

<p style="text-align: center;">DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENCINË KOSOVARE TË MIRËBESIMIT</p>	<p style="text-align: center;">SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON KOSOVO TRUST AGENCY RELATED MATTERS</p>	<p style="text-align: center;">POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODOSE NA KOSOVSKU POVERENIÇKU AGENCIJU</p>
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ASC-09-0091

In the lawsuit of

, Skenderaj/Srbica

Complainant/Appellant

vs.

1. Kosovo Trust Agency
represented by UNMIK Office of Legal Affairs

Respondents

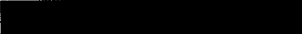
2. Privatization Agency of Kosovo
Ilir Konushevci 8, Prishtinë/Priština

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, after deliberation held on 17 June 2010, delivers the following

DECISION

- 1. The appeal is insofar grounded as the decision of the Trial Panel of the SCSC of 15 October 2009, SCEL-08-005, is set aside.**
- 2. The Trial Panel is ordered to retry the claim.**

Procedural and factual background:

On 5 November 2008 the Complainant filed a complaint with the SCSC requesting to oblige the Respondent to pay compensation in an amount of 400 Euros. The Complainant is a former employee of the SOE  and on the list of employees eligible for a share of the 20 % of the privatization

proceeds of that enterprise. She claimed that she was not treated equally with other employees on the list when distributing these 20 % of the proceeds. She had working experience of eleven years in service of that enterprise, which was not taken into account in the same way as the working experience of other employees, when the proceeds were distributed.

The Privatization Agency of Kosovo (the PAK) objected the complaint mainly on the basis that the Complainant has not presented timely during the procedure of distributing the 20 % of the privatization proceeds a workbook, from which her work experience could have been verified.

By its decision dated 15 October 2009 the Trial Panel of the SCSC rejected the Complainant's complaint as inadmissible. In the legal reasoning of the decision it states that the SCSC has no jurisdiction over the quantum which any complainant eventually receives from the appropriate authority as part of the 20 % distribution from the privatization proceeds. Furthermore, this calculation would be entirely in the hands of the Agency.

On 24 November 2009 the Complainant (herein after the Appellant) filed an appeal against that decision and requested her complaint to be approved.

On 7 May 2010 the PAK filed a response and requested to reject the Appellant's appeal as unfounded and not based on the law, and to uphold the decision of the Trial Panel.

Legal Reasoning:

The appeal is admissible and insofar grounded as the complaint will have to be retried.

Jurisdiction of the SCSC

The jurisdiction of the SCSC is, as the Trial Panel correctly adjudicated, a precondition of the examination of the complaint.

The Trial Panel wrongfully denied the jurisdiction of the SCSC in cases like the one at hand. Complaints which are based on the Agency's responsibility to

distribute the appropriate share of eligible employees to the proceeds of the privatisation of an enterprise belong to the jurisdiction of the SCSC.

At the time when the complaint was filed the jurisdiction of the SCSC was stipulated in UNMIK Regulation (REG) 2002/13. Section 4.1 lit g) of the mentioned REG stipulates that the SCSC shall have primary jurisdiction for claims or counterclaims in relation to such other matters as may be assigned by law. Section 10 of UNMIK REG 2003/13 deals with the entitlements of employees to shares of the proceeds of the privatisation of a SOE. According to Section 10.6 UNMIK REG 2003/13, upon application by an aggrieved individual or aggrieved individuals, a complaint regarding the list of eligible employees as determined by the Agency and the distribution of funds from an escrow account as provided for in Subsection 10.5 shall be subject to review by the SCSC, pursuant to Section 4.1 lit g) of UNMIK REG 2002/13.

At the time when the case was pending at the Trial Panel the new UNMIK REG 2008/4 entered into force. Section 4.1 lit e) of UNMIK REG 2008/4 stipulates that the Trial Panels of the SCSC shall have primary jurisdiction for claims or counterclaims in relation to claims involving an official list of eligible employees of an enterprise issued by the Agency and the eligibility of employees under Section 10 of UNMIK REG 2003/13, as amended. Furthermore, Section 67 of UNMIK AD 2008/6 contains among other matters detailed instructions how to file a complaint. According to Section 67.6 of UNMIK AD 2008/6 a complaint shall contain among other issues "the detailed legal and factual grounds for seeking inclusion in or challenging the list of eligible employees as established by the Agency or the distribution of funds from the escrow account provided for in Section 10 of UNMIK Regulation 2003/13".

Distribution of the right share of the proceeds from the privatisation of a SOE to an individual employee according to Section 10 of UNMIK REG 2003/13, is an essential part of the privatisation procedure. It cannot be concluded from the law that regarding this important part of the privatisation procedure the employees should have no legal remedy against the decisions of the Agency. The contrary is the case: The Agency has to be subject to a control mechanism including a legal remedy in front of a court when calculating the right share of the proceeds to be distributed to an individual employee. Section 4.1 lit e) of UNMIK REG

2008/4 in connection with Section 10 of UNMIK REG 2003/13 and Section 67.6 of UNMIK AD 2008/6, are thus to be interpreted in the way that also complaints dealing with the question of the correctness of the share of the proceeds granted to an individual employee are under the jurisdiction of the SCSC.

Returning the case for retrial

Thus the Trial Panel dismissed the complaint as inadmissible on invalid grounds. The attacked decision therefore has to be set aside and returned to the Trial Panel for retrial. Under these circumstances, the Appellate Panel is not able to consider the merits of the complaint as a first instance and cannot take stand on the legal basis of the claim (ASC-09-0100).

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; ASC-09-0060).

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; compare ASC-09-0060).

Richard Winkelhofer, EULEX Presiding Judge _____ signed _____

Torsten Frank Koschinka, EULEX Judge _____ signed _____

Eija- Liisa Helin, EULEX Judge _____ signed _____

Tobias Lapke, EULEX Registrar _____ signed _____