

Privatization Agency of Kosovo according to section 67.2 of UNMIK Administrative Direction 2008/6 against the provisional list published by the PAK. Section 127.4 of the Law on Administrative Procedure Nr.02/L-28 states that: *"The interested parties may address the court only after they have exhausted all the administrative remedies of appeal."*

The written observations were served with the Complainant on 12 October 2010. The timeline for the Complainant to file a response to the written observations expired on 22 October 2010. No response was filed with the Special Chamber.

On 24 August 2010, [REDACTED] (complainant No. 2) filed a complaint with the Special Chamber against the Privatization Agency of Kosovo, requesting to be included in the employment list eligible to the share of the proceeds from the privatization. The Complainant stated that he worked with the enterprise since 7 March 1994. Furthermore he stated that he considers that he was unjustly not included in the final list published on 4 August 2010. Complainant also filed the copy of the workbook.

On 13 September 2010, the Privatization Agency of Kosovo filed the written observations with the Special Chamber. The PAK requested for the complaint of [REDACTED] to be dismissed as inadmissible, since he did not file a complaint with the Privatization Agency of Kosovo according to section 67.2 of UNMIK Administrative Direction 2008/6 against the provisional list published by the PAK. Section 127.4 of the Law on Administrative Procedure Nr.02/L-28 states that: *"The interested parties may address the court only after they have exhausted all the administrative remedies of appeal."*

The written observations were served with the Complainant on 12 October 2010. The timeline for the Complainant to file a response to the written observations expired on 22 October 2010. No response was filed with the Special Chamber.

On 27 January 2011, the Chamber requested from the PAK through the Order the original publications of the provisional list of the eligible employees in two working days.

On 07 February 2011, the PAK filed the response with all the data requested in the order.

Facts:

Kosovo Trust Agency announced the 18th wave of the privatization through which the Socially-Owned Enterprise [REDACTED] from Gjilan/Gnjilane was privatized by the regular spin off procedure. The assets and liabilities were transferred to the NewCo L.L.C. On 15 May 2007, the sales contract of the privatization was ratified and entered into force.

On 4, 5 and 7 August 2010, the Privatization Agency of Kosovo published the final list of the eligible employees in the Serbian newspaper "Vijesti" from Podgorica, Montenegro (evidence: correspondence between the agency official and the department for marketing of the newspaper in question).

On 4, 5 and 7 August 2010, the Privatization Agency of Kosovo published the final list of the eligible employees in the Serbian newspaper "Blic" from Belgrade, Serbia.

On 5, 6 and 7 August 2010, the Privatization Agency of Kosovo published the final list of the eligible employees in the Albanian newspaper "Infopress" from Prishtinë/Pristina (*evidence: it was not contested, copies of the publications*).

On 5, 6 and 7 August 2010, the Privatization Agency of Kosovo published the final list of the eligible employees in the Albanian newspaper "Koha Ditore" from Prishtinë/Pristina (*evidence: correspondence between the agency official and the department for marketing of the newspaper in question*).

The deadline for filing of the complaints with the Special Chamber, pursuant to Section 10.6 of UNMIK Regulation 2003/13 expired on 30 August 2010. The Special Chamber registered 2 (two) complaints in which it was requested the inclusion of the eligible employees in the final list compiled by the Privatization Agency of Kosovo.

The Complainant [REDACTED] worked in the privatized Socially-Owned Enterprise [REDACTED] from Gjilan/Gnjilane since 10 June 1996. (*evidence: copy of the workbook*).

The Complainant [REDACTED] Viti/Vitina) worked in the privatized Socially-Owned Enterprise [REDACTED] from Gjilan/Gnjilane since 7 March 1994. (*evidence: copy of the workbook*).

Socially-Owned Enterprise [REDACTED], whose main activity was the extraction of stones and gravel of different fractions as well as the sale, transport and placing of the gravel in different locations, after June 1999 did not work with full capacity (60%). Only 26 employees worked in the enterprise, while the rest of the employees were on leave without pay.

Section 67.10 of Administrative Direction 2008/6 states that:
"An oral hearing shall be held, if requested in writing by a complainant or the respondent..."

Given the fact that none of the parties requested it and the list was not contested by any of the parties, the trial panel decided for issuing of the judgment for the said matter without an oral hearing.

Legal Reasoning

The privatization of the socially-owned enterprises in Kosovo is carried out by the Privatization Agency of Kosovo established by the Law on Privatization Agency of Kosovo (No. 03/L-067).

UNMIK Regulation 2003/13 regulates the transformation of the right of use to socially owned immovable property. Section 10 of the said Regulation is devoted to the entitlement of the employees of the socially owned enterprises.

Sections 10.2 and 10.3 of UNMIK Regulation 2003/13 set out the procedure to be applied by the Agency with regard to compiling the list of eligible employees. Initially, the representative body of employees of the enterprise, in cooperation with the Federation of Independent Trade Unions of Kosovo, establishes in a non-discriminatory basis the list of eligible employees and then submits it to the Kosovo Trust Agency. The Agency shall review the list and make such adjustments to ensure equitable access by all eligible employees to the funds to be distributed. Afterwards, pursuant to Section 67.2 of UNMIK AD 2008/6, the provisional list shall be published, together with a notice to the public of the right of any person to file a complaint within 20 days with the Agency requesting the inclusion in or challenging the list of eligible employees entitled to a share of proceeds from the privatization. Finally, pursuant to Section 67.5 of UNMIK AD 2008/6, after having duly addressed all requests and challenges, the Respondent shall, if necessary, adjust the list of eligible employees accordingly, and by a decision of its Board of Directors in conformity with Section 10.2 of UNMIK Regulation 2003/13, which shall contain a reasoned justification for the inclusion or exclusion of each person on the list and the acceptance or refusal of other challenges to the list, officially establish the list of eligible employees. The list of eligible employees established as such shall be published in conformity with Section 10.3 of UNMIK Regulation 2003/13.

According to this, all of those who were not included in the eligible employees list can request to be included in the said list within the foreseen timeline by initially submitting the request with the PAK. Only after the examination of the requests by the PAK that deal with the employees list, the parties can address to the Court.

Section 127.4 of the Law on Administrative Procedure states that: “The interested parties may address the court only after they have exhausted all the administrative remedies of appeal”. From the case files provided by the PAK, the Chamber finds that the parties did not use this legal mean to realize their rights.

Section 67.2 of UNMIK AD 2008/6, states that “*upon receiving the list of eligible employees pursuant to Section 10 UNMIK Regulation 2003/13, the Kosovo Trust Agency shall publish a provisional list of eligible employees together with a notice to the public of the right of any person to file a complaint within 20 days with the Agency requesting the inclusion in or challenging the list of eligible employees*”.

The deadline to file a complaint with PAK against the provisional list expired on 15 August 2009; complainants had not filed any complaint with PAK. However, the deadline provided by the above mentioned Section 67.2 does not refer to a procedural time limit before the Special Chamber, but it refers only to the internal administrative procedure to be followed by KPA when evaluating the complaints against the provisional list.

The failure to file on time a complaint against the provisional list of KPA does not bear as consequence, according to any of the procedural rules set forth by UNMIK AD 2008/6, the inadmissibility of the complaint filed with the Special Chamber against the final list.

UNMIK AD 2008/6 contains specific procedural provisions ruling the procedure before the Special Chamber and, therefore, prevails on other general provisions (*lex specialis derogat legi generali*).

Moreover, it has to be considered that after the filing of a complaint, the Special Chamber is entitled to check the list and verify the right of the complaint to be included or not in the final list of eligible employees. This can be interpreted in the sense that the Court has the authority to verify the requirements of the complainant for his/her eligibility to the inclusion or not in the list, regardless of the fact whether it was filed a complaint with the PAK against the provisional list. In other words, after the expiry of the final term for the administrative procedure before the PAK it cannot be denied to the complainant to act before the Court to defend his right.

For these reasons, the Special Chamber decides that the complaints filed by the employee who didn't respect the administrative deadline of 15 August 2009 for filing a complaint with PAK against the provisional list (or who never filed a complaint to PAK and filed directly a complaint to the Special Chamber) are admissible.

Sections 10.4 and 10.6 (a) of UNMIK Regulation 2003/13 set out the requirements an employee has to meet to be considered as eligible for the list. Section 10.4 expressly provides that an employee shall be considered eligible, if such employee is registered as an employee with the socially-owned enterprise at the time of privatization and is established to have been on the payroll of the enterprise for not less than three years...

The Complainants did not provide in their complaints any material evidence which would prove that they meet the requirements foreseen by the section mentioned above, or that they have been on the payroll at the time of privatization for not less than three years and that the same did not state that they were dismissed from work due to discrimination or they were not able to report to their workplaces due to security reasons.

The workbooks provided by the Complainants cannot be considered as evidence that the same were under employment relations at the time of the commencement of privatization as foreseen by Section 10.4 of Regulation 2003/13, especially when taking into account that the enterprise in question since 1999 operates with 60% capacity with only 26 employees, while the rest of the employees, according to the evidence provided by the Agency, were on leave without pay. Indeed, the Complainants names are not registered in the matrix book (see copy attached by PAK) and they did not mention any reason to this situation (even if the work books are open no working relations at the time of privatization are proved by the data's provided by the Agency).

From what was stated above, the Special Chamber decided for the complaints of the Complainants [REDACTED], Viti/Vitina *to be rejected as ungrounded.*

In accordance with the Additional Procedural Rules of the Special Chamber regarding court fees in force from 10 March 2010 (pursuant to Section 57.2 of UNMIK AD 2008/6) the procedure in the cases regarding the Eligible Employees List (Section 67 of UNMIK AD 2008/6) is free of charge. Therefore, no decision on court fees should be taken.

Legal Advice

Pursuant to Section 9.5 of UNMIK Regulation 2008/04, an appeal against this judgment 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 judgment.

Piero Leanza, Presiding Judge
EULEX

Laura Plesa, Judge
EULEX

Ilmi Bajrami, Judge

Tobias Lapke, Registrar
EULEX