

<p style="text-align: center;">DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHITJE 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 ODOSE NA KOSOVSKU POVERENIÇKU AGENCIJU</p>
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ASC-09-0089

In the lawsuit of

Complainants

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]

vs.

Respondent/Appellant

Privatisation Agency of Kosovo (PAK)

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 04 Februar 2010 issues the following

DECISION:

The appeal is rejected as ungrounded.

The decision of the Trial Panel (SCEL-09-0003) dating 21 October 2009 is upheld.

Factual and Procedural Background:

On 16 October 2009, the Trial Panel issued a decision in case no. SCEL-09-0003, declaring the list of employees eligible to share in the privatization proceeds null and void. 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 20 November 2009.

The Appellant/Respondent contests the Special Chamber's decision to declare the list of eligible employees published null and void and to instruct it to prepare and publish a new list according to the law. It argues that the decision contains a violation of UNMIK REG 2008/4 and it claims new relevant facts and evidence. It claims, that the first instance administrative body had contacted all the employees in regard to whom it considered it necessary because they had not provided sufficient evidence respectively information. At the time, it had been the only administrative body. It states that following the challenged decision and after the establishment of the Workers List Review Committee the list had been reviewed and there had been no alteration compared to the previous list.

Further on 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.

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.

III

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 the requirements for a valid list are:

- Decision of the Board of Directors in conformity with Section 10.2 of UNMIK REG 2003/13.
- 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 privatisation process to have effective access to court in the meaning of Article 6 of the ECHR. This does not and cannot mean, that the Special Chamber accepts the PAK-Law as applicable law in Kosovo, but to ensure a secure and rightful privatisation process this PAK "Law" has to be treated as valid and binding internal rules of organisation within the privatisation process. The PAK, factually acting as successor of the KTA on the field of privatisation, 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.

In this case the Appellant/Respondent itself states that the Review Committee had not existed at the time of first review in this case (for the list which was eventually published pursuant to Section 10.3 of UNMIK REG 2003/13) and that the case had been reviewed by the first instance administrative body. This is not in conformity with the law establishing the PAK. The list can therefore not be considered as reviewed pursuant to Section 10.2 of UNMIK REG 2003/13. The Appellant itself seems to accept this, as it does not challenge the first instance decision concerning this point with any arguments.

With regard to the list reviewed by the Review Committee after its establishment, and which the Appellant claims fulfills 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 16 October 2009 remains effective. A decision concerning costs was not to be taken.

Richard Winkelhofer, EULEX Presiding Judge

Torsten Frank Koschinka, EULEX Judge

Eija-Liisa Helin, EULEX Judge

Tobias Lapke, EULEX Registrar
