

<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 ODNOSE NA KOSOVSKU POVERENIÇKU AGENCIJU</p>
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ASC-09-0067

In the lawsuit of

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| <ol style="list-style-type: none"> 1. [REDACTED], 2. [REDACTED], 3. [REDACTED], 4. [REDACTED], 5. [REDACTED], 6. [REDACTED], 7. [REDACTED], 8. [REDACTED], 9. [REDACTED], 10. [REDACTED], 11. [REDACTED], 12. [REDACTED] | <p>, Surqine Village, Ferizaj/Uroševac;</p> <p>, Rahovice Village, Ferizaj/ Uroševac;</p> <p>, Nikadim Village, Ferizaj/Uroševac;</p> <p>[REDACTED] Ferizaj/Uroševac;</p> <p>, Pleshine Village, Ferizaj/ Uroševac;</p> <p>, Varosh Village, Ferizaj/ Uroševac;</p> <p>[REDACTED], Ferizaj/ Uroševac;</p> <p>[REDACTED], Ferizaj/Uroševac;</p> <p>Prelez of Jerlive Village, Ferizaj/Uroševac;</p> <p>[REDACTED] Ferizaj/Uroševac;</p> <p>, Greme Village, Ferizaj/Uroševac;</p> <p>[REDACTED] Ferizaj/Uroševac.</p> | <p>Complainants</p> |
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vs.

Privatization Agency of Kosovo

Appellant/Respondent

The Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (SCSC), Appellate Panel, composed of Richard Winkelhofer, President of the SCSC, as Presiding Judge, Torsten Frank Koschinka and Eija-Liisa Helin, Judges, after deliberations held on this 09 March 2010 issues the following

D E C I S I O N:

The appeal is rejected as ungrounded.

The decision of the Trial Panel (SCEL-09-0011) dating 17 September 2009, by which the list of eligible employees was declared null and was invalidated, is upheld.

Factual and Procedural Background:

On 17 September 2009, the Trial Panel issued a decision declaring the list of employees eligible to share in the privatization proceeds null and invalidating it at the same time. The Trial Panel further stayed the proceedings in this case and instructed the Appellant/Respondent to publish a new list according to the law.

The Appellant/Respondent filed its appeal against this decision on 23 October 2009. It argues that the decision contains a violation of UNMIK REG 2008/4 and it claims new relevant facts and evidence.

It states that the PAK has informed in time the President of the Special Chamber of the Supreme Court, with the letter dated 28 September 2009, of the ICO-ICR/EUSR appointment of the International Chairman and (in the meantime) the International Member of the Review Committee in PAK.

The Appellant/Respondent claims specifically that it had been instructed by the Special Chamber in case SCEL-09-001 (Ramiz Sadiku) that there was no need to re-publish the list. It claims that the Special Chamber thereby set a precedent. The Appellant/Respondent therefore requests to amend the Trial Panel's decision in a way that a republication of the new list is unnecessary.

Further the Appellant/Respondent states that following the challenged decision and after the establishment of the Workers List Review Committee the list of SOE "LUBOTENI" had been reviewed and there had been no alteration compared to the previous list.

However given the fact that the appeal of the Appellant/Respondent was not completed, the Special Chamber on 13 November 2009 rendered an order requesting the Appellant/Respondent to submit pursuant to Section 60.2 of UNMIK AD 2008/6 a copy of the decision against which the appeal is brought, within 14 (fourteen) days from the acknowledgment of this order, as a condition for admissibility of the appeal.

III

By this order the Appellant/Respondent also was informed clearly that the Trial Panel is not legally bound by its own former decisions. The Appellate Panel also could see no reason for the Appellant/Respondent not being obliged to act according to Section 10.3 of UNMIK REG 2003/13 in cases in which the original list was declared to be null and void by the SCSC.

Appellant/Respondent responded to the SCSC order on 14 December 2009 submitting the copy of the decision with which the proceedings for SCEL-09-0011 were suspended, until the new list is published in accordance with the law. This decision only stayed the proceedings in the case SCEL-09-0011 until the day, "a valid employees list in terms of the law is published". It does not include any other decision. The Appellant in his submission dating 22 October 2009, (as far as the English translation allowed to judge on that), seems to attack the decision of the Trial Panel which declared the former list null and void, as he explicitly asks for an amendment of that decision.

Due to this submission the appeal is not clear, thus with the second order dated 21 December 2009 the SCSC requested from the Appellant/Respondent to provide within 7 (seven) days a clarification with regard to its submission dating 14 December 2009.

The Appellant/Respondent responded to the order of the Court on 29 December 2009, by submitting the copy of the decision with which the list of employees was declared null and was invalidated.

The Appellate Panel held it necessary to issue also a third order dated 13 January 2010 requesting the Appellant/Respondent to submit within 3 (three) days from the receipt of this order a clarification with regard to its submission dating 14 December 2009 and its submission dating 29 December 2009, since the Appellant/Respondent did not manage to clarify, as requested with Order of the Court dated 21 December 2009, against which of the Decisions of the Trial Panel dating 17 September 2009 its appeal is directed. It required the Appellant/Respondent also to clearly state which of the Decisions he intends to challenge or if the Appellant/Respondent intends to challenge both of them. It

also has to be stated clearly, to which extent a modification of the challenged Decision(s) is asked by the Appellant/Respondent.

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.

Section 67.5 of UNMIK Administrative Direction (AD) 2008/6 stipulates that the final list of eligible employees, decided by the Board of Directors in conformity with Section 10.2 of UNMIK REG 2003/13 and established according to Sections 67.2 to 67.5 of UNMIK AD 2008/6, shall be published in conformity with Section 10.3 of UNMIK Regulation 2003/13. This means that among the requirements for a valid list is the publication in conformity with Section 10.3 of UNMIK REG 2003/13, which means published on two consecutive workdays and the following weekend in major Albanian language publications of general circulation in Kosovo and major Serbian language publications.

A list is in conformity with Section 10.2 of UNMIK REG 2003/13 if reviewed and adjusted by the Agency.

As the KTA as the Agency which, in conformity with the applicable law in Kosovo, should be the one dealing with the Privatisation of SOEs and the distribution of the 20 % to the eligible workers does not act on this field of its responsibilities anymore, and as the Appellant has taken over those responsibilities on the basis of the (not directly applicable) "Law on the Privatization Agency of Kosovo (PAK)" (Law No. 03/L-067) the Special Chamber accepts the activities of the PAK as an obvious matter of fact to enable the workers involved in the privatization process to have effective access to court in the meaning of Article 6 of the ECHR. This does not mean that the Special Chamber accepts the PAK Law as applicable law in Kosovo. Nonetheless, to ensure a secure and rightful privatization process this PAK "Law" has to be treated as valid and binding internal rules of organization within the privatization process. The PAK, factually acting as successor to the

KTA on the field of privatization, thus has to - at least in this context - follow the rules laid down in the PAK law.

Section 24.1 of the Law on the Privatization Agency of Kosovo (PAK) (Law No. 03/L-067), pursuant to which the PAK as factual entity has been established, the Agency shall establish Review Committees. Such Review Committees shall have three members, one of which shall be an international member appointed by the International Civilian Representative (Section 24.2 of the Law on the PAK). This person shall chair the Review Committee (Section 24.2 of the Law on the PAK). Any person aggrieved by any act or omission of the Agency shall have the right to file a written application requesting that the Review Committee review such act or omission. Section 24.7 of the Law on the PAK stipulates that any final decision of the Agency, including its Review Committees, can be challenged at the Special Chamber. This indicates that the PAK has organized its internal review in the sense that the Review Committee as outlined in the law is responsible for the review according to Section 10.2 of UNMIK REG 2003/13 and that the list is only final once it has been reviewed by the Review Committee.

With regard to the list reviewed by the Review Committee after its establishment, and which the Appellant claims to fulfill the above mentioned requirements of a valid review of the list, the publication requirement according to Section 10.3 of UNMIK REG 2003/13 has not been fulfilled. The fact that the lists were identical is not relevant, because the list is only final once it has been reviewed.

With regard to the publication of the final list of eligible employees after the establishment of the Review Committee, the Appellant/Respondent is referring to SCEL-09-001 (Ramiz Sadiku) as a precedence. In SCEL-09-001 (Ramiz Sadiku), the Appellate Panel never dealt with the issue raised in this case, because the Appellant/Respondent had withdrawn its appeal. Therefore, the Appellant/Respondent cannot claim inconsistency of court practice. It is important to note that the Appellate Panel of the Special Chamber is not bound by decisions rendered by the Trial Panel of the Special Chamber, as well as the Trial Panel is not bound by its own previous decisions.

The appeal is therefore rejected as ungrounded. The decision rendered by the Trial Panel on 17 September 2009 remains effective. A decision concerning costs was not to be taken.

Richard Winkelhofer, EULEX Presiding Judge signature

Torsten Frank Koschinka, EULEX Judge signature

Eija-Liisa Helin, EULEX Judge signature

Tobias Lapke, EULEX Registrar signature