

DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENCINË KOSOVARE TË MIRËBESIMIT	SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON KOSOVO TRUST AGENCY RELATED MATTERS	POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODNOSE NA KOSOVSKU POVERENIÇKU AGENCIJU
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ASC-09-0092

In the lawsuit of

**Employees of [REDACTED],
Complainant**

Complainant/Appellant

Lubeniq/Ljubenić, Pejë/Peć (presently residing in
Germany)

Representative: [REDACTED]

[REDACTED] Prishtinë/Priština)

vs.

Privatization Agency of Kosovo (PAK)

Respondent

address: Rr. Ilir Konushevcı No.8, Prishtinë/Priština

To: Appellant, Respondent

The Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (SCSC), Appellate Panel, composed of Richard Winkelhofer, Presiding Judge, Torsten Frank Koschinka and Eija-Liisa Helin, Judges, after deliberations held on this 4 February 2010 issues the following

DECISION

The appeal is rejected as ungrounded.

The Decision of the Trial Panel of the SCSC in the case SCEL-09-0015 C27 (dated 15 October 2009) rejecting the complaint as inadmissible is upheld.

Factual and Procedural Background

On 21 August 2009 the Appellant filed a complaint with the SCSC seeking the inclusion of his late father [REDACTED] in the list of eligible employees of SOE UTVA. The complaint was registered with the number 27. The deadline to file a complaint regarding the list of eligible employees of SOE UTVA as published by the PAK was 4 July 2009.

The Appellant claimed that his late father was an employee of SOE UTVA from 1 February 1983 until 1 April 1999. According to the submitted documents [REDACTED] died during the armed conflict in 1999. He alleged that the death of

his father should be considered as a direct discrimination, thus his father shall be included in the list of eligible employees.

On 1 September 2009 the PAK filed its response to the complaint. The PAK agreed with the complaint and – citing the previous practice of the SCSC – requested the inclusion of the late ██████████ in the list of eligible employees of SOE UTVA. PAK did not address the untimely nature of the complaint in its response.

On 15 October 2009 the Trial Panel of the SCSC – amongst others – rejected the complaint of the Appellant as inadmissible due to the fact that it was filed outside the time limit stipulated by Section 10.6 of UNMIK Regulation 2003/13. The Decision of the SCSC was served on the Appellant on 27 October 2009.

On 25 November 2009 the Appellant filed an appeal seeking the annulment of the decision of the SCSC SCEL-09-0015 C27 (dated 15 October 2009) and to accept his complaint as timely. He claims that he was not in the position to file a complaint before 14 August 2009, due to the fact that his annual leave started that day (certified by his employer in Germany). The Appellant slightly amended the complaint now claiming that his late father was the employee of SOE UTVA between 1 February 1983 and 22 September 1988.

Legal Reasoning

The appeal is admissible but ungrounded. Based on Section 63.2 of UNMIK AD 2008/6 the Appellate Panel decided to dispense with the oral part of the proceedings.

The appeal can only be successful if the complaint has to be handled as timely. It does not matter if the PAK did not raise the question of the complaint being untimely, as this is a matter of admissibility, which, as a matter of principle, is not up to the discretion of the parties, but is to be taken into consideration *ex officio*.

Taking this into account, the Appellate Panel considers the appeal as a request for restoration to the previous position pursuant to Article 117 of the Law on Contested Procedure (Official Gazette of SFRY 4/77, 36/80, 69/82, LCP). The legal nature of the request for restoration into the previous position is both, of a procedural and a material nature, so that a precise location of the admissibility of such a request is not necessary. However, the request is ungrounded.

Justifiable reasons in the sense of Art.117 para 1 LCP (which is applicable due to Section 70 para.3 lit a of UNMIK AD 2008/6) for the failure to undertake a necessary procedural action in the time limit prescribed by law or set by the Court are given, when the failure was not due to a fault of the Party requesting the restoration to the previous position. The claimed fact that the Appellant had to stay in Germany until 14 August 2009 is not acceptable as such a reason. It does not only contradict the previous statements of the Appellant that he was in Kosovo on 25 July 2009. First of all the Appellant could have authorised a lawyer to represent him in front of the SCSC which could have ensured that the complaint would be filed in time. Furthermore, in the original complaint he did not address the issue of the delay and did not, not even implicitly, request the restoration to the previous position.

III

It is the duty of the Parties, to proceed with their obligations as soon as possible. As Art 118. of the LCP stipulates the restoration to the previous position after three months of the day of the omission cannot be requested any more. The three months deadline expired on 5 October 2009.

The request had thus to be dismissed. This had to be done by the Appellate Panel instead of the Presiding Judge, as foreseen by Art.121 LCP, as the provisions of the LCP are only applicable with such modifications as considered necessary by the SCSC, Section 70 para. 3 of UNMIK AD 2008/6. As the decision to grant or to deny a restoration to the previous position is a decision touching the very core of the right to the full adjudication of a case, the Appellate Panel holds it, considering the structure of the proceedings in front of the SCSC as foreseen by UNMIK AD 2008/4 and UNMIK AD 2008/6, to be important that those decisions are taken by the Panel instead of the Presiding Judge.

A decision on the costs did not have to be taken.

Richard Winkelhofer, Presiding Judge [signed]
EULEX

Torsten Frank Koschinka, Judge [signed]
EULEX

Eija-Liisa Helin, Judge [signed]
EULEX

Tobias Lapke, Registrar [signed]
EULEX