

DHOMA E POSAÇME E  
GJYKATËS SUPREME TË  
KOSOVËS PËR ÇËSHITJE 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 ODMOSE NA  
KOSOVSKU  
POVERENIÇKU AGENCIJU

---

SCC – 08 – 0302

██████████ Prishtinë/Priština *Claimant*  
Represented by ██████████  
Prishtinë/Priština)

vs.

1. ██████████ (Represented by KTA, Represented by UNMIK) *Respondents*  
Socially Owned Enterprise, Prishtinë/Priština
2. **Privatisation Agency of Kosovo**  
Rr. Ilir Konushevci No.8, Prishtinë/Priština

The Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (Special Chamber) composed of Antoinette LEPELTIER-DUREL as Presiding Judge, Esma ERTERZI and Gyltene SYLEJMANI, Judges, after deliberation held on 1 July 2010 delivers the following:

### JUDGMENT

1. The claim of the Claimant ██████████ is rejected as ungrounded.
2. The Court fees amounting to € 500 are to be borne by the claimant.
3. The counterclaim of the Privatization Agency of Kosovo related to the costs of proceedings is rejected.

## **Factual and procedural background:**

On 16 December 2008 the claimant filed a claim with the Special Chamber seeking compensation for personal incomes between 16 October 1990 and 31 December 2008. The claimant did not request reimbursement of procedural expenses.

The claimant asserted that she was employed by the SOE ██████ that her contract was interrupted on 16 October 1990 and that the Court of Joint Labor in Prishtinë/Priština by its Decision MP.Nr. 2997/90 issued on 19 June 1991 decided that the termination of the employment was unlawful.

Alleged by the claimant, the Court of Joint Labor in Prishtinë/Priština ceased working and most of the case files were destroyed, including hers. The claimant also asserted that her personal documents were destroyed as well during the armed conflict, but that an UNMIK employee allowed her to search the premises of the SOE ██████ where she managed to find some of her personal documents including the above mentioned decision.

The claimant stated in her claim that at the time of the decision none of the parties had appealed, consequently it became final. She claimed that her monthly income used to be around € 200; therefore she claimed € 37,945.56 as compensation and € 13,250.26 as interests, for the period from 16 October 1990 until 31 December 2008.

On 1 April 2009 pursuant to Section 28.4 of UNMIK Administrative Direction (AD) 2008/6, the Judge in charge issued an order, instructing the claimant to provide the Special Chamber with written information within a period of two weeks of having been served with the order regarding the following questions:

- a.) Pursuant to paragraph (e) of Section 27.2 of UNMIK AD 2008/6 the legal basis for the claim and the material facts pertaining to the claim, especially but not limited to:
  - The copy of workbook or any other relevant document proving the employment.
  - Details of the evidence which the claimant intends to provide during the hearing of the case to prove her allegations especially but not limited to the unlawfulness of the termination of the work contract.
  - Explanation why the claimant waited 19 years to file the claim for compensation.
- b.) Pursuant to 25.7 of UNMIK Administrative Direction 2008/6 the English translation of all pleadings and supporting documents especially but not limited to the judgments attached to the claim.

On 22 April 2009 the claimant replied to the order and submitted the following documents:

- Workbook,
- A confirmation of employment (dated 6 June 1988),

- A Decision of the SOE [REDACTED] dated 22 May 1990, not translated into English),
- A submission of the claimant addressed to the Municipal Court of Prishtinë/Priština naming the Kosovo Trust Agency (KTA) as the successor of the SOE [REDACTED] in the case C.no.543/07 (dated 15 October 2008),
- The Decision MP.nr. 2997/90 (dated 19 June 1991) of the Court of Joint Labor in Prishtinë/Priština,
- The payroll of the SOE [REDACTED] (August 1990) including the claimant,
- Financial expertise of [REDACTED] calculating the lost income (dated 30 June 2008),
- A letter addressed to the SOE [REDACTED] by lawyer [REDACTED] requesting the reemployment of employees including the claimant (dated 19 February 1992)
- Judgment of the Municipal Court of Prishtinë/Priština C1 Nr. 453/2007 where the Court declares itself incompetent instructing the claimant to file her claim with the Special Chamber (dated 11 December 2008)
- Two claimant's requests addressed to the Municipal Court of Prishtinë/Priština to reopen the cases M.P.nr. 2995/90 and M.P.nr. 2997/90,
- A certificate of the Municipal Court of Prishtinë/Priština certifying that the case file M.P. 2997/90 cannot be found, and
- The notification to the Agency (dated 21 January 2008)

With the claim, the claimant had provided the Special Chamber with another document:

- Decision C-534/07 MP. 2997/90 dated 27 December 2007 issued by the Municipal Court of Prishtinë/Priština.

On 2 June 2009 the Special Chamber served the claim on the respondent (SOE [REDACTED]) which was returned as "unknown", consequently it was served on the KTA (represented by UNMIK).

On 20 July 2009 the KTA filed its defense. The KTA requested the rejection of the claim as untimely on the grounds of Article 379 of the Law on Obligations (Official Gazette of SFRY 29/78).

In addition, the KTA claimed that the claimant did not raise any arguments justifying her delay in filing a claim with the competent court even once the courts in Kosovo resumed functioning normally after the establishment of UNMIK in 1999. Further the KTA questioned the authenticity of the submitted Judgment and also rose that the claimant did not submit any evidence that the aforementioned judgment truly became final. Finally, the KTA argued that the claimant by not taking the appropriate legal action for the execution of the Judgment, once it became final and at least in 1999, failed to comply with her obligation to mitigate the damages she alleges.

On 26 August 2009 the Special Chamber called the Privatization Agency of Kosovo (PAK) into the suit as a respondent and served the claim and supporting documents at the same time.

The PAK filed its defense on 1 October 2009. It requested the Special Chamber to reject the claim as ungrounded. It argued that the claim could not be admitted since there is another ongoing parallel procedure regarding the same legal issue and that, pursuant to Article 379 of the Law on Obligations, the claim shall be rejected since the 10 years limitation already passed. The PAK added that the claimant did not bring any evidence of the discrimination that hindered her from acting earlier. Corresponding to the KTA's argument, the PAK also rose that it is not proven that the Decision of the Court of Joint Labor in Prishtinë/Priština was final. It asked for compensation of costs of the proceedings.

On 5 October 2009 the Special Chamber served the defenses of the respondents on the claimant.

The claimant replied on 14 October 2009. She stated that there is no legal ground which foresees that, at the occasion of the renewal of proceedings, the claim should be resumed where it remained. She asserted that she wished to continue the procedure and that she did it before a regular Court since there is no longer a Court of Joint Labor in Prishtinë/Priština. She added that the discrimination she alleges is a well known fact about which there is no need to argue more. She denied that her claim could be interpreted as a periodical request and argued that the subject of her claim is a flagrant violation of the Law on work relationship. Otherwise she upheld her previous statements.

On 7 December 2009 the Special Chamber served the reply of the claimant on the respondents.

The PAK filed its rejoinder on 11 January 2010. It responded that the claimant did not justify her delays to file her claim through any valid and valuable evidence. It asserted that the subject of the not terminated procedure was the return to work but not the payment of monthly personal incomes. It repeated its previous arguments concerning the fact that the former proceedings are not ended and requested the claim to be rejected.

The KTA filed its rejoinder on 12 January 2010. It expressed that according to the Labor Law, a Judgment for reinstatement to the job may be followed by a request for execution of that Judgment before the Municipal Court. It argued that the claim for compensation should be considered as a new claim and should not be understood as the continuation of the previous labor case. It asserted that the current claim for compensation for loss of income, filed in 2008, is, pursuant to Article 372 of the Law on Obligations related to the periodical claims, limited to a period of three years, concluding that the claimant may seek compensation for lost income only from 2005. The KTA further argued that the SOE ██████████ was not operational since 1999, that the claimant's job did no longer exist within the SOE and argued that if the entire performance of a contract becomes fundamentally changed without any fault from

either party, the contract is considered terminated. Other than the above the KTA upheld its previous submissions.

The written proceedings were then closed pursuant to section 32 (a) of UNMIK AD 2008/6.

At the hearing held on 13 April 2010, the claimant amended her claim, asking for compensation of loss of wages until the date when the payment will occur. She pointed out that, since the SOE was privatized in the meantime, her compensation should be paid with the assets of the liquidated enterprise. She maintained that the decision of the Labour Court was final and that she could not obtain the execution of such decision due to the discriminatory situation of Kosovo at that time. She explained that she acted before the Municipal Court in 2007 when she succeeded to find the decision in the premises of the enterprise occupied by UNMIK.

The KTA and the PAK upheld their written submissions. The PAK, after having reminded the changes occurred within the enterprises during the nineties and the difficulty to determine the very enterprise which should have had to execute the decision of the Labour Court, should it have been final, added that the Agency is not responsible for the debts of the enterprises it has to administer.

The Special Chamber, with the consent of the parties, asked the KTA to provide, within fifteen days from the hearing, with documents showing up that the SOE was not any more operational after 1999.

The oral proceedings were declared closed.

### **Legal reasoning:**

#### *1. Qualification of the claim:*

With her claim, the claimant is asking for compensation of damages that she alleges as constituted by the loss of incomes she should have perceived if she had had the possibility to return to her work at the SOE [REDACTED]

The Special Chamber has firstly to clarify whether the claimant, acting in such way, filed a new claim or resumed previous proceedings.

The relevant documents provided by the claimant to assess this issue are the following ones:

- The decision MP. Nr. 2997/90 issued on 19 June 1991 by the Labour Court of Prishtinë/Priština that, according to her she found in the premises of the SOE [REDACTED] in 2007, then occupied by UNMIK.

- The decision C-534/07 MP. Nr. 2997/90 taken by the Municipal Court of Prishtinë/Priština on 27 December 2007.

- The decision C1 Nr. 534/07 issued on 11 December 2008 by the Municipal Court of Prishtinë/Priština.

The first document is a copy of the Judgment MP. Nr. 2997/90 annulling the decisions Nr. 01-497, 01-521, 01-513, 01-512 and 01-482 issued on 16 October 1990 by the SOE ██████████ which had obliged several employees, among them ██████████ to leave their position in the enterprise.

With the second document, the Municipal Court of Prishtinë/Priština, considering that the case file Nr. 2997/90 was lost during the war and that the claimant had a legal interest to proceed with this case, granted the claimant's request for a renewal of the proceedings under a new registration number.

The third document is a decision through which the Municipal Court of Prishtinë/Priština declared itself incompetent to adjudicate the claimant's claim against the SOE ██████████ since, pursuant to Article 4.1 of UNMIK Regulation 2002/13, the Special Chamber has exclusive jurisdiction upon the creditors' claims filed against a SOE under the administration of the KTA.

From these documents, it appears that the claimant has expressed her will to resume and to end the proceedings initiated under the number 2997/90. Her request was granted by the Municipal Court in its decision dated 27 December 2007.

The numbers of the files show up clearly that there was only one file registered under the number 2997/90 and renewed under the number C-534/07. Then, due to the Judgment of incompetence issued by the Municipal Court of Prishtinë/Priština, the claimant presented her claim before the Special Chamber.

Contrary to one of the arguments raised by the PAK, there is not any litispendance between two parallel procedures.

However, instead of requesting the resuming of her initial claim related to the annulment of her work relationship with the SOE ██████████ the claimant filed before the Municipal Court of Prishtinë/Priština and then before the Special Chamber a claim for compensation of lost wages.

Those two claims which were filed successively within the same numbers of proceedings (initial one and renewed one) cannot be deemed as the same ones. At the beginning of her proceedings, the claimant asked for the annulment of the termination of her work relationship with the SOE Metamb and her return to her position meanwhile she then

asked the Municipal Court and now the Special Chamber for compensation of lost of incomes.

The facts are different. Whereas with the initial claim, is challenged the decision of the SOE ██████ to terminate a work relationship, with the present one the subject matter is the alleged damage caused by the lack of execution of the obligation to reinstate the claimant in her work.

The legal issue is also different. The initial claim led the Labour Court to examine whether the decision of the SOE ██████ to terminate the work relationship with the claimant was taken according to the Labour Law whereas the present claim aims to assess the existence of a tort and the link between this tort and an action or omission of which the SOE ██████ could be deemed liable.

The Special Chamber cannot share the opinion of the claimant asserting that no provision reads that a renewal of a claim does not mean that a claim should be resumed where it stayed. When the request for a renewal of proceedings is granted that means necessarily that those proceedings can be resumed from the stage at which they were.

Concerning the present case, the Special Chamber examined thoroughly the Judgment of the Labour Court dated 16 October 1990 and assesses that it is a copy which does not show any indication proving that this Judgment was final.

Therefore, the renewal should have led the claimant to ask for execution of this Judgment, which would have led the Municipal Court to serve it on the parties.

But by acting for compensation of damage, the claimant has filed a completely new claim.

## *2. On the merits of the claim:*

Pursuant to Article 154 to the Law on Contracts and Torts, *“Whoever causes injury or loss to another shall be liable to redress it, unless he proves that the damage was caused without his fault.”*

In order to prove her right to compensation, the claimant has to bring the evidence of a duty owed by the SOE ██████ and of a breach of this duty which resulted in damage to her.

In the present case, the alleged duty that the SOE ██████ should have performed, according to the claimant, is to have reinstated her in her position within the enterprise and to have paid her monthly wages from the date of the interruption of her employment contract.

She asserted that this duty was stated by the Labour Court of Prishtinë/Priština in its judgment issued on 19 June 1991, annulling the decisions of the SOE [REDACTED] having obliged her to leave her work and obliging the SOE to organize her return to her position.

The Special Chamber cannot follow this reasoning since the claimant cannot bring the evidence that this Judgment was final and though executable. As already mentioned, the provided document is a copy of a Judgment which does not contain any clause stating that the decision is final.

That means that the annulment of the decisions of the SOE [REDACTED] ending the work relationship is not yet executable and therefore that the duty of the SOE related to the employment contract with the claimant is not yet owed.

Consequently, at the present time, the evidence of a breach of duty cannot be brought nor the evidence of the liability of the SOE.

The claim shall be though rejected.

The Special Chamber considers that there is no need to examine in the present case the arguments raised by the parties in regards with the statutory time limits of the claim, the legitimacy of the actual SOE [REDACTED] to be sued as a respondent, the liability of the agencies for the actions of a SOE under their administration, the validity of the reasons why the claimant filed her claim only in 2007, her own liability of an alleged failure to mitigate the damage and the existence of an eventual damage after 1999. Those arguments should be only examined when the evidence of a breach of duty is brought.

### *3. Costs of the proceedings and Court fees:*

In accordance with Section 11 of UNMIK Regulation 2008/4 and Section 56.2 of UNMIK Administrative Direction 2008/6 costs of the proceedings shall be borne by the unsuccessful party, here the claimant due to the fact that the claim of the claimant is rejected.

The KTA did not ask for reimbursement of costs of the proceedings. The SOE [REDACTED] did not submit any defense. The PAK asked for compensation of its expenses but did not present any statement or invoice concerning those expenses and did not give any details about the amount of those expenses. Thus the Special Chamber cannot evaluate them. This counterclaim shall be rejected.

Pursuant to Kosovo Judicial Council Administrative Direction No. 2008/02 read with Additional Procedural Rules regarding court fees established by the President of the Special Chamber, the Chamber's fees are on the following basis:



- For claims exceeding the amount of € 10 000: a fee of € 50 +0, 5 % to maximum of € 500.

In the present case, the value of the claim as determined by the Claimant is € 51, 195, 82. Therefore, the amount of the Court fees is € 500.

#### *4. Appeals:*

Pursuant to Section 9.5 of UNMIK Regulation 2008/4 an appeal against this decision can be submitted in writing to the Appellate panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters within thirty (30) days from the receipt of this decision.

Consequently it is decided as in the enacting clause of this Judgment.

Antoinette Lepeltier-Durel  
Presiding Judge, EULEX

Esma Erterzi,  
Judge, EULEX

Gyltene Sylejmani,  
Judge

Tobias Lapke,  
Registrar, EULEX

