

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 ODRNOSE NA
KOSOVSKU
POVERENIÇKU AGENCIJU

SCEL – 08 – 004
C-0035

[REDACTED], Kruševac, Republic of Serbia

Complainant

Vs.

Kosovo Trust Agency
Pristina/Prishtinë

Respondent

To: Complainant
Kosovo Trust Agency (KTA)
Privatisation Agency of Kosovo (PAK)

The Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters composed of Antoinette Lepeltier - Durel, Presiding Judge, Esma Erterzi, and Gyltene Sylejmani, Judges, after deliberation held on 21 January 2010, issues the following

ADDITIONAL JUDGMENT

1. The Complaint of Complainant [REDACTED] seeking inclusion in the list of eligible employees entitled to participate in the shares of 20% of the proceeds from privatization of SOE FAGAR, Podujevë/Podujevo is rejected as ungrounded.
2. This judgment supplements the judgment dated 23 October 2008.
- 3 Pursuant to Section 9.5 of UNMIK Regulation 2008/4 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.

Factual and procedural Background

The enterprise was privatized on 23 March 2006.

Pursuant to section 10.3 of the UNMIK Regulation 2003/13, the Kosovo Trust Agency published the list of eligible employees whom it deemed eligible to receive a share of proceeds from the privatization of the Socially – Owned Enterprise [REDACTED], Padujevë/Podujevo. Based on the announcement published in the relevant newspapers, the deadline for the submissions of the complaints pertaining to the published list at the Special Chamber was 2 June 2008.

The Complainant filed her complaint on 30 May 2008 with the UNMIK EU Pillar Belgrade Office and it was registered with the Special Chamber of Supreme Court of Kosovo on Kosovo Trust Agency Related Matters on 21 July 2009.

Pursuant to Section 67.7 of UNMIK AD 2008/6, a copy of the complaint was served by the Special Chamber on the Privatization Agency of Kosovo (PAK) as de facto successor of the Kosovo Trust Agency, and the PAK filed its written observations within the time period prescribed by section 67.8 of UNMIK AD 2008/6 in English and in the language of the complainant.

In its response filed on 28 July 2009, the PAK concluded that the deadline for submitting a complaint to the Special Chamber expired on 2 June 2008, therefore it proposed to the Special Chamber to reject the complaint as inadmissible.

Pursuant to section 67.9 of UNMIK Administrative Direction 2008/6 the response of the PAK was served on the Complainant on 20 November 2009. In her reply dated 9 December 2009 the Complainant submitted only the complaint dated 30 May 2008 that was already filed with the Special Chamber.

On 24 November 2009 the Special Chamber issued a Decision on extension of the time period for another 90 days effective from 20 October 2009.

On 18 December 2009 the Special Chamber ordered the PAK to submit the details from the Matrix book and other relevant documents and/or data regarding the Complainant.

On 28 December 2009 the PAK submitted the copy of the page 31 of the Matrix book of the SOE [REDACTED] Podujevë/Podujevo that relates to the Complainant.

Legal reasoning:

Pursuant to Section 67.10 of the UNMIK Administrative Direction 2008/6 the Special Chamber decides to dispense from the oral part of the procedure since neither the Complainant nor the Respondent requested in writing to held an oral hearing.

The complaint of the Complainant is to be considered as admissible due to the fact that it fulfils the requirement of the Section 67.6 of UNMIK Administrative Direction 2008/6. The Special Chamber considers that the complaint was submitted within the deadline since it was submitted with the UNMIK EU Pillar IV Belgrade office on 30 May 2008. It is for unknown reasons that it was delivered to the Special Chamber a long time after having been filed, whereby it was registered on 21 July 2009.

Sections 10.4 and 10.6 (a) of UNMIK Regulation 2003/13 set out the requirements for an employee to be considered as eligible for the list. Section 10.4 expressly provides that the employee shall be considered as eligible, if such employee is registered as an employee with Socially – Owned Enterprise at the time of the privatization and is established to have been on the payroll of the enterprise for not less than three years. The failure to fulfill such requirements shall not preclude the inclusion in the list of an employee who claims that he/she would have been eligible for the list, had he/she not been subject to discrimination.

The Special Chamber examined the complaint of the Complainant and finds that it is not contested that the Complainant worked in the enterprise from 1985 till 1999. In her complaint the Complainant requested the inclusion in the list of eligible employees entitled to participate in the shares from privatization of the SOE [REDACTED], Podujevë/Podujevo and submitted together with the complaint the copy of her work book and the employment decision No.3057 dated 30 April 1992. The work book clearly shows that the date of the employment with the SOE was 16 January 1985. The same can be verified also from the matrix book provided by the PAK. The end of the period of work in this SOE is confirmed by the Complainant herself.

From these facts, the Special Chamber concludes that the Complainant did not work from 1999 till the date of privatization of the enterprise, thus she was not registered as an employee with the SOE at the time of privatization, in March 2006.

The Complainant did not claim that she was subject to discrimination.

Therefore, on the above mentioned arguments and legal grounds, the Special Chamber decides as in the enacting clause of this judgment.

Legal remedy:

Pursuant to Section 9.5 of UNMIK Regulation 2008/4 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.

Antoinette Lepeltier – Durel, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Gyltene Sylejmani, judge

Tobias Lapke, EULEX Registrar