forces, and during their stay there they destroyed most of the employees' files, including her file. The Appellant attached to the Appeal several photographs, showing destroyed



documents and a Workbook with no inscription in it.

The Appellate Panel, by Order dated 6 June 2014, served the Appellant's Appeal and supporting documents on the Respondent, for filing a response to the Appeal. On 12 June 2014, the PAK was served with the Order; however no response to the Appeal was filed.

**64** Appellant A 0008 *H (M) I,* on 8 February 2014, filed an Appeal against Judgment C-II.-13-0040, dated 14 January 2014 requesting the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant alleged that he worked with the SOE from 5 May 1987 until March 1998. After the war, in July 1999, he continued work with the SOE until the privatization of the enterprise. He considers that he has the same status as other employees who are included in the final list. Further, he alleges that he was not able to provide more evidence to establish [proof of the] work relationship, because as other fellow-workers stated, in the premises of the Factory where he used to work were deployed Serbian military and police forces, and [the workers'] personal files were demolished and destroyed. In addition, the work experience records, such as opening or closing of work experience [correct: Matrix Book], were not maintained after the war.

The Appellate Panel by Order dated 6 June 2014 served the Respondent with the Appellant's Appeal and supporting documents to file a response. The PAK was served with the Order on 12 June 2014; however, no response was filed.

**65** Appellant A 0010 *T D,* on 8 February 2014, filed an Appeal against Judgment C-II.-13-0040, dated 14 January 2014. The Appellant requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to include him in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point III of its enacting clause, in which the complaint was dismissed as out of time. The Appellant alleges that he worked with the SOE since 1976 and terminated his work relationship on 20 March 1998, when first signs of war began, to start again on 6 July 1999, having worked there until its privatization, namely until the end of 2006.

The Appellant alleged that he is illiterate and he was not aware of his failing the deadline to file the complaint against the final list for a 20 percent share; therefore, [he] requested the Court to take into account this fact.

The Appellate Panel by Order dated 6 June 2014 served the Respondent the Appellant's Appeal and supporting documents to file a response. The PAK was served with the Order on 12 June 2014; however, no Response was filed.

**66** Appellant A 0012 *R (I) Q*, on 8 February 2014 filed an Appeal against Judgment C-II.-13-0040, dated 14 January 2014. The Appellant requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and requested the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant alleged the he worked with the SOE from 18 August 1987 until the privatization of the enterprise. He considers that he has the same status as other employees who are included in the final list and proposed to hear the former fellow workers of the enterprise in the capacity of witnesses. The Appellant alleged he provided sufficient evidence to the First Instance to prove his work relationship with the SOE, such as: decision no ..., dated 7 September 1989; decision on job assignments and responsibilities, no ..., dated 2 September 1989; decision on annual leave no ... of 1989; confirmation of the delivery of application-cancellation of insurance, dated 23 May 1990. He added that his Workbook was burned during the war in Kosovo. He alleges that he has a copy of the Matrix Book, which indicates him listed under number ..., this copy is with the PAK. He attached to Appeal a statement dated 27 January 2014 signed by *M A*, graduate engineer, Trade Union managers *J D*, *S S* and *M N*, and *Q F*.

The Appellate Panel, by Order dated 6 June 2014, served the Appellant's Appeal and supporting documents on the Respondent, for filing a response. The PAK was served with the Order on 12 June 2014; however, no response was filed.

**67** [The Appeal of] Appellant A 0013 *S (I) M* is not an Appeal; it is only a Response to the PAK's Appeal, and the Registry of the SCSC registered it by mistake as an Appeal.



**68** Appellant A0014 *C (B) I L* on 29 April 2014, filed an Appeal against Judgment C-II.-13-0040, dated 14 January 2014. The Appellant requested the Appellate Panel to review the appealed Judgment, to approve her Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of proceeds from the privatization of the SOE and requests the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant alleged that she worked with the SOE from 28 July 1987 until the privatization of the enterprise. She considers she has the same status as employees who are included in the final list and proposed hearing of the witnesses, the former employees of the enterprise. The Appellant alleges that the evidence she filed with the First Instance court is sufficient to prove [her] work relationship with the SOE, such as: decision on annual leave no ...., dated 1 July 1989, decision dated 1 August 1989; decision on job assignments and responsibilities no ..., dated 2 September 1989. The Appellant alleges that because of the war in Kosovo, on 22 March 1998, she was compelled to leave the job along with other workers. The Appellant further alleges that she worked with the SOE after the war in July 1999 until the privatization of the SOE. Also, the Appellant alleges that in the last war in Kosovo, in the premises of the factory were deployed Serbian military and police forces who have, during their deployment there, destroyed most of workers' documents, including her personal file.

The Appellate Panel by Order dated 6 June 2014 served the Appellant's Appeal and supporting documents on the Respondent for response. On 12 June 2014, the PAK was served with the Order, however, no response was filed.

**69** **Legal Reasoning:** The Appeals of the Appellants A0001 *H (Z) T*, A0002 *K (H) B*, A0004 *X (U) I N*, A0005 *X (S) N*, A0006 *I Q* and others, *M (H) O, R R, N K, X (S) V, S (C) M, R (D) M, H (H) B, B (D) G, D (I) T, N (M) M K H, S (X) R, G F, T (S) H, R (S) O, S T, M L, H S, N P, A T, Z U, S N, R K, A (A) A, I (H) L, M J, X (B) J, X (S) A, X (A) C, K (M) D, I B, E L, B (R) D, N (A) F-S, S G, H S, M T, H A, H (H) B, H (I) K, T (B) H,* A 0007 *K (H) B,* A 0008 *H (M) I* and A0012 *R (I) Q* are grounded and the PAK is ordered to include the above Appellants in the final list of employees eligible to a 20 percent share of proceeds from the privatization of the SOE.

70 The Appeals of the Appellants A 0003 the PAK, A 0006 *I I, K (H) H, Z (S) B, K H, L (M) O, A (U) M* and A0010 *T D* are rejected as ungrounded.

71 The Appeal of the Appellants A0014 *C (B) I L* and A0013 *S (I) M*, are dismissed as inadmissible.

72 Based on Art 64.1 of the Annex to the LSC, the Appellate Panel decided to dispense with the oral part of the proceedings.

Merits of the Appeal and Assessment of the Appellate Panel

Discrimination

73 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 July 2004, adopted the Anti-Discrimination Law 2004/3 (promulgated by UNMIK Reg 2004/32), which is currently a legally binding document up to the present time.

74 With regard to the burden of proof, Art 8 of the Anti-Discrimination 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.*

75 According to the above interpretation, when a complainant claims that he/she was subjected to discrimination, he/she needs only to establish the specific facts from which it can be presumed that there was discrimination (direct or indirect), and it is up to the Respondent (in this case the Agency) to prove to the contrary, that is to prove that there was no violation of the equal treatment principle.

76 According to the case law of the SCSC (ASC-11-0069, AC-I.-12-0012, etc.) [as persons] subjected to discrimination may be considered:

a) Workers of Albanian ethnicity, or belonging to other minorities, such as Ashkali, Roma, Egyptian, Gorani, and Turkish, who were dismissed for discriminatory reasons in the period of the so-called "Serbian interim measures" (which ranges [correct: lasted] from 1989 to 1999), or who were discriminated in different periods, due to their ethnicity, political and religious beliefs, etc.
b) Workers of Serbian ethnicity, who for notorious reasons after the war in Kosovo, after 1999, did not report to work and were not included in the final lists of employees.

77 Particularly in relation to the time element when considering any discrimination suffered by the categories of the above-mentioned employees, the following should be noted:

a) On 26 July 1990, the Serbian government promulgated the "Law on Labour Relations under Special Circumstances" (Official Gazette of the Republic of Serbia 40/90), to which followed, as a consequence, the dismissal of several thousand workers of Albanian nationality from their workplace (see, on this point, also International Criminal Tribunal for the former Yugoslavia Judgment dated 30 November 2005 in case IT-03-66, page 16, para. 39, which states:

*In 1990, the Assembly of Kosovo and the Provincial Government were abolished. In March 1990, the Assembly of Serbia adopted a series of measures which led to the dismissal of Kosovo Albanians from political and economic institution and from large business enterprises ... .*

Several Resolutions were passed in the 1990ies by the General Assembly and the Security Council of the United Nations, amongst which was the Resolution of the General Assembly 48/153 of 20 December 1993, which recognizes the existence of (and condemns) – inter alia –

*... the measures and practices of discrimination and the violations of the human rights of the ethnic Albanians of Kosovo, as well as the large-scale repression committed by the Serbian authorities, including: ... b. The discriminatory removal of ethnic Albanian officials, especially from the police and judiciary, the mass dismissal of ethnic Albanians from professional, administrative and other skilled positions in Socialy-owned enterprises and public institutions, including teachers from the Serb-run school system ... .*

As a consequence of the so-called "Interim Measures" imposed on the SOE, was the removal and replacement of the Albanian management by a Serbian management (see "Law on the Interim Measures for the Social Protection of Self-Management Rights and of Social Proper-

ty", published in the Official Gazette of the Socialist Republic of Serbia no 49 of 28 October 1989, which is not applicable law pursuant to UNMIK Reg 1999/24).

b) On the other hand, a number of employees, belonging to the Kosovo-Serb minority, worked during the period of the Serbian interim measures (1989-1999), but were not able to return to work immediately after the war being discriminated against by the new management. As observed above, when a complainant alleges specific discriminatory facts, it is up to the respondent to prove that the complainant suffered no discrimination. The same rule of the "reversal of the burden of proof" applied to the workers of Albanian ethnicity (and other minorities) who have claimed discrimination in relation to their dismissal during the Serbian interim measures, shall also apply to this group of employees.

**78** For all above legal reasons, a complaint is [to be] approved grounded in cases where a complainant proves that he/she was employed with the SOE for at least three years and was registered as an employee of the SOE at the time of privatization, or in cases where he/she submitted evidence that he/she was unable to work due to being subject to discrimination (in other words: he/she would have been registered as an employee if he/she had not been subject to discrimination). Otherwise, the complaint has to be rejected as ungrounded, in case the above facts and circumstances have not been established by the complainant.

**79** Appellant A0001 *H (Z) T* alleged that he worked with the SOE since 18 August 1987. On 1 April 1993, the Serbian interim measures were imposed and as in most enterprises, even in his enterprise, dismissal of workers due to their ethnicity has taken place. In 1998, the same management dismissed him in an arbitrary and discriminatory manner. The Appellant asserts that after the war in Kosovo, he reported [to work] several times to continue working in the factory, but due to the [damages of the] factory and due to the non-operation of the factory, he was included in the workers' waiting list, until the privatization, as many other workers. The Respondent PAK, in the Response to the Appeal, did not dispute the allegations of the Appellant. However, it requested the dismissal of the Appeal as inadmissible, because the Appellant failed to file an appeal against the temporary list.



**80** The Appellate Panel holds that failing to file an Appeal against the provisional list pursuant to Sec 67.2 of UNMIK AD 2008/6, does not render the Appeal inadmissible.

**81** Therefore, the Appellant, based on evidence presented, meets the requirements of Sec 10.4 of UNMIK Reg 2003/13 as amended, and his Appeal is approved as grounded.

The Appellate Panel ascertains that the Appellant's allegations are complete and comprehensible. The above appealed allegations were not challenged by the PAK. Therefore, the Appellant is to be included in the final list of employees eligible to a 20 percent share of the proceeds from the privatization of the SOE.

**82** Appellant A0002 *K (H) B* alleged that she worked in the SOE from 15 May 1987 to March 1998, when she was dismissed [based on] the Serbian interim measures in a discriminatory manner. The Appellant asserts that the PAK's finding that she did not work after the last war in Kosovo are unreasonable. The Appellant alleges that she has an employment contract no ... from 15 September 2002, which is attached to this Appeal, which proves her employment after the war.

The Appellate Panel holds that based on evidence presented by the Appellant in the First Instance, the [open] Workbook, and other evidence presented, she meets the requirements of Sec 10.4 of UNMIK Reg 2003/13 as amended, and her Appeal is approved as grounded.

The Appellate Panel ascertains that the Appellant's allegations are complete and comprehensible. The above appealed allegations were not challenged by the PAK. Therefore, the Appellant is to be included in the final list of employees eligible to a 20 percent share of the proceeds from the privatization of the SOE.

**83-88** [Paragraphs 83 to 88 are omitted as the factual and procedural background and the legal reasoning in the Appeals of *X (U) I N, X (S) N, B (D) G, I Q, D (I) T* and *N (M) M* are similar to Appellant A0002 *K (H) B.*]

**89** Appellant *S (X) R* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of the proceeds from the privatization of the SOE and the annulment of

the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started working with the SOE on 5 September 1988 [and has been working until] 3 April 1998. After the war, he returned to work on 6 July 1999 in the same work position as before the war and has worked until the privatization of the SOE. The Appellant asserts that he attached a copy of the Workbook with record no ... and registration no ... .

The Appellate Panel finds that the Appeal of this Appellant is not grounded. He failed to prove his employment with the SOE by any [piece of] evidence; he does not even have a Workbook or evidence of employment after the war.

[...]

**90** Appellant *N K* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of the proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started working with the SOE from 5 May 1987, this is confirmed by a certificate issued by competent authorities of this enterprise on 16 April 2013, which he attached to the First Instance [as part of his] complaint. The Appellant added that after the war he was reinstated on 6 July 1999 in the same work position as before [he] was [working] and has worked until the privatization of the SOE. The Appellant asserts that his Workbook got damaged, because during the war, in the premises of the Factory, there were deployed Serbian military and police forces and for that reason, numerous personal files of workers were destroyed or burned. He provided an ascertainment with SOE stamp, where it is indicated that he concluded a work relationship with the SOE for an indefinite time. The ascertainment bears the date 16 April 2013.

The PAK did not challenge the allegations of this employee; therefore, the Appellate Panel holds that the Appellant is to be included in the list of employees eligible to a 20 percent share of the proceeds from privatization of the SOE.



[Paragraph 91 is omitted as the factual and procedural background and the legal reasoning in the Appeal of *G F* is similar to Appellant *N K*] **91**

Appellant *T (S) H* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of the proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of factual situation. He started employment with the SOE from 16 May 1990 by decision ... which is in the case file. He added that he was reinstated after the war, performing job assignments as before the war, and worked there until the privatization of the SOE. **92**

The Appellate Panel holds that based on the presented facts, the copy of Matrix Book where the Appellant listed under no ..., indicate that his work relationship was terminated in 1989, including other previous decisions; it is obvious that the Appellant failed to provide evidence on the continuity of employment after 1989. Therefore, his Appeal is ungrounded.

[...]

Appellant *R (S) O* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of the proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause. The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. He started employment with the SOE from 18 August 1987. The Workbook is not closed. He added that after the war, on 6 July 1999, he was reinstated in work, performing job assignments as before the war, and worked there until the privatization of the SOE. **93**

The PAK did not challenge the above allegations,. however [correct: in addition], the Appellant provided a list signed by the director of this SOE and other members of the Trade Union of this SOE in which

the Appellant appears on the list of employees eligible to a 20 percent share of the proceeds. For the above reasons, the Appellate Panel holds that the Appellant fulfils the legal requirements for the inclusion in the 20 percent list, and PAK is obliged to include him in the final list of employees eligible to a 20 percent share of the proceeds from the privatization of the SOE.

**94-126** [Paragraphs 94 to 126 are omitted as the factual and procedural background and the legal reasoning in the Appeals of *S T, M L, H S, N P, A T, Z U, R R, S N, R K, A (A) A, I (H) L, M J, I B, X (B) J, X (S) A, X (A) C, K (M) D, E L, B (R) D, N (A) F-S, S G, H (I) K, T (B) H, M (H) O, X (S) V, R (D) M, H (H) B, H S, M T, H A, S (C) M, K (H) B, H (M) I* and *R (I) Q* are similar to Appellant *R (S) O.*]

*The Appeals of Appellants A 0003 PAK, A 0006 I I, K (H) H, Z (S) B, L (M) O, A 0010, A (U) M and T D are rejected as ungrounded.*

The Appeal of Respondent PAK A 0003

**127** The Respondent challenged [in] the appealed Judgment point I of the enacting clause regarding the Complainants whose Complaints are approved as grounded and those Complainants are included in the final list of employees eligible to a 20 percent share.

The Respondent alleged in its Appeal that the challenged Judgment is inconsistent and lacks legally grounded arguments, contains no essential facts and provides an interpretation of the law in an arbitrary manner. These allegations are constantly repeated by the Respondent when it disputes the interpretation of discrimination provided by the SCSC regarding Complainants who claim to have been subjected to discrimination. These appellate allegations of the Respondent submitted also in this Appeal, as it was stated in other occasions, are not correct.

**128** The approach of the SCSC's Specialized Panel on the issue of the interpretation of discrimination regarding the Complainants is correct and legally grounded and such an approach to the interpretation of discrimination is recognized also by the Appellate Panel. The Complainants of Serbian ethnicity that left the SOE since June 1999 stated that they felt unsafe to report to the workplace, because of the circumstances of that time – while the Respondent did not contest the fact



that the Complainant left his work place because of fear, nor objected that such fear after the war was reasonable for the individuals of Serbian ethnicity. The reasoning given by the Specialized Panel [when] approv[ing] the above Complainant's Complaints is correct, since the Respondent, on whom the burden of proof lies, pursuant to Art 8.1 of the Anti-Discrimination Law, failed to prove that the principle of equal treatment of employees has not been violated. Therefore, these Complainants had met legal requirements pursuant to Sec 10.4 of UNMIK Reg 2003/13 amended by [UNMIK Reg] 2004/45 for inclusion in the final list. Therefore, the SCSC Appellate Panel rejected as ungrounded the Appellant's appeal and upheld the challenged Judgment.

**129** Appellant A0006 *I I* alleged that he worked with the SOE for 26 years. He could not provide a copy of the Workbook because it was burned during the war, and according to him, this Court should consider it as *vis major*.

The Appellate Panel found that the Appellant at the time of the privatization was over the age of 70 years and does not meet the legal requirements of Sec 10.4 of UNMIK Reg 2003/13, as amended. Therefore, his Appeal is rejected as ungrounded.

**130** The Appellate Panel rejected as ungrounded the appeal of Appellant *K (H) H*, on the grounds that a copy of the Workbook indicates that his employment was terminated on 31 December 1992 although the Appellant states that his Workbook was burned during the war. There is no evidence of his continuity of employment with the SOE after that date.

**131** Appellant *L (M) O* requested the Appellate Panel to review the appealed Judgment, to approve his Appeal as grounded and to be included in the list of eligible employees entitled to a 20 percent share of the proceeds from the privatization of the SOE and the annulment of the challenged Judgment, namely point II of its enacting clause.

The Appellant asserts that he provided sufficient material evidence to this Court to prove his work relationship with the SOE. He asserts that his Complaint was rejected without correct determination of the factual situation. The Appellant asserted that he worked with AOL "*G*" in D./D., BAOL "*P F*" with seat in D./D. from 1986. In 1988, his work relationship with BAOL "*S*" was terminated and he was then employed with the Factory of Massive Furniture in D./D., for an indefinite peri-

od of time [correct: with an indefinite duration contract]. He worked in the Factory until 1991. From 20 March 1998 to 22 June 1999, Serbian military and police forces were deployed in the premises of this Factory and destroyed and burned the workers' files, which would confirm [his] work relationship in this SOE.

The Appellate Panel found no evidence to support the Appellant's allegations. There is no material evidence of his employment with the SOE after 1991, [and even] less [evidence in regard to any] employment with the SOE after the war. For the above reasons, the Appeal is rejected as ungrounded.

**132** The Appeal of Appellant *A (U) M* is rejected as ungrounded because he failed to provide [either to] the First Instance [or to] the Appellate Panel any evidence to support his allegations. He himself stated in the Appeal that up until the war in Kosovo he worked as a seasonal worker in this SOE, while after the war [he] started working based on an indefinite period of time [correct: with an indefinite duration contract]. However, he did not provide any evidence regarding the working period after the war.

**133** The Appeal of Appellant A 0010 *T D* is rejected as ungrounded, because with the appealed Judgment, the Appellant's Complaint was dismissed as inadmissible. The Appellate Panel considers that the Specialized Panel correctly decided when [it] dismissed his Complaint as inadmissible because it was filed out of time [as] prescribed by law. The deadline for filing a complaint with the SCSC against the final list was on 4 May 2013 [but] the Appellant filed the Complaint on 1 October 2013.

The Appellate Panel cannot take into consideration the Appellant's allegation that he is illiterate and did not know how to follow the deadline for filing the Complaint within the time prescribed by law because between the deadline for filing the complaint and the time the Appellant filed the Complaint, 5 months have passed; so his request cannot be taken as a request for return to the previous situation [correct: state].

For the above mentioned reasons, the Appeals of these Appellants are rejected as ungrounded, while point III of the challenged Judgment, regarding these Applicants [correct: Complainants], is upheld.



The Appeal of Appellant A 0014 C (B) I L is Dismissed as Out of Time.

**134** The Appellant's Appeal is filed against the challenged Judgment of the Specialized Panel is filed out of time and as such is dismissed as inadmissible.

By challenged Judgment C-II.-13-0040 of the Specialized Panel of the SCSC, in the legal remedy of this judgment, the Appellants [correct: Complainants] were notified that they shall file the Appeal within 21 (twenty-one) days from the receipt of the Judgment. The Appellant received the challenged Judgment on 21 January 2014, while the Appeal was filed with the SCSC on 29 April 2014, out of the legal time limit.

Therefore, for the above reasons, the Appellate Panel holds that the Appellant's Appeal is filed out of time; thus, it is dismissed as inadmissible.

**135** The Appeal of Appellant A 0013 *S (I) M* is not an Appeal; it is only a Response to the PAK's Appeal and the Registry of the SCSC registered it by mistake as an appeal. *S (I) M* was included in point I of the enacting clause of the challenged Judgment, whereby he was found eligible to a 20 percent share of the proceeds from the privatization of the SOE.

**136** By the foregoing and based on Art 10.10 of the LSC, it is decided as in the enacting clause.

**Editor's note:** This Judgment further develops ASC-11-0069 and AC-I.-12-0012

## 20.

## Transformation of Socially Owned Capital of SOE to be Based on Contract with Mutual Obligations/Analysis whether Managerial Board of SOE was Established in Accordance with Self-Management Rules

Applicability of laws passed after 22 March 1989; Transformation of SOE's socially owned capital into JSC; Ethnic discrimination in dismissal and appointment of managerial board; Reconfiguration of managerial board

UNMIK Reg 1999/24 Sec 1.2, 1.1; UNMIK Reg 2002/12 Sec 5.4; LE Art 187(1), 187a(3), 187a(1), 27(1) to (4), 14; Law on Circulation and Management of Social Capital Art 2, 2.1, 2b, 4

1. **Socially owned capital of an SOE can only be disposed of through a contract entailing mutual obligations and rights but not through a donation.**

2. **Only the SOE's workers' council is authorized to render a decision on the sale of social capital.**

3. **Even if a large number of employees of Albanian ethnicity retained their work and even shares were distributed to them, such cannot lead to the conclusion that an ethnic bias did not exist when the managerial board was reconfigured in a way that no Albanian manager remained among the interim body of the enterprise.**

*Judgment of 2 April 2015 – AC-I.-14-0169 (First Instance: Decision of 15 April 2014 – SCC-05-0113)*

1 **Factual and Procedural Background**: On 11 April 2005, the Claimant JSC *S* filed a Claim against the Respondent KTA. According to the Claim, the company S is the sole owner of *F-S* LLC – the enterprise sold on 16 September 2004 by the KTA as a SOE. To prove this allegation, the Claimant introduced a decision issued on 28 October 1992 by the Interim Governing Body of the SOE "*F* – Wallpaper Factory", to join the *S*, a JSC, which had mainly maintained private capital. On 4 November 1992 the Commercial Court of N. S./Serbia] registered the company that survived the merging and thus all assets and liabilities of the Wallpaper Factory were transferred to *S*. However, the Governing Body of *S* decided to incorporate a new company in Kosovo - namely F-S LLC. On 2 December 1992, the New Co LLC was registered in the Commercial Court of P./P. as JSC *S* as solely established.



2 This legal circumstance continued until the arrival of international forces in Kosovo. Then the newly established KTA, after studying the status of *F-S* LLC, decided to disregard the company joined and to treat it as a SOE, which resulted in its privatization accruing the total amount of ... euros.

3 The Claimant is claiming payment of the amount of ... euros including interest from 16 September 2004 until the final payment. In addition, the Claimant also claimed payment of ... euros as a compensation for the lost profit as a result of illegal treatment by the KTA.

4 On 26 October 2005, the KTA submitted its defence to the Claim with the SCSC. The KTA requests from the Court to order the Claimant to submit more evidence in support of the Claim. Amongst others, the KTA requests to prove whether the shareholders have approved the current Claim, or are advised for the action undertaken by management; that the Claimant monitored the activities of its alleged affiliate *F* and that it has paid its shareholders; that the Claimant had made any investment with its alleged affiliate *F* and requires proofs, how the financial loss alleged by the Claimant was calculated.

5 Further in the KTA's defence, it asserts that this merging was not based on the LE (adopted in 1988 and promulgated in Official Gazette No 77/88, later amended in 1989 and twice in 1990), which may constitute an applicable law because the significant provisions of this law were not applied during the merging process.

6 Otherwise, the Respondent claims that the grounds for this merging are with the Interim Measures for the Protection of the Rights of Self-Management and Social Protection of F, adopted by the Assembly of Serbia on 6 November 1990. Moreover, the Respondent asserts

that this law does not [constitute] applicable law under UNMIK Reg 1999/24, primarily because it does not cover the legislative gap in virtue of Sec 1.2 of UNMIK Reg 1999/24. The KTA also claims that Sec 1.2 of UNMIK Reg [1999/24] introduces a presumption that laws [applicable] before 22 March 1989 normally are not applicable and the burden of proof rests with the Claimant that the law after 22 March 1989 was not discriminatory.

**7** At the hearing held on 20 June 2013, the trial panel summoned the Respondent - PAK as the ex lege successor of the former – KTA. At the same hearing, the Claimant explained that the claiming company (*S*) was merged with a company called *T* LLC from B. P.[/Serbia], and as a result the Claimant should have been considered as a *T* LLC from B. P.[/Serbia].

**8** Both parties in the case at hand (Claimant and Respondent) confirmed that they stand by the Claim, respectively the Respondents stand by the defence to the claim filed by the KTA on 26 October 2005.

**9** At the hearing held on 22 January 2014, the main issue was the admissibility and connection of the requested evidence. After hearing, the Panel decided that the admissibility and connection of evidence in writing will be decided during the deliberation on the merits.

**10** The last hearing for this case was held on 13 March 2014. Both parties declared that [they] have no new suggestions for additional evidence, so the Court decided to close the proceedings of the evidence over this case and gave the word to the parties for their closing statements.

**11** It is important to emphasize that both parties stood by their previous approaches.

**12** Given that both parties have claimed the costs, the Presiding Judge has given them 5 days to specify the amount of costs claimed.

**13** On 14 March 2014 (within deadline), the PAK complied with the Court Order and claimed the costs in the total amount of ... euros (... euros).

**14** On 25 March 2014 (after the deadline), the Claimant's representative complied with the Court Order and claimed the costs in the total amount of ... euros (... euros).



**15** On 15 April 2014, the Specialized Panel rendered Judgment SCC-05-0113, whereby the Claim for compensation for the alienation of property in the amount of ... euros and profit loss in the amount of ... euros was entirely rejected as ungrounded.

**16** The Claimant is required to pay the PAK the amount of ... euros for the procedural costs. In the reasoning of the Judgment, the Specialized Panel states that the main part of this lawsuit lies in the Court's findings related to two key issues:
(1) What laws were applicable to the merging of 1992 and if they were duly enforced.
(2) Was it simply the fact that on behalf of *F* the decision for merging was issued by the so-called Internal Body; sufficient to consider the transformation as discriminatory.

**17** According to the Claimant, the Law on Companies would be applied only in 1988 and the challenged merging was based on its Art 187a. In the view of the Respondent, the whole privatization laws, approved in the late 1980s - and the well-known "Laws of Marković" (according to last prime minister of the SFRY Ante Marković) should have been implemented. Therefore, merging based on only one of them has no effect.

**18** Regarding the second issue, the Claimant presents the view that although the imposition by the Interim Body in the SOE *F* was based on discriminatory laws, it is not itself sufficient to consider the merging as discriminatory. What is important according to the Claimant is that how the transformation was made (in this case the merging). The Claimant alleges that because most of the employees of *F-S* LLC who were given free shares, were of Albanian ethnicity, [such] proves that the process was conducted in a non-discriminatory way.

**19** According to assessments of the first instance, UNMIK Reg 2002/12 shall apply because the privatization of the property at stance was done in 2004. Under that Regulation, Sec 5.4, any merging that occurred after 22 March 1989 is valid only if based on applicable laws and to be [correct: if] executed in a non-discriminatory way. Merging in question occurred in 1992 and therefore satisfies both requirements. Merging was like "taking over" – SOE *F* was completely absorbed by JSC *S* and had lost its legal personality. The socially owned capital of *F* became part of the capital mainly in the private ownership of the absorbing company. Therefore, the merging of 1992 was itself a classic example

of privatization – a part of social capital was transferred to become part of the primarily private company. Consequently, privatization-related laws would apply.

**20** The Court found that at the time of the merging, the Law on Turnover and Disposition of Socially Owned Capital [correct: Law on Circulation and Management of Social Capital] (LTDSOC [correct: LCMSC]) of 1990 set forth rules concerning privatization issues. In fact, this law - even in its first version of 1989 - was adopted after the deadline specified in UNMIK Reg 1999/24 (22 March 1989). However, the law that was [a] first regulation on privatization was not itself discriminatory and, therefore, should be applied in accordance with Sec 1.2 of UNMIK Reg 1999/24. According to Art 2.1 of the LTSSC [correct: LCMSC] an enterprise can be sold whole or in part, and the proceeds accrued shall be allocated to the Development Fund - a special body established in each of the constituent members of the SFRY. The contract for the sale / privatization of socially-owned entities and capital will be encompassed by the Development Fund as per Art 2b [of the LCMSC]. In accordance with Art 4 of the same law, an individual agency will provide estimates on the value of social capital for sale. The merging between the JSC *S* and the SOE *F* had the effect of sale of the entire SOE and privatization rules would apply. Otherwise, the JSC *S* practically acquired the enterprise for free. The fact that the later management of the Company granted free shares for the workers of *F* is insignificant as workers were not owners of the socially-owned capital. As long as the company that survived the initial union had legal deficiencies, the subsequent incorporation of the LLC *F-S* and all changes in registration and status of the company *S* had no effect on the socially-owned capital at stance. For the whole period, from its foundation until privatization in 2004 "*F* – Wallpaper Factory" should be considered as SOE.

**21** Concerning the issue of discrimination during merging, the Court is of the opinion that for the case at hand it does not matter. Having decided on the merging without complying with the normal procedure of privatization, the Temporary Body assigned for the SOE *F* issued an unlawful decision and it is unimportant whether this decision was executed in a non-discriminatory way.

**22** Therefore, a Claim for compensation for loss of property and loss of profits will be rejected as ungrounded.



**23** On 19 May 2014 the Appeal was filed against Judgment SCC-05-0113 dated 15 April 2014 of the Specialized Panel, by the JSC *T* from B. P./Serbia, due as it is said, breach of procedure, erroneous determination of the factual situation and wrongful law interpretation.

**24** Initially, the Appellant objects the assessments of the Specialized Panel that the union-merging of *F* and *S* which occurred in 1992 constituted a classical example of privatization, given that the socially-owned capital was transferred, namely it becomes primarily a private company, therefore laws on privatizations were applied, basically the LTDSOC [correct: LCMSC]. The Panel established that the LTDSOC [correct: LCMSC] although adopted after 22 March 1989 was not discriminatory and shall be applied in accordance with Sec 1.2 of UNMIK Reg 1999/24. The Panel established that the upheld decision for merging without obeying respective procedures of privatization, which the temporary body imposed on SOE F, was an unlawful decision and the procedure to render this decision is unimportant.

**25** According to the Appellant the LE (official gazette of SFRY No 77/88, 40/89) applied for the subject matter transaction. The Law is valid in line with Sec 1.1 of UNMIK Reg 1999/24 taking into consideration that [it] has entered into force on 1 January 1989, namely before 22 March 1989. Art 187.1 of the LE sets forth that decisions on change of the enterprise status (separation or merging) shall be rendered by the administrative body of the enterprise. Under Art 187a.3 [of the LE] it is defined that the mutual relations of enterprises arising from the status changes will be set forth by the contract. For this purposes the F enterprise management–interim body rendered a decision for joining–merging respectively integration of enterprise *F* with enterprise *S* on 28 October 1992. In accordance herewith may be noticed that the procedure was followed as it was set forth by Art 187a(1) of the LE. In addition, enterprise *F* and *S*, on 28 October 1992 signed the protocol whereby [they] established mutual relations in accordance with Art 187a.3 of the LE. Art 27 of the LE defines that enterprises stated in paragraphs (1) to (4) of this Article (socially-owned enterprises, enterprises of corporations, mixed ownership enterprises and privately-owned enterprises), have the same status but also rights and obligations in the market. In consideration of this provision, it is obvious that SOEs have also had the rights and obligations in the merging procedure with privately-owned enterprises in accordance with Art 187a of the LE. The Appellant alleges that no provisions exist to prohibit such merging.

According to him the reasoning in the Judgment of the First Instance Panel is erroneous taking into consideration that the social capital of *F* became part of private ownership enterprise. For the existing transaction the LTDSOC [correct: LCMSC]shall apply. At the time the LTDSOC [correct: LCMSC] and the LE were valid and no provisions were in force to oblige *F* and *S* to apply the LTDSOC [correct: LCMSC] instead of the LE. *F* and *S* have chosen to apply the Law on Enterprises because it was in the common interest of the enterprises taking into consideration that this was a more efficient manner to commence with business cooperation. Moreover, the legality of the transactions are also confirmed by the fact that the transaction (merging and separation) were registered with the competent body of the state namely with the Economic Court in P./P. and in the Economic Court in N. S.[/Serbia].

**26** In addition, attention shall be paid to UNMIK Reg 2002/12 which sets forth that the unification-merging may be done when the SOEs, in a way as it is defined by Sec 5.4 of this Reg:

> *A re-registration or merger of a Publicly-owned or Socially-owned Enterprise after 22 March 1989 shall affect its status as a Publicly-owned or Socially-owned Enterprise only if such re-registration or merger was: Based on Applicable Law; and Implemented in a non-discriminatory manner.*

**27** In spite to what is stated hereupon, the subject matter transaction would be allowed pursuant to applicable law even if it was based on any grounds of the LE or the LTDSOC [correct: LCMSC].

**28** Merging and separation of SOEs was allowed pursuant to the LE (which is valid in accordance with UNMIK Reg 1999/12 [correct: 24], taking into consideration that was adopted on 22 March 1989). Furthermore, transformation of the social capital into private capital was allowed in accordance with the LTDSOC [correct: LCMSC] (which is valid as it is not discriminatory, in accordance with Sec 1.2 of UNMIK Reg 1999/12 [correct: 24]. Basis for the respective transaction is the one valid for application of Sec 5.4 of UNMIK Reg 2002/12, not the steps which should have been undertaken during the process of implementation of this transaction. Taking into consideration the above, [the] mentioned merging or separation of *F* was based on a valid law. Therefore, the first condition pursuant to Sec 5.4 of UNMIK Reg 2002/12 was fulfilled. The second condition that the transaction was not implemented in a discriminatory manner was also fulfilled as it is clarified by the following paragraph.



**29** At the hearing held on 22 January 2014, the Respondent confirmed that a single contestable issue among parties remains whether the interim measures were discriminatory or not. The Respondent does not mention the non-discriminatory manner of merging as contentious. This is sufficient for the Court to establish that the second condition under Sec 5.4 of UNMIK Reg 2002/12 was fulfilled. According to the Appellant, this is confirmed by the fact that during the process no employees of Albanian ethnicity were expelled from their working positions. In this aspect it shall be specified that the Respondent has provided proofs related to employees' employment termination which occurred prior to the merging of *F*. However, dismissal of *Sa Sa* occurred in December 1990, whereas *R Z* was expelled in October 1991. Merging of *F* took place in October 1992 and the said dismissal and expelling could not have been obstacles for merging and do not confirm the Respondent's allegations over the discriminatory manner of the *F* merging. The Respondent provided no proofs on termination of employments after merging (as no employments of employees were terminated).

**30** Concerning the Status Determination Report (SDR) whereby the Respondent intended to indicate that the merging of *F* was followed by discriminatory actions. The Claimant established that the SDR contains errors. For instance, under point b 2.4 of the SDR, it is erroneously stated that the head of the legal service was expelled because of political reasons in 1993. Moreover, *So G*, Head of the Legal Unit, continued to work in *F* until 1999. Under point B [correct: b] 8.2 [of the SDR] it is stated that the registration of a company as *F-S*, a ground which Serbia considers as a social company whereas the extract attached by the court registry indicates that the company is in private ownership. It is apparent[ly] the SDR's intention not to show the manner the F merging was carried out, but to provide the Respondent with a ground to set aside the merging, and to sell *F* afterwards, alleging that merging never took place.

**31** The Appellant replicates [correct: replies] and cites Sec 5.4 of UNMIK Reg 2002/12 which sets forth:

> *A re-registration or merger of a Publicly-owned or Socially-owned Enterprise after 22 March 1989 shall affect its status as a Publicly-owned or Socially-owned Enterprise only if such re-registration or merger was: Based on Applicable Law; and Implemented in a non-discriminatory manner.*

The fact that the Interim Body administered the F at the moment of merging with S shall not be considered discrimination because of the following: (i) most of the employees were of Albanian ethnicity; (ii) no employees of Albanian ethnicity were expelled; (iii) employees of Albanian ethnicity enjoyed the same status before merging, acquired free shares in *S* which is not contestable among parties.

32 In view of all these facts and grounds, the Appellant suggests the Appellate Panel to entirely amend [correct: quash] the appealed Judgment SCC-05-0113, dated 16 April 2014; to grant the Claimant's request and to oblige the Respondent to pay the Claimant the amount of ... euros, including interest accrued from 16 September 2004 until the final payment; to pay the Claimant the amount of ... euros including interest, and to compensate the Claimant with the amount of ... euros for the proceeding's costs; or to set aside in full the appealed Judgment.

33 On 29 May 2014, the PAK filed a Response to this Appeal whereby amongst others it is said that the PAK entirely objects the Appeal considering it to be legally ungrounded. The Appellant's Representative[s] have only repeated their ungrounded statements provided earlier in the proceedings, and did not prove to have any alleged breach. For this reason, the PAK upholds the challenged Judgment and considers it to be correct and legal.

34 The PAK suggests to reject the Claimant's Appeal and to uphold the challenged Judgment.

35

**Legal Reasoning:** The Appeal is ungrounded.

36 Pursuant to Art 64.1 of the Annex to the LSC, the Appellate Panel decided to dispense with the oral proceedings.

37 The Appellate Panel upon careful examination of all appealing allegations, the appealed Judgment and all [pieces of] evidence submitted in the case file came to the conclusion that the Appeal is ungrounded.

38 Appellate Allegations and Findings of the Appellate Panel

Initially, the Appellant objected the Judgment of the Specialized Panel in all points of its reasoning.



39 The Appellant quotes Art 27 of the LE which defines that enterprises stated in paragraphs (1) to (4) of this Article (socially-owned enterprises, enterprises of corporations, mixed ownership enterprises and privately-owned enterprises), have the same status but also rights and obligations in the market. According to the Appellant, taking into consideration this provision, it is obvious that SOEs have also had rights and obligations in the merging procedure with privately-owned enterprise in accordance with Art 18(a) of the LE and the Appellant alleges that no provisions exist to prohibit such merging.

40 Based on the Appellant's allegations, the Appellate Panel has found that paragraphs (1) to (4) of Art 27 of LE which is referred[-to] by the Appellant sets forth decisively that the decision on merging one of another enterprise by the enterprise that joins [correct: merging one company with another] necessarily requires consent of the workers' council of the enterprise. In virtue of the facts introduced in the case files the decision was rendered through a protocol signed by the members of the interim body of *F* installed by Serbia and a representative of the JSC *S* with no members of Albanian ethnicity, whereby the merging of the SOE *F* with the JSC *S* from B. P./Serbia was approved. By doing so, an illegal action was undertaken as it was rendered by the interim body without approval of the workers' council which represents the interest and will of [the SOE's] employees.

41 The Appellate Panel has also found that in conformity with Art 14 of the LE (Official Gazette No 77, dated 31 December 1988)

> *[e]mployees shall decide to organize the joint associated labour organization, in accordance with the Statute of the Enterprise.*

42 Meanwhile, this matter is set forth by Art 13 of the Statute of this SOE which reads that:

> *the employees may change the organization of the enterprise so as it can join, merge into another enterprise or to be divided in two or more enterprises. The employees will decide concerning the changes and organization of the enterprise by the majority votes of the total number of employees, through referendum.*

43 As it is stated hereupon, for the case at hand it is obvious that changes in the enterprise were undertaken in full contradiction with Art 13 of the LE and contrary to Art 13 of the Statute of the Enterprise.

**44** According to the Appellant, Art 187.1 of the LE sets forth that decisions on change of the enterprise status (separation or merging) shall be rendered by the Management Body of the enterprise. The Appellant also mentions Art 187a.3 [of the LE], which defines that the mutual relations of enterprises arising from the status changes will be set forth by contract.

**45** The Appellate Panel found that Art 187 of the LE of 29 December 1988 which is referred[-to] by the Appellant, with supplements and amendments of this Law of 8 August 1990, Art 187 was deleted and Art 187a was inserted, which was related to statutory changes. This amendment of the basic law pursuant to which the decision was rendered, took place in a period defined by Sec 1.1 and 2 of UNMIK Reg 1999/24 on discriminatory laws, because the law was amended on 8 August 1990. For this reason the appealed allegations are ungrounded.

**46** The Appellate Panel finds that initially the decision was rendered by interim bodies at the time when the interim measures were installed in all enterprises of Kosovo, facts which are well-known, and decisions of the body were arbitrarily and contrary to legal provisions. Thus, the decision was rendered by an incompetent body; therefore, such decision was unlawful from the beginning.

**47** On the other hand, related to other legal requirement of Art 187a(3) [of the LE] which set forth that "mutual relations of enterprises arising from the status changes will be set forth by the contract".

**48** In the case at hand, we have no such mutual relations because the social capital of F was given for free to a private company. This is contrary to the LTDSOC [correct: LCMSC], Art 2 of which reads on sale of the capital and for the body which may render such decision for sale, to be the workers' council. To the contrary, in the case at hand, the social capital of the SOE *F* was given away for free or merged in a JSC in Serbia, which constitutes a typical example of arbitrary and illegal decisions.

**49** The Appellate Panel has found that truly as asserted by the Appellant a large number of employees of Albanian ethnicity retained their work and even shares were distributed to them. However, the problem lays in the fact if any of managers of Albanian ethnicity remained to work with the SOE. If we have a look over the report dated 28 October 1992, where the merging procedures and reasons for transformation



of *F* were discussed, no Albanian was amongst the six members of the Interim Body of the Enterprise.

**50** This proves another crucial moment that all transformation procedures were undertaken by violent or interim bodies installed by the Government in Belgrade, having no until then Albanian manager and without approval of the workers' council. Although a certain number of the employees retained, [all Albanian] managers of the SOE were dismissed from their duties and substituted by an interim management. Whereas the labor force continued to work as they were needed to maintain production.

**51** For the above reasons, the Appellate Panel establishes that the Claimant's appealing allegations are grounded. Therefore, the Appeal is rejected as ungrounded, and consequently the appealed Judgment of the Specialized Panel is hereby upheld to be correct and legally grounded.

**52** Therefore, because of the reasons stated above and pursuant to Art 10.10 of the LSC, it is decided as in the enacting clause of this Decision.

## 21.

## Duty of the Court to Verify Legal Interest of the Claimant/Subjective Right to initiate Proceedings

Jurisdiction; Send for retrial; Non-referral

LBPR Art 29; LCP Art 354.2, 14, 2.4, 391, 114, 194, 2.4(e), 182.2(k), 137.2 and (3), 362, 357.2, 183; Annex to the LSC Art 28.2.2, 28.2, 42; LSC Art 5.1, 4.4

1. **It is the Duty of the Court to verify the legal interest of the Claimant.**

2. **A legal interest is an absolute condition for the admissibility of a claim.**

3. **Only a holder of a subjective right or the legal successor with a subjective right that has been denied or violated by a third party can initiate proceedings for the recognition or restoration of a right.**

*Decision of 14 May 2015 – AC-II.-12-0029 (First Instance: Decision of 11 May 2011 of the Municipal Court K./K. – C.no 148/07)*

1 **Factual and Procedural Background:** On 5 April 2007, the Claimant filed a claim with SCSC requesting verification of ownership for cadastral parcels nos ..., ..., ..., ..., ..., ..., ... and ... with an area of ... ha (now the cadastral parcels ..., Possession List no ..., registered on the name of the Cooperative in S./Š. from S./Š. registered under certificate no ... dated 21 November 2003.

2 The Claim is registered under SCC-07-0143.

3 The Claimant requested the Court to oblige the Respondents to recognize the right of ownership to the above mentioned parcels and



allow their registration in the cadastral records on the Claimant's name. He also requests compensation for procedural costs.

He asserts that he always had aforementioned parcels in his possession and use.

4 Further, he claims that after the process of the aerial photography of 1958, they were registered under his ownership, but later on, in 1964, the same parcels appeared in the name of AIC from P./P. While, in 1992, AIC has transferred its property rights to the second Respondent, *P B*, S./Š. The Claimant submitted, as evidence in support of his allegations, among others, a Certificate, ... of the Municipal Cadastral Department of K./K., decision ..., ... and ..., decision ..., Possession List no ..., inheritance decision O.br. ..., a copy of the plan, records from the Department of Urban Planning and Municipal Cadastre and the report of the geodesy expert.

5 On 8 August 2007, by Decision SCC-07-0143, the SCSC referred the matter for review before the Municipal Court of K./K.

6 On 11 May 2011, the Municipal Court of K./K. by Judgment C.nr. 148/07 has rejected the Claimant's Claim as ungrounded on the grounds that this property has never been owned by the Claimant. This Court's ascertainment had emerged from the decision of the Municipal Commission no ..., according to which, the Claimant since 1958 has been a usurper of this property. The Court also rejected the Claimant's request for the recognition of the ownership right on the basis of adverse possession, on the grounds that pursuant to Art 29 of the LBPR, the socially-owned property cannot be acquired by adverse possession.

7 On 5 August 2011, the Claimant (Appellant) has filed an Appeal against this Judgment, because of, as stated, essential violation of contested procedure, erroneous determination of factual situation and erroneous application of substantive law. According to him, this Judgment should be set aside because of the violations of the provisions of the contested procedure, Art 354.2, 14 of the LCP because the facts on which the Judgment is based are not justified at all, and there are contradictions between them. Moreover, some statements at the hearing were not reflected in the minutes. The Court did not take into consideration at all the Claimant's request to provide case files C.nr.... by which it is verified that the Claimant's predecessor *B K* had initiated a civil dispute related to the property in question in 1972, as well as case files of the

case OV.nr. ... in the administrative procedure, the lack of which has led to a dismissive Judgment.

8 Another essential violation of the provisions of the contested procedure claimed by the Claimant is also the failing to draft minutes, following a[n on] site inspection by the geodesy expert, at this situation, the Court has only ascertained that it has obtained the expert's opinion.

He further claims that in this Judgment, the factual situation is not correctly and fairly determined. According to him, the Court did not consider the fact that since 1928 the above immovable property was under ownership, use and conscious possession of the Claimant's predecessor, now the deceased *B K*.

The determination of the factual situation [was] solely based on the report of the Commission for the legal-property relations, no ... dated 9 May 1962 according to which the predecessor was declared a usurper, is an erroneous conclusion, since the deceased had disputed this Decision and initiated administrative proceedings before this Commission. On 15 November 1971, by decision no ..., [which had been] provided only after a Judgment was delivered, because the Municipality K./K. had it under its possession and was not willing to file it before the Court, it can be noted that the reports on the usurpation of the land were dismissed, while in the reasoning of this Decision, it is concluded that the Claimant's predecessor is the owner of the above immovable properties since 1928. By this decision, the Municipal Assembly was obliged to transfer the above immovable property on the name of the Claimant. However, by arbitrary Decisions no ... dated 11 November 1963 and no ... dated 23 November 1963, the Claimant's property was, in arbitrary way, transferred to the Agricultural Cooperative (AC) "*R A*" in K./K., which has, based on contract on a right of use, transferred the immovable property to the AIC "*K E*" in P./P. and a part of this property has been subsequently allocated for use to the AC "*A P*" in S./Š.

The Court did not take into consideration the Claimant's allegations nor witness statements that this immovable property is under the Claimant's conscious possession. It did not take into consideration the fact that up to 1958, where [correct: when] the areal recording was conducted, the immovable properties were registered on the name of the Claimant. That is verified by certificate no ... dated 21 November 2003, and a copy of the plan.

From the above, the Claimant[/Appellant] requests the Appellate Panel to approve the Claimant's Appeal as grounded and to quash the Judgment of the Municipal Court of K./K. C.nr. 148/07 dated 11 May



2011 and return the matter to the Municipal Court for review and re-adjudication.

9 On 24 November 2014, the first Respondent, the Municipality K./K, filed a Response to the Appeal. It stated that the decision of the People's Council no ... dated 3 December 1962 exactly proves that Claimant's predecessor was a usurper. However, up to now, the Appellant/Claimant has failed to prove ownership over the disputed property. Therefore the Claimant's Appeal should be rejected as ungrounded.

10 While the second Respondent PAK, in its Response dated 3 December 2014, dismissed all Appellant's allegations as ungrounded, it considered the Judgment of the Municipal Court as correct and legally grounded. Furthermore, according to the PAK, the Appellant also failed to provide any relevant fact in the Appeal that would lead to a change of the factual situation as determined by the Municipal Court. Therefore, it requested the Appellate Panel to reject the Appeal as ungrounded.

**Legal Reasoning:** The Appeal is grounded. 11

12 Pursuant to the Art 64.1 of the Annex to the LSC, the Appellate Panel decided to dispense with the oral part of the proceeding.

13 The Appellate Panel, based on the allegations in the Appeal, the challenged Decision and evidence in the case file, found that the Appeal is grounded, whereas the appealed decision is incorrect and legally ungrounded.

14 The Claimant is requesting verification of ownership. He asserts that the property of his predecessor, now the deceased B K, has been acquired unlawfully. Based on the Claim and the valid documents, his predecessor was the owner of the above properties since 1928, whilst after aerial photography of 1958, by a decision dated 9 May 1962, cadastral parcels no ..., ..., ..., ..., ..., ..., ... and ... with a total area of ... ha, currently as cadastral parcels ..., Possession List no ... were transferred into a social-owned property.

15 At no occasion was he able to explain his relationship with the late, *B K*. The inheritance decision O.br. ... dated 15 January 1964 submitted

at the hearing before the Municipal Court is rendered with regard to the decedent *A K*, pursuant to which, his grandchildren *B, F* and the niece, *M*, were appointed as heirs to his immovable property.

16 Therefore, the Appellate Panel considers that the decision on inheritance, O.br. ... considered by the Municipal Court as valid, cannot be considered as evidence in order to finally prove the legitimacy of the Claimant. This is also due to the fact that decision ... for acquiring immovable property refers to *B K*, and even the property claimed by the Claimant himself, is the property which was on the name of *B K*. Moreover, the Commission Decision for Review of the property relations of the self-proclaimed owners, the property ... claimed by the Appellant was returned to *B K*. The same is proved by the documents submitted by the Municipal Department of Urbanism and Cadaster that the above properties, according to the Cadaster, were on the name of *B K*.

17 It is the duty of the Court to verify the legal interest of the Claimant.

A claim can be filed by the party if there is an imminent and immediate violation of the party's interests and subjective rights. Art 2.4 and [391](e) of the LCP pursuant to Art 114 of the LCP (which can be applied by the SCSC whenever it is necessary to decide a procedural matter which is not adequately covered by the LSC), the requirement for the admissibility of the claim is the existence of the legal interest of the Claimant. It is also the duty of the court of appeals, that within the scope of the grounds specified in Art 194 of the LCP to examine *ex officio* whether there exists a violation of the provisions of the contested procedure under Art 182.2(k) [of the LCP].

18 From the above mentioned, the Appellate Panel finds that a claim may be filed only when a person has a legal interest regarding the granting or rejection of a claim. The initiation for recognition or restoration of a right that was violated or denied, should be done only by the person, who is entitled by law, to the subjective right, which was denied or violated by a third party.

19 The existence of the legal interest is one of the main objective requirements for filing a claim; therefore, a claim can be filed only by a person whose subjective right, entitled by law, was denied or violated.



20 Also, Art 28.2.2 of the Annex to the LCP [correct: Annex to the LSC], stipulates that a claim/complaint shall only be admissible if the claimant has the right to initiate proceedings with the SCSC pursuant to Art 5.1 of the LSC.

21 Based on the above, the Appellate Panel ascertains that in the claim in question, the Municipal Court of K./K. did not determine the legal interest of the Claimant. On this occasion, it has violated the provisions of Art 391(e) of LCP as well as Art 28.2 of the Annex to the LSC.

22 Therefore, it rests with the Specialized Panel to determine the existence of the legal interest of the Claimant who may be claimant before the SCSC.

23 As to the allegations of the Appellant that some statements were not reflected in the minutes of the hearing, the Appellate Panel reminded the Appellant that according to Art 137.2 and (3) of the LCP, he shall have the right to read the minutes and submit their [correct: his] objections pertaining to the content of the minutes, which was omitted by him. So, the allegations concerning this matter are ungrounded. The allegation for failing to draft minutes, following a[n on] site inspection by the geodesy expert, is also ungrounded. The Appellate Panel finds that the site inspection report dated 29 October 2010, in the presence of a geodesy expert and the representative of the Claimant, is attached to the case file. The Appellate Panel notes that the expert's report has not been reviewed at the hearing nor was the expert summoned to this case, in violation of Art 362 of the LCP, because the Court did not give the parties the opportunity to state their opinions concerning the expert's report, Art 357.2 of LCP. Consequently, it was not established that a cadastral parcel no ... and ... from possession list ..., a former parcel no ..., is expropriated with a view to building the road H. i E./Đ. J. - M/M.

24 The Municipal Court of K./K., in its Judgment, did not review at all the final decision no ... dated ..., by which *B K* was allowed revision, the return of the immovable property, which was acquired by decision ... dated 9 May 1962. The above decision is also found [by the Appellate Panel ] in the file of the Municipal Court. By this Judgment, the Municipal Court has violated Art 183 of the LCP.

25 Regarding allegations in the Appeal that are related to the acquisition of the ownership right, on the basis of conscious possession, the Appellate Panel notes that the Municipal Court, upon the request of the Party, should have had provided evidence itself, namely the case files C.no ... of ..., as required in Art 42 of the Annex to the LCP [correct: Annex to the LSC], which stipulate that the Court may ask for a document if so requested by a party which proves that despite attempts, he/she failed to provide it. The records presented in the file indicate that the case ... is with the Municipal Court of K./K. and this Court could have determined the existence or non-existence of this evidence.

26 Based on the above-referred legal provisions, it is obvious that the Municipal Court of K./K., by rendering the appealed Judgment, has violated the above provisions and thus issued a Judgment which is incorrect and legally ungrounded, and as such, is to be set aside.

27 Owing to the fact that, pursuant to Art 4.4 of the LSC, neither the SCSC nor any panel or judge thereof, shall have any further authority to refer any specific claim, matter, proceeding or case falling within its primary jurisdiction to another court of Kosovo, this matter may not be returned to the court that issued the appealed Decision, the Appellate Panel shall decide to send it for further [consideration to the] respective specialized panel of the SCSC.

For this reason, the case shall be sent for retrial on the merits to the respective specialized panel. This panel shall take into consideration the observations of the Appellate [Panel], by adjudicating the claim on the merits and by providing a correct treatment for the parties to the proceeding, in order to ensure a fair trial.

28 Therefore, in light of the above, and pursuant to Art 10.10 of the LSC, it is decided as in the enacting clause of this Decision.



## 22.

## The Discretion of the PAK to Annul a Tender is not Without Limits

Preliminary Injunction; Position of highest bidder; Annulment of tender procedure by the PAK; Obligation of the PAK to properly inform respective bidder on annulment of tender procedure

UNMIK AD 2008/6 Sec 55 (As of 1 January 2012: Annex to the LSC Art 55); General Rules of Tender of the PAK Art 10.4, 11, 17, 17.2(c), 17.1

1. **The position of the highest bidder as well as the position of the provisional winner implies a justified and equitable interest warranting protection.**

2. **The PAK is not entitled to annul a tender based on the discretion given to the PAK's Board of directors by provisions of Art 17 of the General Rules of Tender to postpone or cancel the tender at any moment for any reason. This discretion is not without limits.**

3. **The decision of the PAK to postpone or annul a tender has to be explicit, to be reasoned and to be served on the respective bidder. Otherwise it may cause that such decision is considered as void.**

*Decision of 10 September 2015 – AC-I.-14-0257 (First Instance: Decision of 19 August 2014 – C-IV.-14-5624)*

**Factual and Procedural Background**: On 30 July 2014, the Claimant filed a claim with the SCSC, requesting the annulment of decision of the Board of the PAK no ... dated ... by which the tender no ... for sale of Unit no ... – Shop no ... .../... was annulled. The Claimant participated in the public tender announced by the Agency and was announced as highest bidder on ... . Nonetheless on ... the PAK informed him that 1

based on Art 17.1 and 17.2(c) of the Rules of Tender, the Board of PAK in a meeting held on ... cancelled the tender for the disputed property. The Claimant was announced by PAK as the highest bidder for the same asset (Privatization-Wave ... and sale by liquidation no ...) before and the Board of PAK cancelled the tender without reasoning for the second time.

**2** Along with the Claim, the Claimant filed a preliminary injunction request by which he requests to prohibit the PAK from the sale or alienation of the premise which is the subject of the Claim until the main Claim is finally decided. The Claimant argued that if no preliminary injunction would be granted an immediate risk of suffering an irreparable loss would occur since PAK might re-tender the disputed property.

**3** On 19 August 2014, the Specialised Panel granted the requested Preliminary Injunction. The Panel deemed the requirements of Art 55.1 of the Annex to the LSC for the issuance of the preliminary injunction to be met. The Specialized Panel found that the PAK identified the Claimant as provisional winner of the tender in two successive sales for the same Unit. It established that in both cases the Board of PAK cancelled the tender not because the Claimant failed to meet any of the criteria set out in the PAK's rules of participation in the tender, but because the price offered by the Claimant was, according to the PAK, not in rational relation to the market price. The Panel considered that the announcement of another tender for the privatization of the premise which is subject of dispute, and concluded that the finalization/conclusion of the sale would cause immediate and irreparable damage to the Claimant. Firstly, the Claimant would not become owner of the disputed property, even if his Claim would be granted by the Court and secondly, he would not be fully compensated because he would not be in the position of a secured creditor of the SOE in liquidation.

**4** On 28 August 2014, the PAK filed an Appeal against the Decision of Specialized Panel. In its Appeal, the PAK alleges an essential violation of the provisions of contested procedure, erroneous or incomplete determination of the factual situation and erroneous application of substantive law. It proposes to the Appellate Panel to set the appealed Decision aside or to modify it by rejecting the request as unfounded.



**5** The PAK maintained that the Specialized Panel erroneously determined the factual situation when it stated that the Claimant was announced twice as a provisional winner. The PAK criticizes that the Specialized Panel did not distinguish between the terms "highest bidder" and "provisional winner" and explains that the identification of the "highest bidder" relates only to the highest bid offered, whereas the "provisional winner" refers to the notification on the decision of the PAK Board of Directors on the announcement of the provisional winner. Moreover, the PAK asserted that in the present case, the conditions provided by Art 55.1 of the Annex to the LSC were not met. The findings of the Specialized Panel that the Claimant will suffer irreparable damage if the injunction is not granted are incorrect. The damage is considered to be "irreparable" only if it cannot be compensated in any reasonable way by financial means.

**6** On 10 July 2012, the Claimant submitted a Response to the Appeal. He is of the opinion that allowing the Agency to render such decisions on annulment of the tenders without providing any reasons and agreeing to re-tender the facilities which are subject matter of this case would damage him, the justice and especially the judicial practices.

**7** **Legal Reasoning:** The Appeal is admissible, but unfounded.

**8** The Appellate Panel has decided to dispense with the oral part of the proceedings under Art 64.1 of the Annex to the LSC.

**9** The Appellate Panel considers that the Specialized Panel has ruled correctly when it granted the preliminary injunction. The requirements of Art 55.1 of the Annex to the LSC are met; therefore, it rejects the Appeal as unfounded.

**10** The criteria on when a preliminary injunction shall be granted are provided in Art 55.1 of the Annex to the LSC:

*the party shall give credible evidence that immediate and irreparable damage will result to the party if no preliminary injunction is granted. These criteria are set in a way that if any of the above is lacking, the request shall be rejected.*

**11** Though the PAK is right in pointing out that the Claimant was never announced as the provisional winning bidder of the tender for sale of the asset in question, the Claimant was, nevertheless, twice declared

the highest bidder. The Appellate Panel finds that not only the position of the provisional winner but also the position of the highest bidder implies a justified and equitable interest warranting protection.

**12** According to Art 10.4 of the PAK's Rules of Tender, the Agency shall sell the subsidiary with the highest bid price. From then on it lies only in the sphere of the highest bidder to fulfil the requirements to be announced as provisional winner. PAK has to announce the highest bidder as provisional winner if he passes the background check as required by Art 11 of the Rules of Tender. In the case at hand there is no indication that the Claimant would not have passed the background check. Thus, the PAK disregarded the relevant legal interest of the Claimant that the further steps of PAK in the tender will be taken in accordance with due legal process and will finally result in the transfer of the asset in question into the ownership of the Claimant, by taking the decision to annul the tender, mentioning only Art 17.1 and 17.2(c) of the Rules of Tender. The PAK is not entitled to annul a tender based on the discretion given to the PAK's Board of directors by provisions of Art 17 of the Rules of Tender to postpone or cancel the tender at any moment for any reason. This discretion is not without limits. Art 17.1 of the Rules of Tender does not allow the cancellation without reason and the discretion of the Board of directors can only be exercised within the requirements of fair treatment of the respective bidder whose legitimate interests have to be taken into consideration by the PAK before a tender is cancelled.

**13** Fair proceedings in this sense require the following:

The decision to postpone or annul a tender has to be explicit, to be reasoned and to be served to the respective bidder. Otherwise it may cause that such decision is considered as void.

There has to be a valid reason justifying the cancellation of a tender, whereupon a valid reason is only one who is in line with the PAK's obligation to act within its objectives and purposes defined by the Law on PAK and pursuant to good faith and reasonable exercise.

If the PAK assesses that the tender process is faulty or the bid respectively the bidder does not meet necessary requirements it has not only to name the shortcomings but also to reason why these shortcomings are considered as such. E.g.: if a bid is considered to be too low, the



PAK has to disclose the minimum price for the asset in question and how this price is calculated.

Up to now the PAK has not given any valid reason to cancel the tender which could justify the Board's decision. Missing is particularly any explanation why the bid price does not correspond rationally to the perceived value of the tendered item. **14**

It has to be noted that the attitude of the PAK as it appears in this case does not comply with the objectives and purposes defined by the PAK Law2011 and pursuant to good faith and reasonable exercise and might have a negative impact on potential investors. **15**

The Appellate Panel also concurs with the finding of the Specialized Panel that the damage is immediate because without the requested preliminary injunction the PAK would be able to re-announce the asset in question [for tendering] at any time. **16**

The anticipated damage would be irreparable. The valid legal expectancy of the Claimant that the PAK will cooperate fully in relation to the necessary steps to conclude the sale and to transfer the tendered asset into the ownership of the Claimant would not be reasonably awarded by monetary compensation due to its nature and difficult calculation. **17**

For the above reasons and pursuant to Art 10.10 of the LSC, it is decided as in enacting clause. **18**

This Decision shall have no bearing in any way on the final adjudication on the merits of the Claim. **19**

## 23.

## Form of Contract for Sale of Immovable Property

Contract to sell and transfer title to real estate; Written form; Signatures; Verification by the Court; Offer; Handwritten offer; Testimony; Witness; Land swap; Immovable Property; Applicable law

Law on Obligations (also known as: Law on Contracts and Torts) Art 31.1, 32.1 and 2, 73; Law on Transfer of Real Property Art 4, 4.4; LCP Art 181, 181.1(b), 182 and 183; Law on Circulation of Land and Buildings Art 9, 9.12, 12, 47; Law on Use of Agricultural Land Art 53-67

1. **A contract to sell and transfer the title to real estate has to be concluded in writing and the signatures of the contractual parties have to be verified by the court of territorial competence**

2. **Handwritten offers/proposals for conclusion of a contract accepted by a land swap committee of the SOE do not constitute a written contract if not accepted by the director of the SOE in writing.**

3. **When a written contract was not concluded at all, then the testimony of a witnesses about the sale and transfer of a title to real estate is irrelevant.**

*Judgment of 10 December 2015 – AC-II.-12-0203 (First instance: Judgment of Municipal Court of F./U. of 26 November 2009 – C.no 323/06)*

1 **Factual and Procedural Background:** [1] On 30 May 2002, the Claimants have filed a Claim in the Municipal Court of F./U. for confirmation of the ownership on the grounds of possession.

2 By decision C. ... dated 30 November 2005, the Municipal Court of F./U. declared its lack of jurisdiction in regards to the subject-matter whereas the Claimants are advised [about] their rights to [pursue] the claim with the SCSC.

3 On 19 January 2006, the Claimants who are also spouses in relation to each other, have filed another Claim with the SCSC registered under no SCC-06-0028 whereby they sought confirmation of ownership on the grounds of the Contract on swap of immovable properties and possession of the property, cadastral parcel (hereinafter CP) no..., with a surface area of ... ha, Cadastral Zone P. i J., registered on the name of the Respondent. Whereas, the SOE *P B*, F./U. is asked to accept the ownership over the CP no ..., ... and ... and no ..., with a total surface of ..., currently registered on the name of the Claimants.

4 The Claimants allege that in 1970, a swap of cadastral parcels was performed between them and the Respondent Agro Combine "*P B*". This swap of land was said to have happened in written, but the Claimants could not have registered that immovable property in the cadastral office despite the fact of having it in their undisturbed possession.

5 The Claimants offered the following evidence: Possession Lists no ..., ... and no ... from the Court.

6 On 7 April 2006 the SCSC, by First Instance Decision, refers the case to the Municipal Court of F./U.

7 On 9 January 2008, through a submission, the Claimant has specified the Claim in the subjective sense. Due to the death of the second Claimant now as the only Claimant appears her inheritor, the first Claimant.

8 On 26 November 2009 the Municipal Court of F./U., by its Judgment C.no 323/06, partially approves the statement of claim of the Claimant *V Z* as grounded, and it is established that the Claimant is owner of the immovable property no ..., at a place called "A. e B.", of a culture-fifth class field, with a surface area of ... ha, and a fourth class field, with a surface area of ... ha, recorded on the Possession List (hereinafter PL) no ..., CZ-P. i J., on the name of Agro Combine F./U., with a surface area of ... ha, on the grounds of the land swap. By the Judgment, the Respondent Agro Combine – the SOE "*P B*" was obliged to allow the Claimant to perform the registration of the property in the cadastral books at the Directorate for Cadastre, Geodesy and Property

in F./U., within 15 days from the day when the judgment becomes final.

**9** It is also established that the Respondent Agro Combine - SOE "*P B*" in F./U., is owner of the immovable property CP no ..., at the place called 'U.', forth class field, with a surface area of ... ha, recorded on the PL no..., CZ – P. i J., CP no ..., at the place called 'U. te S.', fifth class field, with a surface area of ... ha, fifth class field, with a surface area of ... ha, CP no ..., at the place called "U te sh", forth class field, with a surface area of ... are, recorded in the PL no ..., CZ – P., in the name of the Claimant *V Z*, on the grounds of the land swap. By the Judgment, the Clamant was obliged to allow the Respondent to perform registration of the property in the cadastral books at the Directorate for Cadastre, Geodesy and Property in F./U., within 15 days from the day when the judgment becomes final.

**10** Whereas, it is rejected as ungrounded the part of the statement of claim related to confirmation of the ownership on the grounds of the land swap for the surface area of ... are of the CP no..., at the place called 'A. e B.', recorded on the PL no ..., CM P. i J. as well as confirmation that there was a swap of the this part of the immovable property with the CP no ..., at a place called 'F.', with a surface area of ... are, recorded on the PL no ..., ZK P. i J.

**11** By the Judgment, the Respondent was obliged to pay to the Claimant court expenses in the amount of ... euros.

**12** It is mentioned in the reasoning of the Judgment that during the preliminary hearing and main hearings as well, the Respondent has declared, through his representative, that they object the Claimant's Claim and the statement of the Claim for confirmation of the ownership on the grounds of the land swap, since the Claimant did not offer sufficient material evidence.

**13** In order to establish the factual situation, the Municipal Court has administered the following pieces of evidence: viewing of PL no ... CZ -P. i J., on the name of *V Z*, PL no ..., CZ -P. i J., on the name of *N Z*, PL no... CZ -P. i J., on the name of Agro-Industrial Combine "*P S*" for the cadastral parcel no ..., reading of the request submitted by the Claimant *V Z*, viewing and reading of expertize performed by an court expert of geometry – *A H*, viewing of the copy plan for the CP no ..., viewing of the Certificate on



the immovable property rights UL... CZ-P. i J., on the name of *V Z*, for the CP no ... and CP no ..., supplement to the expertise of the expert *A H*, reading and hearing of the statements of the witnesses *M M* and *S H*, reading of the Judgment of Municipal Court of F./U., reading of the Judgment of the District Court of P./P., as well as viewing of the copy plan for the CP no ... and ... .

Based on the administered evidence and their assessment as defined by Art 8.1 and 8.2 of the LCP, this Court has found that the Claimant's statement of Claim is partially grounded as it was approved in points –I– and –II– of the enacting clause. **14**

The Court has entirely given the credence to the witnesses' statements because as it was sated, they were convincing and objective and it confirmed that a physical swap of land occurred between the Claimant and the Respondent, and even a three-member commission was established for this matter. **15**

Also in the reasoning it is stated that sufficient ground for approval of the statement of claim and recognitions of legal action was also the request (offer) which was submitted to the Respondent on 10 October 1973 which was accepted, and contains all essential parts of the contract in conformity with Art 32.1 .2 of the Law on Transfer of Real Property [correct: Law on Obligations]. **16**

The Claimant has acquired the ownership right on the grounds of land swap and tenure and the agreement was fulfilled in whole, in conformity with Art 4.4 of the Law on Transfer of Real Property of the SRS no 43/81, 28/87 and 40/89, which is an applicable law pursuant to UNMIK Reg 1999/24. **17**

On 20 May 2010, the PAK filed an Appeal against this Judgment with the SCSC which is registered under no SCA-10-0045. **18**

The PAK objected to the challenged Judgment for the reason of containing deficiencies which prevented the assessment of it; it does not contain reasons on crucial facts and contradictions that appeared between the reasoning of the Judgment and administered [correct: analyzed] evidence during the main hearing, which in fact constitute essential violations of the provision of Art 181 and 182 of the LCP. **19**

20 The Appellant states that the factual situation was not considered entirely and real in the reasoning by approving the request on the grounds of an informal act, which is not an official and credible document.

21 Further, the Appellant asserts that pursuant to the Law on the Transfer of Real Property [correct: Law on Contracts and Torts] the contract on land swap has to be in writing and attested at the court, whereas in the reasoning it may be noticed that the Court gave credence only to the request for land swap which is an act for initiation of current proceedings.

22 The PAK alleges that the swap of immovable properties was performed contrary to legal provisions of the applicable law and in lack of legal documents because the request dated 10 October 1973. Neither by its content nor by its form does [it] fulfil legal conditions to be accepted as legal work.

23 Another violation is considered to be a breach of provisions of substantive law because the Court did not ask the Claimant for a legal ground whereon he corroborates his statement of Claim and erroneously based its Judgment on the provisions of the Law on the Transfer of Real Property of 1989 and Art 31.1 of the LOR [correct: Law on Obligations].

24 Further, [the PAK] added that such legal work is concluded in contrary to provisions of Art 9.12, 12 and 47 of the Law on Circulation of Land and Buildings as well as provisions of Art 53-67 of the Law on Use of Agricultural Land no 43/1959.

25 Therefore, [the PAK] asks the Court to approve its Appeal as grounded, to amend the Judgment or to remit the case for retrial.

26 On 31 May 2010, the Claimant's representative lawyer, *H I* submitted a Response to the Appeal whereby he objected the allegations of the Respondent that the Judgment contains discrepancies, contradictory statements and violations.

In contrary, the Judgment has sufficient and logical reasons for all the crucial facts.

He stated that the Appellant did not mention any legal provision which was not applied or it was wrongly applied and which influenced the issuance of the Judgment. The Court has properly established



the factual position. (Art 183 [of the LCP] in conjunction with Art 181[.1(b)] [of the LCP]).

The Court did not make the assessment only on the basis of the document but it also based [it] on the expertise, the site visit and witnesses' statements.

Then, allegations that a contract on swap has to be in written are ungrounded because even in 1973 the contract was accomplished [correct: fulfilled] in whole in conformity with Art 73 of the Law on Transfer of Real Property [correct: Law on Contracts and Torts].

Also, the allegations that the contract was not concluded in accordance with Art 9 of the Law on Circulation of Land and Buildings (Official Gazette of SFRY no 43/65, 57/65 and 17/67) do not stand.

In contrary, in favour that this contract is lawful is also the judgment of the Supreme Court of Yugoslavia GZ.no 49/06 regarding the provisions of Art 9 [of the Circulation of Land and Buildings].

27 On 20 November 2012, through an internal order, the case is submitted to the Appellate Panel and registered under no AC-II.-12-0203.

28 On 17 October 2013, the Appellate Panel dismissed the Claimants' request for preliminary injunction as inadmissible.

29 On 24 August 2015, by a submission, the representative of the Claimant notified the SCSC that the first Claimant died whilst based on the decision on inheritance no ... presented to the Court, his sole inheritor is his son *S V Z* who has authorised, by an authorization, a lawyer in order to take over the procedure and requests that all procedural actions be undertaken up to the closure of this legal matter.

30 **Legal Reasoning:** The Appeal is grounded.

31 Pursuant to Art 64.1 of the Annex to the LSC, the Appellate Panel decided not to hold the oral part of the court proceedings.

32 By the appealed Judgment, the First Instance Court did not properly and completely establish the factual situation and as result it erroneously applied provisions of the substantive law when approved in whole the statement of claim of the Claimant as grounded.

33 The Court has erroneously ascertained that the offer dated 10 October 1973 is sufficient material evidence and it is in accordance with Art 32.1.2 of the Law on Obligational Relations [correct: Law on Contracts and Torts] whereby the parties have performed the swap of the immovable properties. The offer is a proposal for conclusion of the contract which could not have necessarily resulted [in a] conclusion of the contract.

34 Pursuant to Art 4 of the Law on Transfer of Real Property in force as of 16 July 1992, paragraph 2, contract on transfer of the right on immovable property concluded between the holders of the ownership rights, related to the alienation of the socially-owned property and swap of socially-owned property, has to be concluded in written and signatures of the contractual parties have to be attested by the court. It is defined in paragraph 3 of the same Article that a contract not concluded in a manner referred-to paragraphs 1 and 2 of this Article shall have no legal effect.

35 Therefore, the Appellate Panel considers that the Municipal Court has erroneously applied the substantive law when [it] considered the offer as valid legal work wherewith the transfer could be made of the immovable properties.

36 Furthermore, even this offer is written by hand, it is unsigned by the director or person in charge in the SOE and in most of its pages it is illegible and as such it cannot be considered as offer, let alone as valid contract.

37 In lack of a valid contract, the Appellate Panel may not consider as decisive even the statements of witnesses which could have been used only to supplement or strengthen a document or a contract, but in this case it is not so.

38 On the basis of the aforementioned reasons, the Appeal of the Appellant is grounded whereas the challenged Judgment, [namely] its points –I–, –II– and –IV– of the enacting clause are set aside and the statement of Claim included in three points of the enacting clause of the appealed Judgment is rejected as ungrounded.

39 Since another part of the Claim is included in point –III– of the enacting clause of the appealed Judgment [it] is rejected as ungrounded



by the Municipal Court of F./U., the Appellate Panel now ascertained that the whole Claim is rejected as ungrounded.

As stated above, pursuant to Art 10.10 of the LSC it is decided as in the enacting clause. 40

## 24.

## Conditions for Rendering a Judgment without Hearing

Hearing; Collection of evidence

Annex to the LSC Art 34, 34.3, 43.1, 46

1. **The only possibility for the first instance to close a case by judgment without a hearing is provided in Art 34 of the Annex to the LSC.**

2. **By not issuing an Order and not completing the procedure set forth in Art 34 of the Annex to the LSC, the first instance breached the parties' right to be heard which constitutes an essential violation of the established procedure.**

*Decision of 10 February 2016 – AC-I.-15-0233 (First Instance: Judgment of 2 October 2015 – C-IV.-15-1015)*

1 **Factual and Procedural Background:** On 9 June 2015, the Claimants/workers of KAI "*A*" SH.A –Admin Joint Services in P./P., filed a Claim with the SCSC asking to establish that the SOE SCI-"*H P S*" is an integral part of KAI "*A*" SH.A – Admin Joint Services in P./P., and to oblige the Respondent – PAK – to recognise the status of shareholders of KAI "*A*" SH.A – Admin Joint Services in P./P. to the Claimants.

2 The Claimants have stated that the Self-managing Community of Interest (SCI) for *H P* commenced its operations in 1970 in some regions of Kosovo. Since 1978, SCI for *H P* was located in the business premise of "D." neighbourhood ..., obj. ..., whilst from 1988 and onwards it was used by KAI "*A*" SH.A, a company that has established this SCI with its own capital.

3 The Claimants emphasized that they are shareholders pursuant to the Law on Property and other Real Rights since it is in their factual possession and they are permanent users of the property as of 1988



without being disturbed by anyone. Furthermore, they added that the SCI was financially supported by KAI "*A*", [with a] principal capital in that time [in the] amount of money- ... dinar or if converted into DM it was ..., i.e. equal to ... euros.

4 On the same date as their Claim, they have also filed a motion for Preliminary Injunction highlighting the same allegations as stated in the Claim. In the said application they pointed out that for the purpose of protection of their rights and existing state of the claimed immovable property, they have proposed to the Court to order a preliminary injunction so that the PAK will not alienate the business premise which subject-matter of the dispute.

5 On 12 June 2015, the SCSC issued an Order and requested the Claimants to clarify the immediate and irreparable damage that Claimants will suffer if the motion for preliminary injunction will be not granted pursuant to Art 55 of the Annex to the LSC; to submit a power of attorney for the legal representative and to provide evidence in support of the Claim. On the same day, the Claimants' Claim and motion for Preliminary Injunction were sent to the Respondent.

6 On 29 June 2015, the Claimants' representative responded to the SCSC's Order dated 12 June 2015, by offering additional explanations in regards to the motion for Preliminary Injunction. The Claimants' representative stated the fact that entering [correct: commencement] of the SOE into a liquidation procedure may jeopardize the Claimants' request for realization of their rights in relation to the contested object because the PAK may tear down, change its function, destroy different [correct: various pieces of] equipment, etc. He proposed the approval of the Preliminary Injunction.

7 On 30 June 2015, the PAK filed its reply to SCSC's Order. The PAK challenged the motion for Preliminary Injunction and demanded to reject it as ungrounded based on the fact that the Claimants did not submit any piece of evidence in regards to [their] alleged ownership right and they did not meet the criteria stipulated in Art 55.1 of the Annex to the LSC. The PAK stated the Claimants have failed to present to the SCSC credible evidence.

8 On 8 September 2015, the Respondent submitted [its] Reply to the Claimants' allegations, by reasoning that the Appellants/Claimants did

not corroborate their request for approval of the complaint by credible and relevant evidence. The Respondent further added that the PAK is the only institution lawfully competent to establish the legal status of all the SOEs, including the case of this SOE. PAK also stated that the SOE was founded as legal person which performed duties of social interest and had social capital, and proposed to the SCSC to reject the Claimants' motion as ungrounded on law.

9 On 11 September 2015, the PAK statement was transferred to the Claimants.

10 On 25 September 2015, the Claimants submitted a Response to the Respondent's submission of 8 September 2015 emphasizing that the Respondent's arguments are ungrounded and inconstant and they do not have to be taken into consideration. The Claimants have further replicated their allegations as presented in their Claim dated 9 June 2015 and proposed to the SCSC to approve their Complaint as grounded.

11 On 2 October 2015, the Specialized Panel rendered Judgment C-IV.-15-1015 [in which] rejected the Claimants Claim and motion for Preliminary Injunction as ungrounded. According to the SCSC, the Claimants' allegations that as of 1988 and onwards they were in possession and use of business premises are not sufficient because [such] does not prove the ownership of the Claimants. Utilization by Claimants' business premises cannot lead to acquisition of the ownership [right] without any contractual relationship concluded between the Claimants and the SOE for the purchase of business premises based on law. The Claimants did also note prove the facts by any [pieces of] evidence.

12 On 28 October 2015, the Claimants filed an Appeal claiming that the Specialised Panel wrongly and incompletely verified the factual situation and wrongly applied material law and breached provisions of the LSC. The Claimants submitted also that the SCSC never asked the Respondent to prove that they are the owners of claimed premises and failed to assess the evidence related to the allegations concerning the Claimants' right of permanent use of the disputed premises. Finally, the Specialised Panel violated Art 43.1 and Art 46 of the Annex to the LSC because [it] rendered a Judgment without scheduling a hearing and without prior notice on the written procedure.



13 On 23 November 2015, the PAK filed a Response to the Appeal and requested the SCSC to reject the Claimants' Appeal as ungrounded due the fact that they did not prove their allegations.

14 **Legal Reasoning:** The Appellate Panel decided to dispense with the verbal proceedings, pursuant to Art 64.1 of the Annex to the LSC.

15 The Appeal is grounded. The First Instance [Panel] rendered a Judgment lacking clarity as to the essence of the request and grounds, as well as lacking clarity on the active and passive legitimacy. The Court should have [had] established if the Claim is on status determination in which case "workers" of the company have no active legitimacy, because any company can only be represented by the respective management. In addition, a claim to verify the status of a shareholder is inadmissible against the PAK, because the PAK has no competence over private companies.

16 The request itself is very vague – to recognize the employees' statute of shareholders of KAI "*A*" SH.A – Admin Joint Services in P./P., because they are factual bona fide possessors and entitled to apply Art 18.1.1.4 of PAK Law2011. Art 18 of that law has nothing to do with any rights of employees or shareholders. The First Instance [Panel] should [have] clarified the essence of the request and hence the admissibility of the Claim.

17 It should also be noted that the First Instance [Panel] wrongly closed the case with Judgment on the merits without having a hearing. On the decision and in the case file, there is no explanation why and on what legal basis the Specialized Panel decided not to hold a hearing at all. The only possibility for the first instance to close a case with judgment without a hearing is provided in Art 34 of the Annex to the LSC. If after a report provided by the reporting judge, the panel finds out that no genuine dispute of an important material fact exists, the panel might issue an order under Art 34.3 [of the Annex to the LSC] to dispense with oral hearings and [with the] collection of evidence. However, before issuing such order, the panel shall inform parties that an order of this kind is under consideration and shall invite the parties to come up with new submissions [with]in a proper deadline. Only if parties fail to file submissions or file irrelevant submission, the First Instance Panel [can] issue an order to dispense with the hearing. By not issuing

an order and not completing the procedure set forth in Art 34 of the Annex to the LSC, the First Instance [Panel] breached parties' right to be heard in the court of justice, which is an essential violation of the established procedure.

**18** By rendering a Judgment in [an] unclear and unspecified Claim and breaching parties' right to a hearing, the Court failed to respect [its] *ex officio* duties to check the admissibility of all claims and secure that parties enjoy their procedural rights.

**19** Therefore, the Judgment is to be set aside and both the Claim and motion for Preliminary Injunction shall be remitted for re-adjudication.



## 25.

## Ownership is Obtained only Through a Valid Ownership Title

Ownership Claim; Possession; Cadastral records; Confiscated Land; Tendering; Liquidation Procedure; Privatization

Law on Agrarian Reform Art 29; Law on Confiscation of Property Art 10; LBPR Art 28.4

**Without a final decision rendered by the competent public authority that annuls the act of confiscation, a claimant cannot successfully claim ownership over confiscated property.**

*Judgment of 10 February 2016 – AC-I.15-0249 (First Instance: Judgment of 26 October 2015 – SCL-11-0012)*

**Factual and Procedural Background:** On 23 April 1946, after *K B* had been executed as an enemy of the people, the People's Council of in the Municipality I./I. decided, pursuant to Art 29 of the Law on Agrarian Reform, to confiscate ... ha of land belonging to *K B* located in a place known as "Q.", assigning that land to the district council of the trade union as a sports playground. **1**

On 21 December 1955, the confiscated land was given to the Agriculture *Cooperative D* in I./I. for temporary usage. The People's Council of the Municipality I./I. did not, at that time, render any permanent decision in regard to the concerned land. **2**

First Claim

On 7 October 1967, the Complainant's father, *B B*, filed a request for recognition/confirmation of his ownership rights (no ...) to the Review Committee of socially owned properties in the Municipal Assembly of I./I. without specifying the cadastral number of the parcel; however, there is no evidence how the procedure regarding this request has actually ended. **3**

4 On 29 April 1981, upon agreement of the Workers' Council of AC *D* on 27 April 1981, the Municipal Assembly of I./I. had decided that the Working Organization "*S*", i.e., the successor of the SOE should be given the right to use certain land including the cadastral parcels no ... and ... under the Possession List ... with a total surface of ... ha and the cadastral parcels no ... and ... under the Possession List no ... (with a total surface of ... ha). The decision, however, does not state anywhere that such land has been confiscated and that it originally belonged to *K B*.

5 On 1 June 1981, the Directorate of Economy and Finance of the Municipal Assembly of I./I. issued decision no ... in order to allocate the right of use (without compensation) to the Working Organisation "*S*" over cadastral parcels no ... and ... under Possession List no ..., with a total surface of ... ha, and the cadastral parcels no ... and ... under Possession List no ..., (with a total surface of ... ha). This Decision on the allocation of the parcels expressly describes the concerned land as "confiscated" and notes that such land was previously in the possession of AC D.

Second Claim

6 On 23 December 2004, the Claimant/Complainant filed a Claim with the SCSC seeking restitution from the SOE of the cadastral parcels nos ..., ..., ... and ... under Possession List no ... of the Municipal Assembly of I./I., having a total surface area of ... ha.

7 On 20 January 2006, the SCSC referred the case to the Municipal Court of I./I. Pursuant to the Decision of the Municipal Court of I./I. C.no ... of 29 October 2006, the proceedings were suspended since the liquidation procedure had commenced against the Respondent SOE.

8 According to the Appeal of the Claimant filed with the Municipal Court of I./I. on 12 November 2007, the SCSC with its Decision ... dated 13 December 2007, rejected the Appeal as ungrounded and upheld the Municipal Court Decision.

9 On 27 April 2007, the SOE was privatized through an open public tender and the subsequent sale of NewCo "*S*" LLC ("NewCo"), while the SOE was put into liquidation on 18 September 2007.



Third Claim Filed with the Liquidation Committee

10 On 2 July 2010, the Complainant submitted an ownership claim to the Liquidation Committee of the SOE seeking restitution and compensation of the land with a total surface area of ... ha, located at a place called "Q." in the Municipality I./I. (the "claimed land"). The Complainant identifies the claimed land as follows: cadastral parcels nos. ..., ..., ... and ... under Possession list no ... (*rectius*, ...) of the Municipal Assembly of I./I. This Committee notes that due to the lack of cadastral identification of the Confiscated Land in the Decision on Confiscation and the subsequent documentation, there is no evidence before this Committee that the Claimed Land corresponds to the Confiscated Land.

The Decision of the Liquidation Committee

11 On 9 November 2010, the Liquidation Committee rejected in total the Claim as ungrounded for the reasons set forth below:

1. Art 20.2 of the LBPR states that "the ownership right can also be acquired by decision of government authorities in the ways and under the conditions determined by law". Pursuant to Art 10 of the Law on Confiscation of Property of 12 June 1945 (the "Confiscation Law"), "the state acquires a right over the confiscated property according to the final decision that announces the confiscation of the confiscated property". As the claimed land was confiscated in accordance with the Confiscation Law, the Liquidation Committee considers that the SOE is the legitimate owner of the claimed land;

2. The Confiscation Decision was adopted in accordance with the Confiscation Law and there is no legal provision that allows the Liquidation Committee to review such decision. The Liquidation Committee must therefore recognise and accept the outcome of the confiscation procedure as carried out by the Municipality I./I.;

3. There is no evidence before the Liquidation Committee which proves that the Complainant (or other successor with title of the former owner of the claimed land) have taken any legal action before the Municipal Council of People or competent court regarding the legality of the Confiscation Decision for the purposes of restitution of the Claimed Land;

4. Pursuant to Art 28.4 of the Property Law, which provides that the possessor of immovable property without title but in good faith may acquire ownership over such property after 20 years of adverse possession, the SOE is the legitimate owner of the Claimed parcel.

The Request to Review the Decision of the Liquidation Committee

12 On 18 January 2011, the Complainant filed a written request to this Committee with the request to review the decision of the Liquidation Committee. The Committee is requested to approve on merits the Complainant's ownership claim in respect of the claimed land, and in particular to return such land or award the Complainant with monetary compensation.

The Decision of the Liquidation Committee in Regard to the Request for Review

13 In the decision dated 28 March 2011, ..., the Liquidation Review Committee rejected the application for review and concluded the following:

1. The numbers of the possession lists under which parcels ..., ..., ... and ... are registered in the cadastre have changed (several times in certain cases) in the course of time. In particular, cadastral parcels no ... and ... (previously referred to in the Possession List no ... or the Possession List no ...) are currently registered under Possession List no ... (Cadastral Zone no ...), whereas cadastral parcels no ... and ... (originally referred to in Possession List no ...) now appear on possession list separate i.e. Possession List no ..., respectively.

2. Parcels ... and ... are still registered as socially-owned land in the name of the SOE, as evidenced under the following possession lists, issued by the Department for Geodesy and Property of the Municipality I./I.: 1) Possession List no ... (Cadastral Zone no ...) dated 23 May 2003 (ref. no ...) (available in PAK Data Room; a copy of which was included in the sale documents of NewCo); Possession List no ..., dated 15 September 2004.

The Complaint Against the Decision of the Liquidation Committee

14 On 5 May 2011, the Complainant, in the capacity of inheritor of his grandfather *K K B*, filed with the SCSC a challenge/complaint against



the Decision of the Liqudiation Committee of the PAK, with reference no ..., dated 28 March 2011, seeking confirmation of the ownership right or compensation of the immovable property – confiscated land.

15 The Claimant requests the recognition of even the cadastral parcel ... (which is transformed and now is parcel no ... and ...) with a surface of ... ha and he states that this cadastral parcel, beeing considered as a "road", was restituted to his grandmother and as such it is under his ownership, but it is posessed by the Respondent.

16 The Claimant states on his complaint that all the surface of the cadastral parcels beeing on the present contest have a total surface of ... ha, surface that matches with the Conclusion of the Decision of the Muinicipal Assembly of I./I. issued in 1981.

17 The Claimant drew the attention of the Court to the following facts:

1. The Claimant states that the first Claim-Appeal was filed with the SCSC on 23 December 2004. On 20 January 2006, the case was referred to the Municipal Court of I./I. for further competence. On 29 October 2007, the Municipal Court of I./I. suspended the court proceeding because in the meantime the liquidation process of the SOE has [been] initiated. Against this Decision, on 12 November 2007 the Claimant filed an Appeal with the SCSC. The Appeal was rejected by the SCSC on 13 December 2007. Based on the legal measures the Claimant, on 19 December 2009, filed an appeal [correct: complaint] at the PAK Liquidation Committee Regional Office in P./P. The PAK Liquidation Committee - Regional Office in P./P. issued a decision on 11 November 2010 rejecting the appeal [correct: complaint]. Meanwhile, on 27 April 2007 the SOE "*S*" was privatized through a public tender and furthermore on 18 September 2007 the SOE entered a liquidation procedure.

2. The Claimant stated in his Appeal that the Claim/Request for the recognition of the ownership right over the contested cadastral parcels has been raised 2 to 4 years before the privatization of the SOE, and based on the principles and the judicial practice, as well as on the national and international laws, the PAK and the SCSC would not have been able to act or to permit the privatization of these assets.

The Hearing

18 On 30 June 2015, the representative of the Claimant during the hearing specified his claim. The claim of the Claimant is related to: "the parcel no ... and ... with a total surface of ... sqm, which are sold during the liquidation procedure"

19 In regard to cadastral parcel no ..., the representative of the Claimant during the hearing stated that it is not related to the Claim of this Claimant. According to the lawyer of the Claimant, the legal basis of the Claim is not disputable, but it is the issue of finding the way on how to satisfy the Claimant - either by restitution of the property or by compensation. According to the Appellant, there is also a legal situation regarding the conducted sale in relation to parcel ... and ..., which legal situation is for sure not unknown for the Respondent. According to the Appellant, there are two options of satisfying the Claimant: either to provide an adequate restitution of the property of the same quality or to determine compensation in accordance with the current market prices.

The Judgment of the Specialized Panel

20 The Specialized Panel of the SCSC, with Judgment SCL-11-0012, dated 26 October 2015 decided the following:

1. The Respondent PAK is obliged to transfer to the Claimant the right of possession of the parcels ... and ..., that constitute the right of ownership, certified by the Kosovo Cadastral Agency, Municipal Cadastral Office in I./I. in the name of the Claimant;

2. The appeal [correct: complaint] against the decision of the Liquidation Review Committee no ..., dated 28 March 2011, that exceeds the scope of adjudication of point –I– of the enacting clause of the current Judgment is hereby rejected;

21 The Specialized Panel has reasoned that in relation to the first part of the Claim related to the recognition of the ownership right of the cadastral parcels ... and ..., the Court is of the opinion that without a final judgment rendered by a competent body for nullification of the confiscation act done in 1946, the decision on confiscation is still formally in force; therefore, it is binding. The Specialized Panel also reasoned that no evidence may lead to the conclusion that the historical decisions and acts on transfer of that property were ever successfully challenged by any of *K B*'s successors including the Claimant.



22 As far as the second part of the Claim which is related to the recognition of the ownership right over the cadastral parcel [is concerned] ..., which parcel later was divided in two plots ... and ..., the Court is of the opinion that the Claimant is entitled to obtain Court protection of his Claim[. R]egarding those two parcels the ownership right is not disputable, since it is registered on the name of the Claimant. Therefore, the Court decided to oblige PAK to transfer to the Claimant the possession right of the parcels ... and ..., that constitute the ownership certified by the Kosovo Cadastral Agency, Municipal Cadastral Office in I./I. on the name of the Claimant. Therefore, the PAK has to release the property and transfer it to the Claimant who is the only legal owner thereof.

The Appeal of the Respondent

23 On 16 November 2015 the Respondent filed an Appeal within time limit against the Judgment of the Specialized Panel of the SCSC, SCL-11-0012, dated 12 October 2015, due to essential violations of the provisions of the contested procedure, the erroneous and incomplete verification of the factual situation and wrong application of the substantive law, requesting the Judgment to be quashed and the matter be remitted for retrial or to reject the Claim of the Claimant as ungrounded. Furthermore, in the Appeal the Respondent considers that the conclusion of the First Instance Panel is wrong in regard to point I of the enacting clause of the Judgment, as the Specialized Panel obliged the PAK to transfer to the Claimant the possession right, which is in violation of Art 5.1 of the PAK Law2011. The Respondent asserts that the Agency is not the owner, but only the administrator of the socially owned property. The Respondent asserts in the Appeal that the First Instance Panel does not conclude at all that the Claimant is in possession of the parcels, while under point –I– of the enacting clause it obliged PAK, which is the administrator, and not the owner of the parcels, to transfer to the Claimant the possession right of the properties. The Judgment, according to the Respondent contains no reasoning in regard to the possession. The First Instance Panel failed to confirm the fact whether the Claimant possesses the contested properties and the time period for how long has he possessed them. Also, the Respondent is asserted in the Appeal that the first instance Court failed to confirm the legal basis on which the Claimant became the owner of the properties. Also in this case it is not confirmed the passive legitimacy of the Respondent. Consequently, according to the Respondent, the material provisions have been wrongly and in an arbitrary manner applied.

The Appeal of the Claimant

24 On 20 November 2015, the Claimant filed an appeal within the time limit against the Judgment of the Specialized Panel, SCL-11-0012, dated 26 October 2015, and that [correct: but] only against point II of the enacting clause of the Judgment, due to an erroneous and incomplete verification of the factual situation and wrong application of the substantive law, requesting the Judgment, the point II, to be quashed, approving the Claim in regard to cadastral parcel ... and ..., obliging the Respondent to return under factual possession the parcels in possession, or compensate the damage caused to him in accordance with the real value of the market price, in case these two parcels cannot be restored. Furthermore, the Claimant in the Appeal considers that the rejection of the claim in regard to the parcels ... and ... is wrong as the factual situation is not correctly verified and the substantive law was wrongly applied. According to the Claimant, the acknowledgment of the fact of confiscation of properties and the objective assessment of the [pieces of] evidence consisted the sufficient basis to conclude the fact that the Respondent holds without any legal basis the cadastral parcels ... and ..., which were requested to be returned to the Claimant. According to the Claimant, the fact that a part of confiscated properties has been restored provides a significant argument for restoring also the other two parcels, mentioned above and which are being held by the Respondent without any legal basis, which were sold during the liquidation procedure, and thus the only option that has remained is their compensation thereof. Therefore, the Claimant in the Appeal asserts that he cannot agree with the estimation of the Specialized Panel that the recognition of the ownership right for cadastral parcels ... and ... will happen only after having decided on the merits for the act of the confiscation of the properties which happened in 1946, an act which by the First Instance Court is considered as sill valid. According to the Claimant, this assessment of the Court lacks the relevant argumentation.

The Response of the Respondent to the Appeal of the Claimant

25 On 3 December 2015, the Respondent filed with the SCSC a Response to the Appeal of the Claimant, requesting from the Court to reject this Appeal and uphold point –II– of the enacting clause of the appealed Judgment as lawful and legally grounded. Furthermore, the Respondent in the Response filed to the Appeal, asserts that the administrative decision regarding the confiscation of the properties in the judicial proceedings may be challenged only when a final Decision or Judgment exists, which is issued by the competent body for the annulment of the act of confiscation concluded in 1946. According to the Respondent, the decision for confiscation of properties is still in force and any action undertaken in regard to these parcels cannot produce legal effects. According to the Respondent, the SCSC has no substantive jurisdiction over this claim as there is no final decision for the annulment of the act on confiscation of properties. Therefore, the legal remedies have not been exhausted in the administrative procedure and therefore this is in line with the legal standing that the SCSC has taken in regard in the case SCC-08-0224. According to the Respondent, the Claimant should prove the claimed property right for the concerned properties on the basis of a legal title and restore the property right thereof. According to the Respondent, the Claimant has failed to prove whether up to now the administrative acts have been contested, including also the confiscation act, he was passive and up to now he was not interested in the contested parcels. Therefore, according to the Respondent, the Decision of the first instance Court, as given under point II of the enacting clause of the appealed Judgment is therefore lawful and based on decisive facts and evidence, and as such it should be upheld, whereas the Appeal of the Claimant should be rejected as ungrounded.



The Response of the Claimant to the Appeal of the Respondent

26 On 25 November 2015, the Appellate Panel issued an Order serving the Appeal of the Respondent on the Claimant in order to provide a response to the Appeal. The Claimant received the Order on 2 December 2015 and up to now no response has been filed to the Appeal of the Respondent.

27 **Legal Reasoning:** The Appeals are admissible but ungrounded.

Based on Art 64.1 of the Annex to the LSC, the Appellate Panel decided to dispense with the oral part of the proceedings.

The merits of the Appeal and the Assessment of the Appellate Panel

28 The appealed Judgment of the Specialized Panel of the SCSC is correct in its outcome and legal reasoning; therefore, it should be upheld.

29 From the historical and procedural background of the case it is seen that the Claimant requested different parcels for the land which were confiscated from his grandfather *K K B*, executed in 1946.

30 At the hearing held on 30 June 2015, the Claimant specified the statement of his Claim and according to the minutes of the session exhibited in the case file it is seen that the Claimant is asking for parcels ..., ... and ... . Whereas, for the parcel ..., the representative of the Claimant stated at the hearing it is not related to his Claim.

31 It is established based on the minutes of the hearing session that the cadastral parcels ... and ... are sold during the liquidation procedure of the SOE, so they are parcels already registered in the name of third parties. Knowing this fact, the Claimant has requested for these two parcels the monetary compensation with the value of the market price. [In regard to t]he cadastral parcel ..., which is being requested by the Claimant, it is proved that it is divided into two parts, namely as parcels ... and ... . These two parcels according to the minutes of the hearing and the assertion of the Claimant, as well as the property certificate from the Cadastre Office in I./I., are registered in cadastral records as the property of the Claimant, but the Claimant did not possess them, and they are under the usage of the Respondent.

32 It is an uncontested fact that the act of confiscation of the properties in 1946 is not proved by the Claimant or earlier by his predecessors, that this act is ever annulled through any decision by any public authority. Therefore, the conclusion of the Specialized Panel that the act of confiscation of properties from the Claimant's predecessor is still formally in force is correct, because there is no final decision to prove that that particular act is either administratively or judicially annulled. Consequently, the act of confiscation of these properties is still binding and with effective action.

33 On the other hand, the Claimant has failed to prove by evidence the connection of the confiscated properties by the act of confiscation, and the claimed parcels in the Claim. Therefore, in this respect the legal outcome of the Liquidation Committee of PAK is correct as provided in the appealed Decision by the Claimant.

34 While there is no final decision from a public entity which proves the annulment of the act on confiscation of properties of the Claimant's predecessor, it is clear that the Claimant cannot claim to have any legal title to request the possibility of restoring the claimed properties in regard to parcels no ... and ..., which is the final request given in the statement of the claim specified during the hearing dated 30 June 2015.



35 In regard to cadastral parcel ... which was later divided in two parcels, namely parcel no ... and ..., the ownership certificate issued by the Cadastral Office proves that this parcel, actually divided into two parcels the ownership right of the Claimant, is registered in the cadastral registry.

36 It is unclear yet which is the legal basis over which this parcel is registered in the name of the Claimant in the cadastral registry. There is no evidence in the case file that the Respondent has ever contested the act of registration of parcels no ... and ... in the cadastral registry in name of the Claimant, in any administrative procedure of any public authority. Therefore, it can be concluded that the Respondent failed to prove the alleged fact that the Claimant without any legal basis holds these parcels in his name in the cadastral records. What is evident and correctly proven, is that these two parcels are registered in the cadastral records in the name of the Claimant, whereas they are used by the Respondent. Therefore, it can be concluded that the Claimant has a legal interest to seek the court protection for his own property, namely to restore the right of use of it.

37 The Claimant for parcels no ... and ..., for which he is aware that they are sold, has requested monetary compensation. The First Instance Panel acted correctly when [it] has not reviewed and decided over the alternative monetary request of the Claim. The Claimant, as mentioned above, has failed to prove with evidence that the act of confiscation of the claimed property has ever been annulled, and without an ownership title that the Claimant does not hold, he has no legal basis to seek monetary compensation for the properties that are already registered in the name of third parties.

38 The Respondent in the Appeal raised the issue of the lack of legitimacy of the Respondent Party. This allegation is not correct. The Claimant contested the decision of the Liquidation Authority through which was rejected his ownership claim; therefore, he had no other choice but to sue the Liquidation Authority which by conducting the liquidation procedures of the SOE, under whose name the contested properties are evidenced, has rejected his claim thereof.

39 In his Appeal, the Claimant alleges that the First Instance Panel has recognized the fact of confiscation of the property; therefore, according to him this circumstance is taken as sufficient basis for restoring his

confiscated properties. His statement cannot be influential, since the ownership is obtained only under a valid title of ownership. As stated above, the Claimant has failed to provide this property title. Also, his statement that the return of the parcels no ... and ..., is an influential circumstance that enables the return of the two other parcels no ... and ..., is not correct and does not correspond to the situation and the circumstances of these parcels. As noted above, the Claimant had the right of ownership over parcels no ... and ..., registered in the cadastral records, but did not possess them, so the Court decided to return the possession right, but not the ownership right, which he already had, unlike the parcels ... and ..., which are identified as socially owned property, where the Claimant failed to prove right of ownership by the means of the ownership title, and therefore the Court has no legal basis to recognize the right of ownership for these parcels.

**40** For these reasons, the Appellate Panel considers that in this case the outcome granted by the First Instance Panel could not be changed neither in favour of the Respondent, in regard to the challenged point I of the enacting clause, as requested by the Respondent in its Appeal, nor in the favour of the Claimant in regard to the challenged point –II– of the enacting clause, as requested by the Claimant in his Appeal, filed against the Appealed Judgment.

**41** Therefore, the Appeals of the Claimant and the Respondent based on the above stated reasons had to be rejected as ungrounded and the appealed Judgment had to be upheld as lawful and legally grounded.

**42** As stated above and pursuant to Art 10.10 of the LSC, it is decided as in the enacting clause.

*Notes*