

DHOMA E POSAÇME E GJKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE 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 ODNOSE NA KOSOVSKE POUVERENIČKU AGENCIJU
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13 September 2010

SCEL – 09-0005

Complainants

1. [REDACTED] Rimanishtë/Rimanište village, Prishtinë/Priština
2. [REDACTED] Abri e Epërme/Gornje Obrinje village, Drenas/Drenica
3. [REDACTED] Rimanishtë/Rimanište village, Prishtinë/ Priština
4. [REDACTED] Majac/Majance village, Podujevë/o
5. [REDACTED] Prishtinë/ Priština
6. [REDACTED] Caravic/Cerovik village, Klinë/a
7. [REDACTED] Agim Cela street; Prishtinë/ Priština
8. [REDACTED], Fushë Kosovë/ Kosovo Polje
9. [REDACTED] Torinë/a village; Lipjan/Lipljan
10. [REDACTED], Prishtinë/ Priština
11. [REDACTED] Prishtinë/ Priština
12. [REDACTED] Gadime e Epërme/Gornje Gadimlje, Lipjan/Lipljan
13. [REDACTED], Gllarevë/Iglarevo village, Klinë/a
14. [REDACTED], Prishtinë/ Priština
15. [REDACTED] Banullë/Bandulic village, Lipjan/Lipljan
16. [REDACTED] Peran/e village, Podujevë/o
17. [REDACTED] Barilevë/Bariljevo village, Prishtinë/ Priština
18. [REDACTED] Metehi/Metohija village, Podujevë/o
19. [REDACTED] Gllamnik/Glavnik village, Podujevë/o
20. [REDACTED] Mazgit village, Obilic/q
21. [REDACTED] Dumnice village, Vushtrri/Vucitrn
22. [REDACTED], Prishtinë/ Priština
23. [REDACTED], Prishtinë/ Priština
24. [REDACTED] Prishtinë/ Priština
25. [REDACTED] Banja e Pejes, Pejë/Peć
26. [REDACTED] Lipjan/Lipljan
27. [REDACTED], Skenderaj/Srbica
28. [REDACTED] Prishtinë/ Priština
29. [REDACTED] Baic village, Drenas
30. [REDACTED], Prishtinë/ Priština

Vs.

Respondent

Privatisation Agency of Kosovo
 8 Ilir Konushevci Street, Prishtinë/ Priština

To: Complainants and Respondent

The Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (the Special Chamber), Trial Panel, composed of Piero Leanza, Presiding Judge,

Laura Plesa and Ilmi Bajrami, Judges, after deliberation held on 13 September 2010, issues the following

JUDGMENT

1. The complaints of [REDACTED] [REDACTED] are accepted as grounded. The Respondent is ordered to include them in the final list of employees eligible to a share of the privatization proceeds of the SOE Trasing. Complainants [REDACTED] and [REDACTED], since accepted by the Respondent, are to be included on the final list.

2. The complaints filed by [REDACTED] [REDACTED] (for late [REDACTED]), [REDACTED] are rejected as ungrounded.

3. The complaint of [REDACTED] is rejected as inadmissible.

Procedural background:

On 21 May 2009 [REDACTED] (Complainant Nr.1) filed a complaint with the Special Chamber against the Privatization Agency of Kosovo (hereinafter the "PAK"), requesting to be included on the list as he had been employed with the SOE "Trasing" (hereinafter the "SOE") for more than 7 years from 3 August 1976 until 28 March 1983. The Complainant stated that during the Interim Measures imposed by the Serbian regime his pension rights were restricted. After 1999 he reported every day to the SOE seeking inclusion on the employees' list. The Complainant enclosed a certified copy of his workbook.

The PAK, in the written observations submitted on 27 May 2009, stated that the complaint should be rejected as ungrounded because at the time of privatization, 11 April 2006, the Complainant was not registered as an employee of the SOE and there is no evidence that he worked at the SOE after 1999.

The Complainant was served with the written observations on 2 July 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 13 July 2009. No response has been filed until the date of the deliberation of this decision.

On 25 May 2009 [REDACTED] (Complainant Nr. 2) filed a complaint with the Special Chamber against the PAK in which he stated that he fulfils the legal requirements set by Section 10 of UNMIK Regulation 2003/13 and requested to be included on the list. The Complainant stated that he had worked at the enterprise from 1974 until the Interim Measures imposed in 1990 and also since 2000 until the privatization of the enterprise. The Complainant enclosed a certified copy of his workbook and a decision on annual leave.

The PAK, in the written observations submitted on 29 May 2009, stated that the complaint should be rejected as ungrounded since the Complainant reached retirement age before the date of privatization, 11 April 2006, and therefore does not fulfil the requirements of Section 10.4 of UNMIK Regulation 2003/13.

On 24 June 2009 the written observations were sent to the Complainant for a response within 10 (ten) days. However, there is no record of the date of its receipt available. No response has been filed until the date of the deliberation of this decision.

On 26 May 2009 [REDACTED] (Complainant Nr. 3) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant submitted that he had worked at the enterprise from 10 April 1974 until 21 October 1993, when he was violently dismissed from work by the Interim Measures imposed on the SOE. He reported regularly to work after 1999 but he was not offered a job since the enterprise was not fully operational. The Complainant enclosed a certified copy of his workbook and a written declaration about his working relation with the SOE, signed by two witnesses.

The PAK, in the written observations submitted on 2 June 2009, stated that the complaint should be rejected as ungrounded because at the time of privatization, 11 April 2006, the Complainant was not registered as an employee of the SOE. According to the workbook presented by the Complainant his employment was terminated on 21 October 1993.

The Complainant was served with the written observations on 2 July 2009 for a response within 10 (ten) days. In response of 3 July 2009 the Complainant submitted that the written observations are ungrounded and should not be approved because he reported to work every month after 1999 but he was not offered back his job as a driver.

On 26 May 2009 [REDACTED] (Complainant Nr. 4) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant submitted that he had worked at the enterprise from 15 April 1978 until 19 October 1993 when he was dismissed from work by the Interim Measures imposed on the SOE. The Complainant started working again in 2000 until the date of privatization when his employment was terminated. The Complainant enclosed a confirmation on employment and notification from the KTA.

The PAK, in the written observations submitted on 2 June 2009, stated that the complaint should be rejected as ungrounded. The Complainant did not present sufficient evidence to prove that he fulfils the legal requirements for inclusion in the final list.

The Complainant was served with the written observations on 3 July 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 14 July 2009. No response has been filed until the date of the deliberation of this decision.

On 28 May 2009 [REDACTED] (Complainant Nr. 5) filed a complaint with the Special Chamber against the PAK in which he stated that he fulfils the legal requirements and requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant submitted that he had worked at the enterprise from 1974 until 1990 when he was dismissed from work by the Interim Measures imposed on the SOE. After 1999 he reported to work but he was not offered a job since the enterprise was not fully operational. The Complainant enclosed an employment certificate, a statement from the former SOE director that he reported to work after 1999 and a statement from a former KTA employee that the Complainant was asking for a job but was sent on unpaid leave.

The PAK, in the written observations submitted on 9 June 2009, stated that the complaint should be rejected as ungrounded. The Complainant did not present sufficient evidence to prove that he fulfils the legal requirements for inclusion in the final list.

The Complainant was served with the written observations on 29 June 2009 for a response within 10 (ten) days. In response of 6 July 2009 the Complainant submitted that he reported regularly to work after 1999 and although he was put on a waiting list he was not offered the job. Therefore, he requests to be included on the list as the other former employees.

On 2 June 2009 ██████████ (Complainant Nr. 6) filed a complaint with the Special Chamber against the PAK in which he stated that he was discriminated and requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant submitted that he had worked at the enterprise for 3 years from 1 January 2000 until 23 March 2004. Also, he submitted that after 1999 he reported to work every day seeking his right to 20%. The Complainant enclosed a decision on financial support.

The PAK, in the written observations submitted on 9 June 2009, stated that the complaint should be rejected as ungrounded. The Complainant did not present sufficient evidence to prove his statements that he fulfils the legal requirements for inclusion on the list. Further, the Complainant reached retirement age before the date of privatization, 11 April 2006.

The Complainant was served with the written observations on 1 July 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 13 July 2009. No response has been filed until the date of the deliberation of this decision.

On 3 June 2009 ██████████ (Complainant Nr. 7) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant submitted that he had worked at the SOE for 11 years until 1991 when he was violently dismissed from work during the Serbian Interim Measures. The Complainant reported to work after 1999 but there was no work for him. The Complainant submitted that he was discriminated first when he was dismissed from work by the Serbian Interim Measures and then by the SOE Management, who did not create conditions for returning to work. The Complainant enclosed a certified copy of his workbook and notification from the KTA.

The PAK, in the written observations submitted on 9 June 2009, stated that the complaint should be rejected as ungrounded. The Complainant did not present sufficient evidence to prove his statements that he was discriminated and that he returned to work after 1999.

The Complainant was served with the written observations on 29 June 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 9 July 2009. No response has been filed until the date of the deliberation of this decision.

On 3 June 2009 Fare ██████████ (Complainant Nr. 8) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant submitted that he fulfils the legal requirements to be on the list since he worked at the SOE for 11 years from 4 August 1986 until 11 July 1998. The Complainant enclosed a certified copy of his workbook and two decisions on appointment.

The PAK, in the written observations submitted on 9 June 2009, stated that the complaint should be rejected as ungrounded since at the time of privatization, 11 April 2006, the Complainant was not registered as an employee of the SOE. According to the workbook presented by the Complainant his employment was terminated on 11 July 1998.

On 24 June 2009 the written observations were sent to the Complainant for a response within 10 (ten) days. However, there is no record of the date of its receipt available. No response has been filed until the date of the deliberation of this decision.

On 3 June 2009 [REDACTED] (Complainant Nr. 9) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant submitted that he had worked at the SOE for approximately 17 years from 13 July 1982 until 5 February 1985 and from 10 February 1986 until 15 October 1993 when he was dismissed together with many other Albanian employees. The Complainant submitted that he returned to work on 1 July 1999 and was on the employees' list until 11 April 2006. The Complainant submits that until the date of privatization he was an employee waiting to be reinstated to work in terms of the Basic Labour Law. The Complainant enclosed a certified copy of his workbook.

The PAK, in the written observations submitted on 9 June 2009, stated that the complaint should be approved as grounded. This complaint was filed directly at the Special Chamber and based on the facts presented it appears that at the time of privatization, 11 April 2006, the Complainant was registered as an employee of the SOE.

The Complainant was served with the written observations on 30 June 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 10 July 2009. No response has been filed until the date of the deliberation of this decision.

On 5 June 2009 [REDACTED] (Complainant Nr. 10) filed a complaint with the Special Chamber against the PAK in which he stated that he was discriminated and requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant submitted that he worked at the SOE for 12 years, 7 months and 16 days. In 1992 he was violently dismissed from work due to the Serbian Interim Measures. The Complainant reported to work after 1999 and worked without payment, but was not put on the payroll. The Complainant submitted that he was discriminated first when he was dismissed from work by the Serbian Interim Measures and then by the SOE Management who did not create conditions for returning to work. The Complainant enclosed a certified copy of his workbook.

The PAK, in the written observations submitted on 9 June 2009, stated that the complaint should be rejected as ungrounded since at the time of privatization, 11 April 2006, the Complainant was not registered as an employee of the SOE. The Complainant did not present sufficient evidence to prove his statements that he was discriminated and that he returned to work after 1992.

The Complainant was served with the written observations on 27 June 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 7 July 2009. No response has been filed until the date of the deliberation of this decision.

On 5 June 2009 [REDACTED] (Complainant Nr. 11) filed a complaint with the Special Chamber against the PAK in which he stated that he fulfils the legal requirements and requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant submitted that he had worked at the SOE from 1970 until 1990 when he was dismissed from work during the Serbian Interim Measures. The Complainant reported to work after 1999 and worked until 11 April 2006. The Complainant enclosed a certified copy of his workbook.

The PAK, in the written observations submitted on 10 June 2009, stated that the complaint should be approved as grounded. This complaint was filed directly at the Special Chamber and based on the facts presented (certified copy of a workbook closed on 11 April 2006) it appears that at the time of privatization, 11 April 2006, the Complainant was registered as an employee of the SOE.

The Complainant was served with the written observations on 27 June 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 7 July 2009. No response has been filed until the date of the deliberation of this decision.

On 5 June 2009 [REDACTED] (Complainant Nr. 12) filed a complaint with the Special Chamber against the PAK in which he stated that he is discriminated and requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant was employed with the SOE until 1991 he was violently dismissed from work during the Serbian Interim Measures. The Complainant reported every day to work after 1999, but the enterprise could not offer him a job. The Complainant was sent on paid leave until he reached 65 years of age. Therefore, he claims that he was discriminated although he was on the payroll at the time of privatization. The Complainant enclosed a certified copy of his workbook, decision on annual leave.

The PAK, in the written observations submitted on 10 June 2009, stated that the complaint should be rejected as ungrounded since the Complainant reached retirement age before the date of privatization, 11 April 2006, and therefore does not fulfil the requirements of Section 10.4 of UNMIK Regulation 2003/13. According to the workbook presented by the Complainant his employment was terminated on 21 November 2004.

The Complainant was served with the written observations on 26 June 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 6 July 2009. No response has been filed until the date of the deliberation of this decision.

On 5 June 2009 [REDACTED] (Complainant Nr. 13) filed a complaint with the Special Chamber against the PAK stating that he was discriminated and requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant was employed with the SOE since 13 August 1971. The Complainant stated that he was employed with the SOE for more than 20 years of which 5 years in the period after 1999, from 1 July 2000 until 11 April 2006 when his employment was terminated due to the privatization. The Complainant enclosed a certified copy of his workbook and employment certificate from the SOE management.

The PAK, in the written observations submitted on 10 June 2009, stated that the complaint should be rejected as ungrounded since the Complainant reached retirement age before the

date of privatization, 11 April 2006, and therefore does not fulfil the requirements of Section 10.4 of UNMIK Regulation 2003/13.

The Complainant was served with the written observations on 26 June 2009 for a response within 10 (ten) days. In response of 8 July 2009 the Complainant submitted that the written observations are entirely ungrounded since the respective UNMIK Regulation does not determine that retirement age is an obstacle to the distribution of the 20%. Further, the Complainant maintained that the publication in the media also did not state anything about retirement. The Complainant stated that he had been a regular employee from 1971 until the date of privatization and therefore he was on the payroll at this time. The Complainant maintained that since he was a regular employee at the time of privatization and has over 3 years of experience he fulfils the legal requirements for inclusion on the employees' list.

On 8 June 2009 [REDACTED] (Complainant Nr. 14) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant was employed with the SOE from 17 August 1987 until 31 October 1991 when he was dismissed from work during the Serbian Interim Measures. The Complainant reported to work many times after 1999 and was registered by the government in Kosovo, but he was not offered to go back to work. The Complainant enclosed a certified copy of his workbook and a Decision on termination of employment.

The PAK, in the written observations submitted on 16 June 2009, stated that the complaint should be rejected as ungrounded since at the time of privatization, 11 April 2006, the Complainant was not registered as an employee of the enterprise. The Complainant did not present sufficient evidence to prove that he returned to work after 1991 respectively 1999.

The Complainant was served with the written observations on 27 June 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 7 July 2009. No response has been filed until the date of the deliberation of this decision.

On 9 June 2009 [REDACTED] (Complainant Nr. 15) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant submitted that he fulfils the requirements of Section 10 of UNMIK Regulation 2003/13. The Complainant was employed with the SOE from 18 October 1970 until 25 March 1999 when he was dismissed from work due to the Serbian Interim Measures Body. The Complainant reported to work after 1999 and requested to be reinstated several times but he was not offered a job. The Complainant noticed that the enterprise was hiring new employees instead of offering the jobs to its previous employees. The Complainant enclosed a certified copy of his workbook and Notification from KTA.

The PAK, in the written observations submitted on 17 June 2009, stated that the complaint should be rejected as ungrounded since at the time of privatization, 11 April 2006, the Complainant was not registered as an employee of the enterprise. The Complainant did not present sufficient evidence to prove that he returned to work after 1999.

The Complainant was served with the written observations on 27 June 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 7 July 2009. No response has been filed until the date of the deliberation of this decision.

On 9 June 2009 [REDACTED] (Complainant Nr. 16) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant submitted that he fulfils the requirements of Section 10 of UNMIK Regulation 2003/13. The Complainant submitted that he was employed with the SOE for 15 years 7 months and 6 days. However, his employment was terminated in 1993 by the Serbian Interim Measures Body. He reported to work after 1999 but he was not offered a job since the enterprise was not fully operational. The Complainant enclosed a certified copy of his workbook.

The PAK, in the written observations submitted on 17 June 2009, stated that the complaint should be rejected as ungrounded since at the time of privatization, 11 April 2006, the Complainant was not registered as an employee of the enterprise. According to the workbook submitted by the Complainant his employment was terminated as of 22 March 1993. The Complainant did not present sufficient evidence to prove that he returned to work after 1993 respectfully 1999.

The Complainant was served with the written observations on 27 June 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 7 July 2009. No response has been filed until the date of the deliberation of this decision.

On 9 June 2009 [REDACTED] (Complainant Nr. 17) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant submitted that he fulfils the legal requirements since he was employed with the SOE for more than 20 years. He worked at the SOE from 1972 until 1999 when he was dismissed from work due to the discriminatory interim measures imposed on the enterprise. The Complainant enclosed a certified copy of his workbook.

The Complainant submitted that final list of employees is compiled on a discriminatory basis, since it includes employees with less experience than other employees that are not included. The Complainant requested the Special Chamber to review the employees on the list.

The PAK, in the written observations submitted on 17 June 2009, stated that the complaint should be rejected as ungrounded since at the time of privatization, 11 April 2006, the Complainant was not registered as an employee of the enterprise. The Complainant did not present sufficient evidence to prove that he was discriminated in 1999 and that he returned to work after 1999.

On 25 June 2009 the written observations were sent to the Complainant for a response within 10 (ten) days. However, there is no record of the date of its receipt available. No response has been filed until the date of the deliberation of this decision.

On 10 June 2009 [REDACTED] (Complainant Nr. 18) filed a complaint with the Special Chamber against the PAK in which he stated that he fulfils the legal requirements of section 10.4 of UNMIK Regulation 2003/13 and the list was compiled in a discriminatory manner. The Complainant requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant submitted that he was employed with the SOE for more than 11 years. He reported to work after 1999 but he was rejected since

there is no work. The Complainant enclosed an employment certificate from the SOE management.

The PAK, in the written observations submitted on 18 June 2009, stated that the complaint should be rejected as ungrounded since at the time of privatization, 11 April 2006, the Complainant was not registered as an employee of the enterprise. The Complainant did not present sufficient evidence to prove his statement on discrimination and that he returned to work after 1999.

The Complainant was served with the written observations on 27 June 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 7 July 2009. No response has been filed until the date of the deliberation of this decision.

On 11 June 2009 [REDACTED] (Complainant Nr. 19) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. He worked as a driver at the SOE from 21 May 1979 until 31 October 1991. After 1999 he reported to work and he was promised that he will be employed again. The Complainant stated that after 1999 he as well as other employees worked at the SOE without payment. He was registered with the SOE at time of its privatization. He fulfils the legal requirements for inclusion on the list and he therefore feels discriminated.

The PAK, in the written observations submitted on 19 June 2009, stated that the complaint should be rejected as ungrounded since at the time of privatization, 11 April 2006, the Complainant was not registered as an employee of the enterprise. The Complainant's employment with the SOE was terminated on 31 October 1991 and on 13 September 1994 he started working for another company.

The Complainant was served with the written observations on 3 July 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 13 July 2009. No response has been filed until the date of the deliberation of this decision.

On 11 June 2009 [REDACTED] (Complainant Nr. 20) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. He worked as a driver at the SOE since 1980 until the date of privatization and therefore he fulfils the legal requirements for inclusion on the list.

The PAK, in the written observations submitted on 19 June 2009, stated that the complaint should be rejected as ungrounded since he did not submit sufficient evidence to prove that at the time of privatization, 11 April 2006, he was employed with the SOE.

The Complainant was served with the written observations on 29 June 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 9 July 2009. No response has been filed until the date of the deliberation of this decision.

On 11 June 2009 [REDACTED] (Complainant Nr. 21), the wife of late Bedri Zeqiri filed a complaint with the Special Chamber against the PAK and asked for the inclusion of her late husband on the list of employees entitled to a share of the 20 % of the privatization proceeds.

She submitted that he worked at the SOE from 19 March 1984 until 27 October 1993. The Complainant enclosed a copy of the SOE matrix book.

The PAK, in the written observations submitted on 19 June 2009, stated that the complaint should be rejected as ungrounded since Bedri Zeqiri at the time of privatization, 11 April 2006, was not registered as an employee of the SOE. The Complainant submitted a copy of the matrix book which shows that Bedri Zeqiri worked at the SOE until 27 October 1993.

The Complainant was served with the written observations on 27 June 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 7 July 2009. No response has been filed until the date of the deliberation of this decision.

On 12 June 2009 [REDACTED] (Complainant Nr. 22) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant maintained that he fulfils the legal requirements since he worked at the SOE from 1971 until 9 April 1990 when he was transferred to work for the Constructors Association of Kosovo. The Complainant enclosed a certified copy of his workbook and a decision that he is on pension from 1 September 1995.

The PAK, in the written observations submitted on 19 June 2009, stated that the complaint should be rejected as ungrounded since at the time of privatization, 11 April 2006, the Complainant was not registered as an employee of the SOE. According to the workbook and decision on retirement presented by the Complainant his employment was terminated on 1 September 1995 since he reached retirement age.

The Complainant was served with the written observations on 27 June 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 7 July 2009. No response has been filed until the date of the deliberation of this decision.

On 12 June 2009 [REDACTED] (Complainant Nr. 23) filed a complaint with the Special Chamber against the PAK in which she requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant maintained that she was discriminated since she fulfils the legal requirements to be on the list. She worked at the SOE from 26 April 1982 until 15 January 1991 when she was dismissed from work by the Serbian Interim Measures imposed on the enterprise. She reported regularly to work after 1999 but she was not offered a job since the enterprise was not fully operational. The Complainant enclosed a certified copy of her workbook.

The PAK, in the written observations submitted on 19 June 2009, stated that the complaint should be rejected as ungrounded since at the time of privatization, 11 April 2006, the Complainant was not registered as an employee of the SOE. The Complainant did not submit sufficient evidence in support of her allegations. According to the workbook presented by the Complainant her employment was terminated on 15 January 1991.

The Complainant was served with the written observations on 29 June 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 9 July 2009. No response has been filed until the date of the deliberation of this decision.

On 12 June 2009 [REDACTED] (Complainant Nr. 24) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant maintained that he fulfils the requirements to be on the list since he worked at the SOE from 13 September 1983 until 25 March 1999. He reported regularly to work after 1999 but he was not offered a job since the enterprise was not fully operational. The Complainant enclosed a certified copy of his workbook.

The PAK, in the written observations submitted on 19 June 2009, stated that the complaint should be rejected as ungrounded since at the time of privatization, 11 April 2006, the Complainant was not registered as an employee of the SOE. The Complainant did not submit sufficient evidence in support of his allegations. According to the workbook presented by the Complainant his employment was terminated on 25 March 1999.

The Complainant was served with the written observations on 29 June 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 9 July 2009. No response has been filed until the date of the deliberation of this decision.

On 12 June 2009 [REDACTED] (Complainant Nr. 25) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant maintained that he fulfils the requirements to be on the list since he worked at the SOE since 1966 until the date of privatization. He reported regularly to work after 1999 but he was not offered a job since the enterprise was not fully operational. The Complainant enclosed a decision on annual leave and employment certificate.

The PAK, in the written observations submitted on 19 June 2009, stated that the complaint should be rejected as ungrounded. The PAK submitted that the deadline was on 13 June 2009 while the complaint was filed on 15 June 2009 and is therefore untimely. The Complainant did not submit sufficient evidence to prove that he returned to work after 1999.

The Complainant was served with the written observations on 30 June 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 10 July 2009. No response has been filed until the date of the deliberation of this decision.

On 12 June 2009 [REDACTED] (Complainant Nr. 26) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant maintained that he was employed as a watchman at the SOE since 6 August 1996. The Complainant enclosed a certified copy of his workbook.

The PAK, in the written observations submitted on 19 June 2009, stated that the complaint should be rejected as ungrounded. The PAK submitted that the deadline was on 13 June 2009 while the complaint was filed on 15 June 2009 and is therefore untimely. According to the presented workbook the Complainant's employment was terminated as of 25 March 1999 and the Complainant did not present evidence that he returned to work after 1999.

The Complainant was served with the written observations on 1 July 2009 for a response within 10 (ten) days. The deadline for filing a response expired on 13 July 2009. No response has been filed until the date of the deliberation of this decision.

On 22 June 2009 [REDACTED] complaint was registered at the Special Chamber (Complainant Nr. 27). The Complainant requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. On 17 September 2009 the complaint was rejected as inadmissible as untimely filed.

On 30 June 2009 [REDACTED] (Complainant Nr. 28) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. On 17 September 2009 the complaint was rejected as inadmissible as untimely filed.

On 29 June 2009 [REDACTED] (Complainant Nr. 29) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. On 17 September 2009 the complaint was rejected as inadmissible as untimely filed.

On 24 May 2010 [REDACTED] (Complainant Nr. 30) filed a complaint with the Special Chamber against the PAK in which he requested to be included on the list of employees entitled to a share of the 20 % of the privatization proceeds. The Complainant was employed as the Chief of Construction machines from 11 October 1963 until 2 October 1997 when his employment was terminated by the Interim Measures imposed on the SOE. He reported regularly to work after 1999 but he was not offered a job since the enterprise was not fully operational. In 2001 the Complainant started another job until he reached retirement age. The Complainant enclosed two decisions concerning his employment and termination of employment at Preschool institution.

The PAK, in the written observations submitted on 1 June 2010, stated that the complaint should be rejected as inadmissible. The deadline for filing complaints at the Special Chamber expired on 13 June 2009 while the complaint was filed on 24 May 2010.

The Complainant was served with the written observations on 5 July 2010 for a response within 10 (ten) days. In response of 6 July 2010 the Complainant asked that the Special Chamber examine his case. He stated that he did not see the publication in media and was informed the employees that worked until 1998 would not be included in the list.

On 13 July 2009 the PAK submitted to the Special Chamber the Status Determination Request for the SOE, the Note of Observations dated April 2009 prepared by the PAK Review Committee, copies of the publications in Serbian language newspapers: Vjesti of 22 and 24 May 2009 and Blic of 21, 23 and 24 May 2009, copies of the publications in Albanian language newspapers: Kosova Sot of 21, 22 and 23 May 2009 and Koha Ditore of 21, 22 and 23 May 2009 and a copy of the Matrix Book of the SOE.

On 17 September 2009 the Special Chamber rejected the complaints filed by Bajram Uka, Musa Berisha, Sali Zariqi as untimely filed.

Due to limited resources in translation the Special Chamber has not been able to finalise the English translations of all complaints, supporting documents and subsequent submissions of the Complainants within the time limit pursuant to Section 67.11 of UNMIK AD 2008/6.

On 1 July 2010 the PAK submitted additionally that following the establishment of the new Employee List Review Committee, composed of two local members and one international member serving at the chairperson of the committee, the employee list did not undergo any additional changes. The PAK enclosed a Note of Observations by the Employee List Review Committee dated 30 June 2010.

Facts:

On 11 April 2006 the Kosovo Trust Agency (KTA) privatized the Socially Owned Enterprise “Trasing” in Pristinë/Priština (also referred to as SOE “Put”, “Kosmetput” and “Kosometput”).

The PAK published the list of the eligible employees in the Serbian language newspaper “Vjesti” on 22 and 24 May 2009 and in the Serbian language newspaper “Blic” on 21, 23 and 24 May 2009. The PAK published the list of the eligible employees in the Albanian language newspaper “Kosova Sot” on 21, 22 and 23 May 2009 and in the Albanian language newspaper “Koha Ditore” on 21, 22, and 23 May 2009.

The deadline for filing the complaints with the Special Chamber, pursuant to Section 10.6 of UNMIK Regulation 2003/13, expired therefore on 13 June 2009. The Special Chamber has registered 30 complaints seeking inclusion in the final list of eligible employees established by PAK.

The Complainant Nr. 1 [REDACTED], date of birth 7 August 1942, was employed with the SOE since 3 August 1976 and his employment was not terminated, according to the certified copy of his workbook submitted by the Complainant.

The Complainant Nr. 2 [REDACTED] date of birth 29 March 1939, was employed with the SOE from 26 April 1974 until 4 November 1991, 23 September 1994 until 1 October 1998 and from 10 April 2000 until 1 July 2005 as evidenced by the certified copy of his workbook and decision on annual leave submitted by the Complainant. The Complainant reached retirement age before the date of privatization, 11 April 2006.

The Complainant Nr. 3 [REDACTED], date of birth 10 July 1946, was employed with the SOE from 10 April 1974 until 21 October 1993 as evidenced by the certified copy of his workbook as submitted by the Complainant.

The Complainant Nr. 4 [REDACTED] date of birth 27 August 1958, was employed with the SOE from 15 April 1978 until 19 October 1993 and from 15 March 2000 until 11 April 2006 as evidenced by the employment certificate submitted by the Complainant and matrix book, entry 63, submitted by the respondent.

The Complainant Nr. 5 [REDACTED], date of birth 10 November 1953, was employed with the SOE from 8 April 1974 until 14 October 1993 as evidenced by the employment certificate submitted by the Complainant. He reported to work after 1999 as evidenced by the statement from the former SOE director dated 28 May 2009 and statement from former KTA employee dated 6 April 2010.

The Complainant Nr. 6 [REDACTED] date of birth 5 May 1939, was employed with the SOE from 1971 as evidenced by the Decision on Financial support dated 29 January 2003. The Complainant reached retirement age before the date of privatization, 11 April 2006.

The Complainant Nr. 7 [REDACTED] date of birth 1 March 1948, was employed with the SOE from 1 September 1980 until 31 October 1991 as evidenced by the certified copy of his workbook submitted by the Complainant.

The Complainant Nr. 8 [REDACTED] date of birth 9 August 1965, was employed with the SOE from 4 August 1986 until 11 July 1998 as evidenced by the certified copy of his workbook submitted by the Complainant.

The Complainant Nr. 9 [REDACTED], date of birth 30 March 1959, was employed with the SOE from 13 July 1982 until 5 February 1985, from 10 February 1986 until 15 October 1993 and from 1 July 1999 until the date of privatization, 11 April 2006, as evidenced by the certified copy of his workbook submitted by the Complainant.

The Complainant Nr. 10 [REDACTED] date of birth 6 April 1959, was employed with the SOE for from 22 November 1978 until 11 September 1979 and from 1 January 1981 until 28 October 1992 as evidenced by the certified copy of his workbook submitted by the Complainant.

The Complainant Nr. 11 [REDACTED] date of birth 19 August 1944, was employed with the SOE from 2 June 1970 until 31 August 1993 and from 1 July 1999 until the date of privatization, 11 April 2006, as evidenced by the certified copy of his workbook submitted by the Complainant.

The Complainant Nr. 12 [REDACTED], date of birth 20 November 1939, was employed with the SOE from 9 May 1977 until 28 December 1977, 5 June 1978 until 5 December 1978, 19 March 1979 until 19 December 1979, 26 November 1980 until 31 March 1998 and from 1 July 1999 until 21 November 2004 as evidenced by the certified copy of his workbook submitted by the Complainant. The Complainant reached retirement age before the date of privatization, 11 April 2006.

The Complainant Nr. 13 [REDACTED], date of birth 27 December 1940, was employed with the SOE since 13 August 1971 and his employment was not terminated as evidenced by the certified copy of his workbook submitted by the Complainant. The Complainant reached retirement age before the date of privatization, 11 April 2006.

The Complainant Nr. 14 [REDACTED] date of birth 25 July 1961, was employed with the SOE from 17 August 1987 until 31 October 1991 as evidenced by the certified copy of his workbook submitted by the Complainant.

The Complainant Nr. 15 [REDACTED], date of birth 13 March 1943, was employed with the SOE from 18 October 1970 until 25 March 1999 as evidenced by the certified copy of his workbook submitted by the Complainant.

The Complainant Nr. 16 [REDACTED] date of birth 16 March 1950, was employed with the SOE from 16 August 1977 until 22 March 1993 as evidenced by the certified copy of his workbook submitted by the Complainant.

The Complainant Nr. 17 [REDACTED], date of birth 4 December 1946 was employed with the SOE from 9 August 1977 until 25 March 1999 as evidenced by the certified copy of his workbook submitted by the Complainant.

The Complainant Nr. 18 [REDACTED] date of birth 12 February 1955, was employed with the SOE since 8 September 1980.

The Complainant Nr. 19 [REDACTED] was employed at the SOE from 21 May 1979 until 31 October 1991 when his employment was terminated as evidenced by the copy of his workbook submitted by the respondent. According to the workbook on 13 September 1994 the Complainant started working at another enterprise.

The Complainant Nr. 20 [REDACTED] date of birth 14 February 1947, was employed with the SOE since 15 August 1980 and his employment was not terminated according to the copy of workbook submitted by the respondent.

Bedri Zeqiri, late husband of the Complainant Nr. 21 [REDACTED], was employed with the SOE from 19 March 1984 until 27 October 1993 as evidenced by the copy of the SOE matrix book, entry 514, submitted by the Complainant.

The Complainant Nr. 22 [REDACTED], date of birth 4 December 1934, was employed with the SOE from 9 August 1971 until 9 April 1990 as evidenced by the certified copy of his workbook submitted by the Complainant. The Complainant is on pension since 1 September 1995 as evidenced by decision on retirement of 21 November 1995 submitted by the Complainant. The Complainant reached retirement age before the date of privatization, 11 April 2006.

The Complainant Nr. 23 [REDACTED] date of birth 15 February 1963, was employed with the SOE from 26 April 1982 until 15 January 1991 as evidenced by the certified copy of her workbook submitted by the Complainant.

The Complainant Nr. 24 [REDACTED] date of birth 6 February 1963, was employed with the SOE from 13 September 1983 until 31 May 1985, from 2 June 1986 until 2 August 1993 and from 1 August 1995 until 25 March 1999, as evidenced by the certified copy of his workbook submitted by the Complainant.

The Complainant Nr. 25 [REDACTED], date of birth 16 May 1944, was employed with the SOE from 4 May 1973 until 25 March 1999 as evidenced by the employment certificate submitted by the Complainant

The Complainant Nr. 26 [REDACTED], date of birth 1 November 1956, was employed with the SOE from 6 August 1996 until 25 March 1999 as evidenced by the certified copy of his workbook submitted by the Complainant.

The Complainant Nr. 30 [REDACTED] date of birth 15 October 1939, reached retirement age before the date of privatization, 11 April 2006.

Legal Reasoning:

Section 67.10 of UNMIK AD 2008/6 states: *“An oral hearing shall be held, if requested in writing by a Complainant or the respondent. The Trial Panel may in its own discretion decide that an oral hearing shall be held. If an oral hearing is to be held, the Trial Panel shall inform the Complainant and the Agency of the date of such hearing by written notice.”*

None of the Complainants filed a request for an oral hearing. Therefore, pursuant to Section 67.10 of UNMIK AD 2008/6, the Special Chamber decides to proceed with a judgment on merit of this case, on the basis of the submitted documentation and evidences.

The Complainants requested from the Special Chamber to be included on the list of employees entitled to a share of the 20 % of the proceeds from the sale of SOE “Trasing” as prepared by the PAK. All the Complainants maintained that they fulfil the legal requirements to be on the list.

According to Section 10.1 of UNMIK Regulation 2003/13 on the Transformation of the Right of Use to Socially-Owned Immovable Property *“(…) employees of the Socially Owned Enterprises shall be entitled to a share of the proceeds from the privatization on a priority basis. This share shall be 20 per cent of the proceeds from the sale of shares of a subsidiary corporation of the Socially – Owned Enterprise that is privatised pursuant to section 8 of Regulation No. 2002/12. The amount shall be distributed for the benefit of eligible employees in accordance with this section.”*

Pursuant to section 10.3 of UNMIK Regulation 2003/3:

“The official list of eligible employees issued by the Agency shall be published, together with a notice of the right of complaint pursuant to 10.6, on two consecutive workdays and the following weekend in major Albanian language publications of general circulation in Kosovo and major Serbian language publications.”

The PAK published the list of employees in accordance with section 10.3 of UNMIK Regulation 2003/13 in the major Serbian language newspapers, Vjesti and Blic, and in the major Albanian language newspapers, Kosova Sot and Koha Ditore together with a notice of the right to file a complaint at the Special Chamber before 13 June 2009.

The procedure for filing a complaint with the Special Chamber is set out at section 10.6(a) of UNMIK Regulation 2003/13, which states that: *“The complaint must be filed with the Special Chamber within 20 days after the final publication in the media pursuant to subsection 10.3 of the list of eligible employees by the Agency. The Special Chamber shall consider any complaints on a priority basis and decide on such complaints within 40 days of the date of their submission.”*

The complaint of [REDACTED] (Complainant 30) is to be rejected as inadmissible pursuant to section 28.3 of UNMIK Administrative Direction (AD) 2008/6 as read in conjunction with sections 28.2 (d) and 67.1 of UNMIK AD 2008/6 and section 10.6 of UNMIK Regulation 2003/13. The complaint was registered at the Special Chamber on 24 May 2010, more than 11 months after 13 June 2009, the deadline for filing complaints determined in accordance with section 10.6 (a) of UNMIK Regulation 2003/13. Moreover, he did not state the reasons why he submitted the claim more than 11 months after the legal deadline, nor he asked for a restoration in terms, according to Article 117 of the Law on Contested Procedure (published

in the Official Gazette 4/77-1478, 36/80-1182, 69/82-1596, which is applicable Law in Kosovo pursuant to UNMIK Regulation 1999/24 and Section 70.3 of UNMIK AD 2008/6). Further, Article 118 of the Law on Contested Procedure stipulates that the motion for the restoration to the previous position is to be submitted to the Court where the omitted action should have been taken within 15 (fifteen) days, counting from the day when the reasons for the omission ceased existing and, anyway, after the expiration of three months since the date of omission, the restoration to the previous position cannot be requested any more (see, as a precedent on the same matter, ASC-09-0045, Decision of the Appellate Panel of the Special Chamber dated 9 March 2010).

The complaints of the Complainants 1-26: [REDACTED]

[REDACTED] and [REDACTED] were submitted on time.

Section 10.4 of UNMIK Regulation 2003/13 as amended by UNMIK Regulation 2004/45 sets out the legal requirements for eligible employees: *“For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-owned Enterprise at the time of privatization or initiation of the liquidation procedure and is established to have been on the payroll of the enterprise for not less than three years. This requirement shall not preclude employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6”*.

The complaint filed by [REDACTED] was accepted as grounded by the PAK in the written observations on the complaint submitted on 9 June 2009. The complaint filed by Faruk Kastrati was accepted as grounded by the PAK in the written observations on the complaint submitted on 10 June 2009. Therefore, since the above mentioned complaints were accepted by the Respondent, the Complainants’ requests are accepted by the Court and the Complainants shall be included in the list.

The Special Chamber finds that the Complainants [REDACTED]

[REDACTED] and [REDACTED] fulfil the requirements set by Section 10.4 of UNMIK Regulation 2003/13 as amended and, therefore, their complaints are accepted as grounded.

The Complainant Nr. 4 [REDACTED] presented a copy of employment certificate indicating that was employed with the SOE from 15 April 1978 until 19 October 1993 and from 15 March 2000 until 11 April 2006. The second employment is evidenced also in the matrix book, entry 63, submitted by the respondent. The PAK argued that the presented evidence was not sufficient to prove that the Complainant fulfils the legal requirements for inclusion in the final list. The Special Chamber established that the Complainant has been working at the SOE from 15 April 1978 until 19 October 1993 and from 15 March 2000 until 11 April 2006. Therefore, the Special Chamber finds that according to the presented evidence the Complainant has been on the payroll for more than three years and he was registered with the SOE until the date of privatisation of the SOE, 11 April 2006. Thus, the complaint of [REDACTED] is accepted as grounded.

The Complainants [REDACTED]

[REDACTED] and [REDACTED] maintained that they have been dismissed from work in the period 1991-1999 based on their Albanian ethnicity by the Interim Measures Management imposed on the SOE. All of them submitted that they would fulfil the legal requirements of Section 10.4 of UNMIK Regulation 2003/13 as amended had they not been subjected to discrimination. Therefore they have filed their complaint to the SCSC pursuant to Section 10.6 of UNMIK Regulation 2003/13 as amended.

Concerning the evidence required to substantiate statements on discrimination section 10.6 (b) of UNMIK Regulation 2003/13 states: "*Any complaint filed with the Special Chamber on the grounds of discrimination as reason for being excluded from the list of eligible employees has to be accompanied by documentary evidence of the alleged discrimination.*"

However, article 8.1 of the Anti-Discrimination Law 2004/3 reads as follows:

"8.1. When persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

8.2. Paragraph 8.1 shall not prevent the introduction of rules of evidence, which are more favourable to plaintiffs. Further, a Complainant may establish or defend their case of discrimination by any means, including on the basis of statistical evidence."

Article 11 of the same law states:

"11.1 When this law comes into effect it supersedes all previous applicable laws of this scope.

11.2. The provisions of the legislation introduced or into force for the protection of the principle of equal treatment are still valid and should be applied if they are more favorable than provisions in this Law".

The Anti-Discrimination Law 2004/3 was adopted by the Assembly of Kosovo on 30 July 2004 and promulgated by UNMIK Regulation 2004/32 on 20 August 2004. Pursuant to article 13.1 the law shall enter into force thirty days after its adoption by the Assembly and promulgation by the SRSG.

Therefore, article 8 of the Anti-Discrimination Law since adopted subsequently supersedes section 10.6 (b) of UNMIK Regulation 2003/13. Pursuant to article 8 of the Anti-Discrimination Law individuals claiming discrimination are required to submit facts from which it may be presumed that there has been direct or indirect discrimination. In addition, the Respondent would have to address the statement on discrimination and to prove that there has been no breach of the principle of equal treatment.

The Complainants [REDACTED]

[REDACTED] and [REDACTED] submitted they were discriminated as consequence of the Serbian Interim Measures adopted by the Serbian Regime in the period 1990-1999. The Respondent argued that they did not submit sufficient evidence that would prove their statements. Regardless of the fact that in this matter – as mentioned above – the burden of proof (i.e. to prove the contrary of what the Complainants stated) falls on the Respondent, the situation in Kosovo during 1990–1999 is a fact of a common knowledge (*factus notus*).

According to Article 221 paragraph 4 of the Code on Contested Procedure (7/77-1478 as amended), “*facts that are a matter of common knowledge need not to be proved*”.

The Special Chamber notes that pursuant to the report Status Determination Request regarding the SOE “Trasing”, submitted by the respondent, the Enterprise was initially established as a Workers Organization, while in 1989 it was transformed into a Socially-owned Enterprise. On 28 December 1990 the Interim Measures were imposed on the SOE which led to the removing of the Albanian management and replacing with Serbian management as well as the dismissal of workers based on their Albanian ethnicity. This transformation was based on the Serbian Law on transformation 48/91, which is not applicable law pursuant to UNMIK Regulation 1999/24.

The Complainant Nr. 3 [REDACTED] presented the certified copy of his workbook indicating that he was employed with the SOE from 10 April 1974 until 21 October 1993. The Complainant stated that in 1993 he was violently dismissed from work due to the Serbian Interim Measures imposed on the SOE. The Respondent argued that the Complainant’s employment was terminated on 21 October 1993, before the time of privatization and should therefore be rejected as ungrounded. The Special Chamber considers that the Respondent did not provide any evidence to refute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. Therefore, the Special Chamber finds that the Complainant [REDACTED] fulfils the legal requirements of Section 10.4 of UNMIK Regulation 2003/13, since he has been on the payroll for more than three years and he could have been on a payroll of the Enterprise at the time of privatization if he had not been subject to discrimination.

The Complainant Nr. 5 [REDACTED] presented a copy of employment certificate indicating that he was employed with the SOE from 8 April 1974 until 14 October 1993. The Complainant stated that in 1993 he was violently dismissed from work due to the Serbian Interim Measures imposed on the SOE. The Complainant presented a statement from the former SOE director indicating that he presented to work after 1999 and a statement from former KTA employee that he was asking for a job but was sent on unpaid leave. The Respondent argued that the presented evidence is not sufficient evidence for inclusion in the final list. The Special Chamber considers that the Respondent did not provide any evidence to refute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. Therefore, the Special Chamber finds that the Complainant [REDACTED] fulfils the legal requirements of Section 10.4 of UNMIK Regulation 2003/13 since he has been on the payroll for more than three years and he could have been on a payroll of the Enterprise at the time of privatization if he had not been subject to discrimination.

The Complainant Nr. 7 [REDACTED] presented the certified copy of his workbook indicating that he was employed with the SOE from 1 September 1980 until 31 October 1991. The Complainant stated in 1991 he was violently dismissed from work due to the Serbian Interim Measures imposed on the SOE. The Respondent argued that the presented evidence is not sufficient evidence for inclusion in the final list. The Special Chamber considers that the Respondent did not provide any evidence to refute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. Therefore, the Special Chamber finds that the Complainant [REDACTED] fulfils the legal requirements of Section 10.4 of UNMIK Regulation 2003/13 since he has been on the payroll for more than three years and he could have been on a payroll of the Enterprise at the time of privatization if he had not been subject to discrimination.

The Complainant Nr. 10 [REDACTED] presented the certified copy of his workbook indicating that he was employed with the SOE for from 22 November 1978 until 11 September 1979 and from 1 January 1981 until 28 October 1992, when he was dismissed from work due to the Serbian Interim Measures. The Respondent argued that the Complainant did not present sufficient evidence to prove his statements that he was discriminated and that the presented evidence is not sufficient evidence for inclusion in the final list. The Special Chamber considers that the Respondent did not provide any evidence to refute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. Therefore, the Special Chamber finds that the Complainant [REDACTED] fulfils the legal requirements of Section 10.4 of UNMIK Regulation 2003/13 since he has been on the payroll for more than three years and he could have been on a payroll of the Enterprise at the time of privatization if he had not been subject to discrimination.

The Complainant Nr. 14 [REDACTED] presented the certified copy of his workbook indicating that he was employed with the SOE from 17 August 1987 until 31 October 1991. The Complainant stated that in 1991 he was dismissed from work based on the Serbian Interim Measures imposed on the SOE. The Respondent argued that the presented evidence is not sufficient evidence for inclusion in the final list. The Special Chamber considers that the Respondent did not provide any evidence to refute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. Therefore, the Special Chamber finds that the Complainant [REDACTED] fulfils the legal requirements of Section 10.4 of UNMIK Regulation 2003/13 since he has been on the payroll for more than three years and he could have been on a payroll of the Enterprise at the time of privatization if he had not been subject to discrimination.

The Complainant Nr. 15 [REDACTED] presented the certified copy of his workbook indicating that he was employed with the SOE from 18 October 1970 until 25 March 1999. The Complainant stated that in 1999 he was dismissed from work based on his Albanian ethnicity by the Interim Measures imposed on the SOE. The Respondent argued that the presented evidence is not sufficient evidence for inclusion in the final list. The Special Chamber considers that the Respondent did not provide any evidence to refute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. Therefore, the Special Chamber finds that the Complainant [REDACTED] fulfils the legal requirements of Section 10.4 of UNMIK Regulation 2003/13 since he has been on the payroll for more than three years and he could have been on a payroll of the Enterprise at the time of privatization if he had not been subject to discrimination.

The Complainant Nr. 16 [REDACTED] presented the certified copy of his workbook indicating that he was employed with the SOE from 16 August 1977 until 22 March 1993. The Complainant stated that in 1993 he was dismissed from work based on the Serbian Interim Measures imposed on the SOE. The Respondent argued that the presented evidence is not sufficient evidence for inclusion in the final list. The Special Chamber considers that the Respondent did not provide any evidence to refute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. Therefore, the Special Chamber finds that the Complainant [REDACTED] fulfils the legal requirements of Section 10.4 of UNMIK Regulation 2003/13 since he has been on the payroll for more than three years and he could have been on a payroll of the Enterprise at the time of privatization if he had not been subject to discrimination.

The Complainant Nr. 17 [REDACTED] presented the certified copy of his workbook indicating that he was employed with the SOE from 9 August 1977 until 25 March 1999. The Complainant stated that in 1999 he was dismissed from work due to the Interim Measures imposed on the SOE. The Respondent argued that the presented evidence is not sufficient evidence for inclusion in the final list. The Special Chamber considers that the Respondent did not provide any evidence to refute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. Therefore, the Special Chamber finds that the Complainant [REDACTED] fulfils the legal requirements of Section 10.4 of UNMIK Regulation 2003/13 since he has been on the payroll for more than three years and he could have been on a payroll of the Enterprise at the time of privatization if he had not been subject to discrimination.

The Complainant Nr. 23 [REDACTED] presented the certified copy of her workbook indicating that she was employed with the SOE from 26 April 1982 until 15 January 1991. The Complainant stated that in 1991 she was dismissed from work based on the Serbian Interim Measures imposed on the SOE. She reported regularly to work after 1999 but she was not offered a job since the enterprise was not fully operational. The Respondent argued that the presented evidence is not sufficient evidence for inclusion in the final list. The Special Chamber considers that the Respondent did not provide any evidence to refute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. Therefore, the Special Chamber finds that the Complainant [REDACTED] fulfils the legal requirements of Section 10.4 of UNMIK Regulation 2003/13 since she has been on the payroll for more than three years and she could have been on a payroll of the Enterprise at the time of privatization if she had not been subject to discrimination.

The complaints of [REDACTED] [REDACTED] for late [REDACTED] [REDACTED] are rejected as ungrounded. The Complainants do not fulfil the requirements of Section 10.4 of UNMIK Regulation 2003/13 as amended.

The Complainant Nr. 1 [REDACTED] presented a certified copy of his workbook indicating that he started working at the SOE on 3 August 1976; the workbook appears to be still open, without any indication of a closing date of the working relation. However, the employee himself admitted in his complaint that his work relation with the SOE was terminated on 28 March 1983 and he didn't claim that he was dismissed for discriminatory reasons. PAK argued that the presented evidence is not sufficient to prove that at the time of privatization, 11 April 2006, the Complainant was registered as an employee of the SOE. The Special Chamber establishes that the Complainant has been working at the SOE from 3 August 1976 until 28 March 1983. Therefore, he does not fulfil the requirements of Section 10.4 of UNMIK Regulation 2003/13 and his complaint is rejected as ungrounded.

The Complainant Nr. 2 [REDACTED] presented the certified copy of his workbook indicating that he was born on 29 March 1939 and that he was employed with the SOE from 26 April 1974 until 4 November 1991, 23 September 1994 until 1 October 1998 and from 10 April 2000 until 1 July 2005. The Respondent argued that the Complainant was not registered with the SOE at the time of privatization, 11 April 2006, since he reached retirement age before that date. The Special Chamber accepts the argument of the Respondent according to which employees that reached retirement age before the date of privatization do not fulfil the

requirements of Section 10.4 of UNMIK Regulation 2003/13. Thus, the complaint of [REDACTED] is rejected as ungrounded.

The Complainant Nr. 6 [REDACTED] presented a decision on financial support dated 29 January 2003 indicating that he was born on 5 May 1939 and that he was employed with the SOE from 1971 until he was dismissed from work by the Interim Measures imposed on the SOE. The Respondent argued that the Complainant was not registered with the SOE at the time of privatization, 11 April 2006, since he reached retirement age before that date. The Special Chamber accepts the argument of the respondent according to which employees that reached retirement age before the date of privatization do not fulfil the requirements of Section 10.4 of UNMIK Regulation 2003/13. Thus, the complaint of [REDACTED] is rejected as ungrounded.

The Complainant Nr. 8 [REDACTED] presented the certified copy of his workbook indicating that he was employed with the SOE from 4 August 1986 until 11 July 1998. The Respondent argued that the Complainant was not registered with the SOE at the time of privatization, 11 April 2006, since his employment was terminated on 11 July 1998. The Complainant did not claim that his work relation with the SOE was terminated due to discrimination. The Special Chamber finds that the Complainant has failed to prove that he fulfils the requirements of Section 10.4 of UNMIK Regulation 2003/13. Thus, the complaint of [REDACTED] is rejected as ungrounded.

The Complainant Nr. 12 [REDACTED] presented the certified copy of his workbook indicating that he was born on 20 November 1939 and that he was employed with the SOE from 9 May 1977 until 28 December 1977, 5 June 1978 until 5 December 1978, 19 March 1979 until 19 December 1979, 26 November 1980 until 31 March 1998 and from 1 July 1999 until 21 November 2004. The Respondent argued that the Complainant was not registered with the SOE at the time of privatization, 11 April 2006, since he reached retirement age before that date. The Special Chamber accepts the argument of the respondent according to which employees that reached retirement age before the date of privatization do not fulfil the requirements of Section 10.4 of UNMIK Regulation 2003/13. Thus, the complaint [REDACTED] is rejected as ungrounded.

The Complainant Nr. 13 [REDACTED] presented the certified copy of his workbook indicating that he was born on 27 December 1940 (however, the copy of the ID and all the other certificates state that he was born on 3 July 1940) and that he was employed with the SOE since 13 August 1971, with no date of termination of employment indicated. He submitted also a certification, dated 27.6.2006, stating that he was employed with the SOE "in undetermined time starting from 22.5.1979 till 13.7.1998" and that after the war he reported to work from 1.7.2000 until 11.4.2006, where the employment relation ceased because of the privatization. According to the same certificate he was registered in the matrix book, after the war, under the number 271. However, in the copy of the matrix book submitted by PAK no number 271 exists. Moreover, he submitted also an M-2 Form, indicating that he worked until 13 July 1998. Finally, the Complainant didn't make any statement about being dismissed from work due to discriminatory reasons. The Respondent argued that the Complainant was not registered with the SOE at the time of privatization, 11 April 2006, since he reached retirement age before that date. The Complainant argued that the respective UNMIK Regulation does not determine that retirement age is an obstacle to the distribution of the 20% neither there was such notice in the publication of the finalist in the media. Anyway, even not considering that the Complainant reached the retirement age before the privatization, it has to

be noted that he did not submit convincing evidence that he worked until 11.4.2006, due to the contrast between the submitted documentation, where only the certificate dated 27.6.2006 states that he worked until the time of privatization. It also to be noted that this certificate cannot be considered as sufficient evidence of the length of the work relation, considering that it does not match with the matrix book (where the Complainant's name and the registration number 276 does not appear at all). Further, the mentioned certificate states that it has been released because the worker does not possess a workbook and indicates as starting date of the employment with the SOE "Put" the date 22 May 1979, where the submitted certified workbook indicates work relations with the SOE "Put" at least since 3.4.1972 (the previous stamps are not easily readable). For these reasons, the Special Chamber accepts the argument of the Respondent according to which the complaint does not fulfil the requirements of Section 10.4 of UNMIK Regulation 2003/13. Thus, the complaint of [REDACTED] is rejected as ungrounded.

The Complainant Nr. 18 [REDACTED] did not submit copy of his workbook but presented a copy of employment certificate issued by the SOE management on 23 May 2006 indicating that he was employed with the SOE from 8 September 1980 until 11 April 2006 as registered in the matrix book under 285. However, he also stated that after 1999 he tried to return to work but there was not work for him. The Respondent argued that there is no such entry (285) in the matrix book and that the Complainant did not present sufficient evidence to prove his statement on discrimination and that he returned to work after 1999. The Court notes that from the matrix book it results that the last number is 284 and there is no record for number 285. Further, the Complainant himself admits that he worked for "11 years" and that after 1999 he was not employed anymore with the SOE. These are unfavourable facts admitted by the Complainant and therefore they constitute valid proof of the said circumstances (Article 221 of Law on Contested Procedure). Therefore, the document submitted by the Complainant – which is in contrast with the matrix book and with the facts admitted by the same Complainant - cannot be accepted as evidence that he worked for the SOE until the time of privatization (2006). The Special Chamber finds that the Complainant has failed to prove his statements and therefore his complaint shall be rejected as ungrounded.

The Complainant Nr. 19 [REDACTED] presented a copy of his workbook indicating that he was employed at the SOE from 21 May 1979 until 31 October 1991 and as of 13 September 1994 he started working at another enterprise. The Respondent argued that the Complainant was not registered with the SOE at the time of privatization, 11 April 2006, since his employment was terminated on 31 October 1991. The Special Chamber finds that the Complainant has failed to prove that he fulfils the requirements of Section 10.4 of UNMIK Regulation 2003/13. Indeed, he didn't claim that his work relation ceased in 1991 due to discriminatory measures. Moreover, from the workbook it results that in 1994 he started to work for another enterprise. Thus, the complaint of [REDACTED] is rejected as ungrounded.

The Complainant Nr. 20 [REDACTED], stated that he was employed with the SOE since 1980 until the privatization of the enterprise. The Complainant did not attach any document proving the length of his working relation with the SOE and did not claim any discrimination. According to the copy of his workbook - submitted by PAK - the Complainant was employed with the SOE from 15 August 1980 for 11 years, 3 months and 3 days. Therefore, even if there is no closing date written in the relevant "box" of the workbook, the conclusion is that the employment was terminated on 18 November 1991. PAK argues that the presented evidence is not sufficient to prove that the Complainant fulfils the legal requirements for his inclusion on the list. The Special Chamber notes that the Complainant did not claim that his

employment with the SOE was terminated for discriminatory reasons and that according to the presented evidence there is no proof that the Complainant worked with the SOE until the time of the privatization. Thus, the complaint is rejected as ungrounded.

The Complainant Nr. 21 [REDACTED] (Complainant Nr. 21) stated that she is the wife of the late [REDACTED]. The Complainant presented a copy of the SOE Matrix Book, entry 514, indicating that [REDACTED] was employed with the SOE from 19 March 1984 until 27 October 1993. The Respondent argued that Bedri Zeqiri at the time of privatization, 11 April 2006, was not registered as an employee of the SOE. The Special Chamber finds that the Complainant has failed to prove that [REDACTED] fulfils the requirements of Section 10.4 of UNMIK Regulation 2003/13. The Complainant didn't claim any discrimination, nor specified the reasons of the termination of the employment relation in 1993. Moreover, copy of workbook was not submitted. Thus, the complaint of [REDACTED] is rejected as ungrounded.

The Complainant Nr. 22 [REDACTED] presented the certified copy of his workbook indicating that he was born on 4 December 1934 and that he was employed with the SOE from 9 August 1971 until 9 April 1990. Pursuant to the decision on retirement dated 21 November 1995 presented by the Complainant he is on pension since 1 September 1995. Moreover, the Complainant himself admits that he worked with the Respondent only until 9.4.1990 and that from this date to 1995 he worked for another enterprise (which is reflected also in his working book). He states that the new employer (Constructors Association of Kosovo) included also the SOE "Put", but he did not submit any evidence regarding this point. In any case, his workbook certifies that starting from 10.7.1991 the Complainant started to work with another different SOE ("Kosing"), which appears not to have any relation with "Put" SOE. The Respondent argued that the Complainant was not registered with the SOE at the time of privatization, 11 April 2006, since he reached retirement age before that date. For all the above mentioned reason, the Special Chamber accepts the argument of the Respondent according to which the Complainant does not fulfil the requirements of Section 10.4 of UNMIK Regulation 2003/13. Thus, the complaint of [REDACTED] is rejected as ungrounded.

The Complainant Nr. 24 [REDACTED] presented the certified copy of his workbook date of birth 6 February 1963 indicating that he was employed with the SOE from 13 September 1983 until 31 May 1985, from 2 June 1986 until 2 August 1993 and from 1 August 1995 until 25 March 1999. The Respondent argued that at the time of privatization, 11 April 2006, the Complainant was not registered as an employee of the SOE. He did not claim that his work relation with the SOE was terminated on 25 March 1999 due to discrimination. The Special Chamber finds that the Complainant has failed to prove that he fulfils the requirements of Section 10.4 of UNMIK Regulation 2003/13. Thus, the complaint of [REDACTED] is rejected as ungrounded.

The Complainant Nr. 25 [REDACTED] did not submit copy of his workbook but he presented a copy of employment certificate indicating that he was employed with the SOE from 4 May 1973 until 25 March 1999. The Respondent argued that the Complainant was filed after the deadline 13 June 2009 and that the Complainant did not submit sufficient evidence to prove that he returned to work after 1999. The Special Chamber finds that the Complainant was submitted on time (12 June 2009, as stated by the Registry under "date of submission" on the cover sheet of the case file). However, the Complainant did not claim that he was dismissed on 25 March 1999 due to discriminatory reasons, but only that there was not work for him at the SOE. Moreover, the complaint contains contradictory statements, where

the Complainant maintains to have worked for the SOE “from 1966 up to the sale/privatization” and, afterwards, he states that after 1999 he could not work because there was not enough work in the SOE. Therefore, the Complainant has failed to prove that he fulfils the requirements of Section 10.4 of UNMIK Regulation 2003/13 and his complaint is rejected as ungrounded.

The Complainant Nr. 26 [REDACTED] presented the certified copy of his workbook indicating that he was employed with the SOE from 6 August 1996 until 25 March 1999. The Respondent argued that the Complainant was filed after the deadline 13 June 2009 and that the Complainant’s employment was terminated on 25 March 1999 and he did not submit sufficient evidence to prove that he returned to work after 1999. The Special Chamber finds that the Complainant was submitted on time (12 June 2009, as above). However, the Complainant did not claim that he was dismissed in 1999 due to discriminatory reasons, nor he states in his complaint when and why the work relation ceased. Therefore, the Complainant has failed to prove that he fulfils the requirements of Section 10.4 of UNMIK Regulation 2003/13 and the complaint shall be rejected as ungrounded.

The Special Chamber therefore decides as in the enacting clause.

Legal Advice:

Pursuant to Section 9.5 of UNMIK Regulation 2008/4 an appeal against this decision 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 30 (thirty) days from the receipt of this decision.

Piero Leanza, Presiding Judge,
EULEX

Laura Plesa, Judge,
EULEX

Ilmi Bajrami, Judge

Tobias Lapke,
Registrar, EULEX