

ASC-09-0045

In the lawsuit of

██████████, Pejë/Peć *Complainant/Appellant*
represented by attorney at law ██████████ from Pejë/Peć
str ██████████

vs

Kosovo Trust Agency *Respondent*
represented by UNMIK Legal Office,
TSS Compound, 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 8 March 2010, delivers the following

DECISION

- 1) The appeal is rejected as ungrounded.**
- 2) The motion for the restoration to the previous position is dismissed as inadmissible.**
- 3) The decision of the Trial Panel of the SCSC in the case SCCL- 08-003 -0102 dated 9 July 2009 is upheld.**

Procedural background:

On 9 July 2009 the Trial Panel of the SCSC issued a decision in the case SCEL-08-003-0102 rejecting the complaint of the Complainant/Appellant as inadmissible pursuant to Section 10.6 (a) of UNMIK REG 2003/3. The Trial Panel stated that the Kosovo Trust Agency (KTA) had published the list of employees deemed as eligible to receive a share of the proceeds from the privatisation of the SOE Metohija/Rugova in Pejë/Peć and that the time limit for filing complaints against the fore mentioned list ended 2 June 2008. Further more the Trial Panel stated that the Complainant/Appellant filed his complaint with the SCSC on 6 May 2009 and thus after the expiry of the time limit for filing complaints.

On 12 August 2009 the Complainant/Appellant filed an appeal against the mentioned decision requesting the Appellate Panel of the SCSC to quash the decision and to approve her complaint against the list as timely filed and grounded. In the reply to the order of the Appellate Panel dated 18 December 2009, the Complainant/Appellant stated that she had been included to the first list of eligible employees, but not to the newly drafted list. At the time for filing complaints against that newly drafted list she had been in the critical health condition and hospitalized.

Legal Reasoning:*Failure to comply with the time limit for filing a complaint*

The appeal is admissible but ungrounded.

Like the Trial Panel of the SCSC stated according to Section 10.6 of UNMIK Regulation (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 shall be subject to review by the SCSC and the complaint has to be filed with the SCSC within 20 days after the final publication of the list of eligible employees by the Agency in the media. The KTA published the list of eligible employees of the SOE "Rugova" in Pejë/Peć on 7, 8,10, 11 May 2008. Counting from the date of the final publication of the list the time limit for

filing a complaint ended thus 2 June 2008. The Complainant/Appellant has filed a complaint with the SCSC on 6 May 2009 and thus after the expiry of the time limit. These facts are not contested and the conclusion of the Trial Panel of the SCSC is correct.

Motion for the restoration to the previous position

The appeal is also construed as a motion for the restoration to the previous position, but as such is dismissed as untimely filed.

In her appeal the Complainant/Appellant submitted that she was at the time when a complaint should have been filed against the published list in critical health condition and hospitalized. As an evidence supporting these statements the Complainant/Appellant has presented documents, which prove that she has been treated in the Pejë/Peć Regional Hospital from 4 till 14 April 2008 and from 25 till 28 Mai 2009 and further in the Belgrade Military Academic Clinic on 29 Mai 2009.

According to Article 117 of the Law on Contested Procedure (LCP) (Official Gazette 4/77-1478,36/80-1182, 69/82-1596) if a party fails to undertake some action in the proceedings within a time set and there fore loses the right to take that action, the court shall upon the motion of that party, allow that party to subsequently undertake that action in question if it assesses that there are justifiable reasons for such a failure. Further more Article 118 of the LCP stipulates that the motion for the restoration to the previous position shall be submitted to the court where the omitted action should have been taken and that the motion has to be submitted within fifteen days, counting from the day when the reasons for the omission ceased existing. After the expiration of three months since the date of omission, the restoration to the previous position cannot be requested any more.

The time limit for filing complaints against the list published by the KTA has ended on 2 June 2008. The motion for the restoration to the previous position should then have been filed with the SCSC at latest on 3 September 2008. For the reason that the time limit for filing a motion for the restoration to the

