

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

ASC-09-0060

In the case SCEL-09-0009 " [REDACTED] "

[REDACTED]

[REDACTED]

Complainant No.23/Appellant

Vs

Privatisation Agency of Kosovo (PAK)

Ilir Konushevci street, No.8, Prishtinë /Priština

Respondent

the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (SCSC) composed of Richard Winkelhofer, President of the SCSC, as Presiding Judge, Torsten Frank Koschinka and Eija-Liisa Helin, Judges, on the appeal of the Complainant No.23 against the decision of the SCSC of 26 August 2009, SCEL-09-009, after deliberation held on 14 May 2010, delivers the following

DECISION

The appeal is grounded.

The decision of the SCSC of 26 August 2009, SCEL-09-009, is set aside.

The Trial Panel is ordered to retry the claim.

Reasons at Law:

The (final) list of eligible employees (see Section 67.5 UNMIK AD 2008/6 in conjunction with Section 10.3 UNMIK REG 2003/13) for the SOE [REDACTED] [REDACTED] in Prizren was published on 21, 22 and 23 May 2009, in the daily

newspapers "Koha Ditore", "Kosova Sot" and "InfoPress", in Albanian language, and on 21, 23 and 24 May 2009 in the daylies "Blic" (Belgrad) and "Vijesti", (Podgorica), both in Serbian language. The 20-days-deadline to file a complaint with the SCSC, related to the list (Section 67.6 UNMIK AD 2008/6 in conjunction with Section 10.6 UNMIK REG 2003/13) was 13 June 2009.

On 15 July 2009, the Complainant (in person) filed a complaint with the SCSC to be included in the list, maintaining that he had lodged another complaint with the Kosovo Trust Agency (KTA) on 10 May 2007 following the publication of a (first) list on 25 April 2007 (remarks by the Appellate Panel: this took place in connection with privatisation efforts carried out by the KTA at that time), "within the time period prescribed by the law", but did not receive any response, though expected. He further claims that he did not know about the publication of a new list by the PAK to set off a new time limit, as he has not been able to buy newspapers on a daily basis; due to his and his wife's ill health they spent "most of the time" in the village Jablanica/Jabllanicë, "where newspapers are not delivered", and TV signals are not transmitted. Lately, as a member of the Bosnian minority in Kosovo he had not been properly notified, at all, as the list has not been published in a newspaper in Bosnian language. He was only informed by colleagues about the publication of the final (second) list. For these reasons, he maintains he could not file the complaint earlier than 32 days after the deadline. He argues also on the merits, why – according to his opinion - he should have been included in the list. Due to the facts given he requests to take his arguments on the merits into consideration, even if submitted late, and to include him in the list.

The PAK requested to dismiss the complaint as untimely filed.

With the challenged decision of 26 August 2009, the Trial Panel of the SCSC rejected the complaint as inadmissible. In its legal reasoning, the decision refers to the above mentioned legal provisions stating a 20-days-deadline for the filing of a complaint, and Sections 28.2 (d) and 28.3 UNMIK AD 2008/6. As the deadline had been missed, the complaint had to be rejected accordingly.

III

In his appeal, timely filed by the Complainant, the Appellate Panel of the SCSC is requested to "annul" the appealed decision and to recognize his entitlements to a share of the privatisation proceeds.

The appeal is grounded.

The Appellant repeats the arguments given in first instance, mainly submitting that due to the missing answer of the KTA to his complaint in 2007, and due to the circumstances around the publication of the final list by the PAK in 2009, his late complaint should be considered timely and valid, and should have resulted in his inclusion in the list.

In his complaint in first instance, the Appellant did explicitly not contest its late filing (by 32 days, while he now maintains that the deadline was missed by two days only; at this stage, it is of no particular relevance by how many days he missed the deadline). However, he did not only argue on the merits of the case, but simultaneously gave reasons he considered valid for not having been in a position to file the complaint in time. Insofar, this complaint clearly had to be understood also as a motion for restoration to the previous position, directed to the Trial Panel (see Articles 117, 118 of the Code of Civil Procedure, Official Gazette of the SFRY 4/77-1478, as amended, in conjunction with Section 70.3 [a] UNMIK AD 2008/6).

By only dismissing the complaint as untimely filed without referring to the arguments in the complaint as to its late filing, the Trial Panel did not deal with this motion for restoration to the previous position, at all. Therefore, the dismissal as untimely was premature; the attacked decision cannot persist.

It will rest with the Trial Panel (again) to examine if the reasons given in the complaint / motion are valid grounds for the late filing of the complaint; on that basis it will have to decide (again), if the complaint has to be considered untimely filed and therefore inadmissible. If it comes to the conclusion that there were justifiable reasons why the complaint was filed too late, it will have to restore the Appellant to the previous position, and to consequently deal with the merits of the complaint. If not, the motion for restoration to the previous position

will have to be rejected as ungrounded, and the complaint itself to be dismissed as untimely filed (again).

At this moment in time, the Appellate Panel as the second instance court is not in a position to deal with the merits of the case (the exclusion of the Appellant from the list) itself, as this would deprive the parties of one instance.

Court fees / costs:

Proceedings in cases concerning Lists of Eligible Employees (Section 67 UNMIK AD 2008/6) are - with the exception of certain court fees not relevant here - free of charge (see also the Additional Procedural Rules regarding Court Fees issued by the Special Chamber, in force from 10 March 2010, based on Section 57.2 UNMIK AD 2008/6).

If costs will arise in the course of the further proceedings (in particular on the side of the Respondent), it will rest with the Trial Panel to allocate these costs in its final decision among the parties (see Section 11 REG 2008/4 and Section 66 UNMIK AD 2008/6).

Richard Winkelhofer, EULEX Presiding Judge (signed)

Torsten Koschinka, EULEX Judge (signed)

Eija -Liisa Helin, EULEX Judge (signed)

Tobias Lapke, EULEX Registrar (signed)