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| <p>DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENCINË KOSOVARE TË MIRËBESIMIT</p> | <p>SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON KOSOVO TRUST AGENCY RELATED MATTERS</p> | <p>POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODNOSE NA KOSOVSKU POVERENIÇKU AGENCIJU</p> |
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28 January 2011

SCEL – 10-0004

Complainants

C1/1 [REDACTED] 11250 Železnik
C1/2 [REDACTED]
C1/3 [REDACTED], Ferizaj/Uroševac
C1/4 [REDACTED]
Represented by Attorney-at-law [REDACTED]
Address: Kosovska Mitrovica, [REDACTED]
C2/1 [REDACTED] Surqinë/Svrcina village, Ferizaj/Uroševac
C2/2 [REDACTED] Greme/Grebno village, Ferizaj/Uroševac
C2/3 [REDACTED] Rahovicë/a village, Ferizaj/Uroševac
C2/4 [REDACTED] Gursel and Bajram Sylejmani str., Ferizaj/Uroševac
C2/5 [REDACTED] Prelez of Jerlive village/ Jerli Prelez, Ferizaj/Uroševac
C2/6 [REDACTED] Ferizaj/Uroševac
C2/7 [REDACTED] Pleshinë/ Plešina village, Ferizaj/Uroševac
C2/8 [REDACTED] Varosh/ Varoš village, Ferizaj/Uroševac
C2/9 [REDACTED] Gursel and Bajram Sylejmani str., Ferizaj/Uroševac
C2/10 [REDACTED] Nikadim village, Ferizaj/Uroševac
C2/11 [REDACTED], Ferizaj/Uroševac
C2/12 [REDACTED] Tirana str., Ferizaj/Uroševac

Vs.

Respondent

Privatization Agency of Kosovo (PAK)
Ilir Konushevci 8 street, Pristinë/ 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 28 January 2011, issues the following

JUDGMENT

1. The complaints filed by C1/1 [REDACTED], C1/2 [REDACTED], C1/3 [REDACTED] and C1/4 [REDACTED] are rejected as inadmissible.

2. The complaints filed by C2/1 [REDACTED] C2/2 [REDACTED] C2/3 [REDACTED] C2/4 [REDACTED] C2/5 [REDACTED] C2/6 [REDACTED] C2/7 [REDACTED] C2/8 [REDACTED] C2/9 [REDACTED] C2/10 [REDACTED] C2/11 [REDACTED] and C2/12 [REDACTED] are accepted as grounded. The Respondent is ordered to include those complainants in the final list of employees eligible to a share of the privatization proceeds of the SOE Luboteni, Ferizaj/Uroševac.

Procedural background:

On 7 May 2010 attorney-at-law [REDACTED] filed a complaint with the Special Chamber (Complaint 1) on behalf of the complainants [REDACTED] (complainant C1/1), [REDACTED] (complainant C1/2), [REDACTED] (complainant C1/3) and [REDACTED] (complainant C1/4) against the Privatization Agency of Kosovo (hereinafter the "PAK").

[REDACTED] (complainant C1/1) submitted that she was discriminated since she is not on the employees' list of the enterprise JSC Urošev grad, Hotel Ljuboten, now Drita, Hotel Ljuboten, Ferizaj/Uroševac. The complainant stated that she was an employee of the enterprise until she was forced to leave her home and work place due to the situation in 1999 which is of common knowledge. The complainant maintained that the Agency failed to comply with the procedure for compiling the list of employees and she is therefore discriminated. The complainant enclosed verified copies of her passport, employment booklet, and power of attorney.

[REDACTED] (complainant C1/2) submitted that he was discriminated since he is not on the employees' list of the enterprise Drita - Urošev grad. The complainant maintained that he started working at the enterprise on 6 March 1997. During the conflict the complainant had to leave work and fled to Serbia and since then he was unable to return due to the well-known situation in Kosovo. The complainant enclosed verified copies of power of attorney, employment booklet, and his passport.

[REDACTED] (complainant C1/3) submitted that he was still employed with the enterprise Hotel Ljuboten - Urošev grad. The complainant maintained that he started working at the enterprise on 12 June 1995 and was still employed there. In 1999 the complainant had to leave his home and move to Mitrovica/ë and since then he was unable to return because of his Serbian ethnicity. The complainant enclosed copies of his identity card, verified power of attorney, verified employment booklet, and employment decision.

[REDACTED] (complainant C1/4) submitted that he was discriminated since he is not on the employees' list of the enterprise Drita - Urošev grad. The complainant maintained that he started working at the enterprise on 2 August 1993. During the conflict the complainant had to leave work and fled to Serbia and since then he was unable to return due to the well-known situation in Kosovo. The complainant enclosed verified copies of power of attorney, his passport and employment decision.

The PAK, in written observations of 21 May 2010, stated that the complaints C1/1 – C1/4 should be rejected as ungrounded because according to their statements and the

presented documents, the complainants were employees of the company Urošev Grad/ Drita Hotel Ljuboten, which is not the same SOE as SOE Luboteni/ Brick Factory.

The representative of complainants C1/1 – C1/4 was served with the written observations on 12 June 2010 for a response within 10 (ten) days. The deadline for filing a response expired on 22 June 2010. No response has been filed until today's date.

On 5 May 2010 a complainant was filed (Complaint 2) by the complainants [REDACTED] (complainant C2/1), [REDACTED] complainant C2/2), [REDACTED] (complainant C2/3), [REDACTED] (complainant C2/4), [REDACTED] (complainant C2/5), [REDACTED] (complainant C2/6), [REDACTED] (complainant C2/7), [REDACTED] (complainant C2/8), [REDACTED] (complainant C2/9), [REDACTED] (complainant C2/10), [REDACTED] (complainant C2/11), [REDACTED] (complainant C2/12) against the PAK. The complainants are seeking inclusion on the employees' list of the SOE Luboteni. The complainants submitted that they already challenged the list before the Special Chamber and had submitted to the court all the evidence. The complainants stated that there are 30-33 employees at this factory while on the published list there are only 4 employees. The complainants requested from the Special Chamber to be summoned to a hearing, that the distribution of 20% is put on hold, to verify the documents already submitted by them to the court and to summon the employees included on the list as well as the PAK.

On 13 May 2010 the PAK was served with the complaint for written observations within 7 days pursuant to section 67.8 of UNMIK Administrative Direction (AD) 2008/6. The PAK has not filed written observations.

[REDACTED] (complainant C2/1) submitted that he was employed with the SOE from 1975 until the interim measures were imposed on the enterprise. After 1999 he was appointed as the director of the unit Mustafe Goga until June 2003. The complainant submitted that the enterprise was commercialized in 2003 and the management sent all the employees on leave because there were no conditions to continue with the work. The complainant enclosed the following documents: registration certificate for NNZ Mustafe Goga (Brick Factory), employment booklet, employment decision 11/01 of 11.06.2001 from NNZ Mustafe Goga, register of personal incomes from 1989/1990, register of employees of NNZ Mustafe Goga date unclear, decisions of the management board of Mustafe Goga of 19.06.01 (No.167/01), 19.06.2001 (No.169/01), 02.08.2001 (209/01), request from NNZ Mustafe Goga for property documents of 30.10.2001, register of personal incomes of October 1999, November 1999, December 1999, January 2000, February 2000, March 2000, April 2000, May 2000, June 2000, July 2000, August 2000, September 2000, October 2000, November 2000, December 2000, January 2001, February 2001, March 2001, April 2001, July 2001, August 2001, decision of 08.11.2001 appointment of [REDACTED] as the director of "Tulloria", list of employees of Mustafe Goga of 1 April 2002, notification re working hours, decision sending the employees involved in production on leave for indefinite time from 1.10.2002, register personal income 08.01.02, register 31.12.01, register February 2001, Payment receipt personal income [REDACTED] October 2002, List of accounts October 2002, August 2002, July 2002, 6 reports from 2003 enterprise Silkapor.

In written observations of 22 June 2009 the PAK submitted that the complaint should be rejected as ungrounded. The complainant's employment with the SOE was terminated on 31.05.1991. The evidence is not sufficient to prove that the complainant worked at the SOE after 2001. He was not on the payroll or on the waiting list of the SOE at the time of privatization. The factory was closed in June 2003. The PAK enclosed documents without English translation.

In response 16 July 2009 the complainant submitted that the SOE was commercialized in 2001 until 2003. He together with the other 35 employees continued working for the new enterprise Mustafe Goga.

██████████ (complainant C2/2) submitted that he was employed with the SOE from 01.10.1984 until 1990 when all Kosovo employees were dismissed from work. After 1999 the complainant reported to work and since there was no work the director only registered such employees. He stated that until 1990 the factory was operating with 35-40 employees while presently only 4 were considered eligible. The complainant contests that the employees on the list fulfil the legal requirements. The complainant enclosed the following documents: employment decision, and employment certificate for the period 01.10.1984 – 31.11.1990, handover protocol.

In written observations of 22 June 2009 the PAK submitted that the complaint should be rejected as ungrounded. The complainant's employment with the SOE was terminated on 31.05.1990. The Complainant had not presented evidence that he worked with the SOE after 1999. He was not on the payroll or on the waiting list of the SOE at the time of privatization. The factory was closed in June 2003. The PAK enclosed the following documents: employment booklet open with the SOE on 01.10.1984 and still open, documents without English translation.

In response of 13 July 2009 the complainant submitted that after 1999 no employee was on the payroll because the Brick Factory Luboten was not operational. The complainant reported to work after 1999, registered at the SOE and informed by ██████████ (C2/1) that the employees will be called back to work. His workbook was not closed on 31.05.1990 as stated by the PAK.

██████████ (complainant C2/3) submitted that he was employed with the SOE from 21 January 1988 until the interim measures. After 1999 he started working at Mustafe Goga until its commercialization. On 01.10.2002 the management took a decision to send the employees on leave for an indefinite period. The complainant worked until June 2003. The complainant enclosed the following documents: verified copy of employment booklet, decision on personal income, employment decision, employment contract of 30.04.2002, decision sending the employees involved in production on leave for indefinite time from 1.10.2002.

In written observations of 22 June 2009 the PAK submitted that the complaint should be rejected as ungrounded. The complainant's employment with the SOE was terminated on 31.05.1990. The Complainant had not presented evidence that he worked with the SOE after 2002. He was not on the payroll or on the waiting list of the SOE at the time of privatization. The factory was closed in June 2003. The PAK enclosed documents without English translation.

The written observations were served on the complainant on 11 July 2009. The deadline for the complainant to file a response to the written observations of the PAK expired on 21 July 2009. No response was filed.

██████████ (complainant C2/4) submitted that she was employed with the SOE from 18 January 1980 until the interim measures. After 1999 she started working at Mustafe Goga. On 01.10.2002 the management took a decision to send the employees on leave for an indefinite period. The complainant worked until June 2003 as a cashier. The complainant enclosed the following documents: verified copy of employment booklet, 2 decisions on personal income, decision on annual leave, decision on reimbursement.

In written observations of 22 June 2009 the PAK submitted that the complaint should be rejected as ungrounded. The complainant's employment with the SOE was terminated on 31.05.1990. The Complainant had not presented evidence that she worked with the SOE 1990 or 1999. She was not on the payroll or on the waiting list of the SOE at the time of privatization. The factory was closed in June 2003. The PAK enclosed documents without English translation.

In response of 14 July 2009 the complainant maintained that the employment was terminated on 31.05.1990 but the employees continued working until 31.12.1990 without payment. The employees were discriminated; the factory was closed down due to the interim measures. The complainant took back her work book in 2007 in order to look for another job.

██████████ (complainant C2/5) submitted that he was employed with the SOE from 1972 until 1990 when he was dismissed from work by the Serbian authorities. He worked at the SOE in 1999 and 2000, but the enterprise had difficulties and the employees had to stop working. The complainant enclosed the following documents: verified copy of employment booklet, employment certificate.

In written observations of 22 June 2009 the PAK submitted that the complaint should be rejected as ungrounded. The complainant's employment with the SOE was terminated on 31.05.1990. The Complainant had not presented evidence that he worked with the SOE after 1990 or 1999. He was not on the payroll or on the waiting list of the SOE at the time of privatization. The factory was closed in June 2003.

The written observations were served on the complainant on 14 July 2009. The deadline for the complainant to file a response to the written observations of the PAK expired on 24 July 2009. No response has been filed.

██████████ (complainant C2/6) submitted that he was employed with the SOE from 1987 until 1990 when he was dismissed from work by the Serbian authorities. After 1999 he worked at the SOE in 1999 and 2000, but the enterprise had difficulties and the employees had to stop working. The complainant enclosed the following documents: verified copy of employment booklet.

In written observations of 22 June 2009 the PAK submitted that the complaint should be rejected as ungrounded. The complainant's employment with the SOE was terminated on 31.05.1990. The Complainant had not presented evidence that he

worked with the SOE after 1999. He was not on the payroll or on the waiting list of the SOE at the time of privatization. The factory was closed in June 2003.

The written observations were served on the complainant on 11 July 2009. The deadline for the complainant to file a response to the written observations of the PAK expired on 21 July 2009. No response has been filed.

██████████ (complainant C2/7) submitted that he was employed with the SOE from 18 April 1986 until 31.05.1990. He was discriminated in 1990 when together with all Albanian employees was violently dismissed from work by the interim measures. After 1999 the complainant reported to work but the factory was ruined. The complainant enclosed the following documents: verified copy of employment booklet.

In written observations of 22 June 2009 the PAK submitted that the complaint should be rejected as ungrounded. The complainant's employment with the SOE was terminated on 31.05.1990. The Complainant had not presented evidence that he worked with the SOE after 1990 or 1999. He was not on the payroll or on the waiting list of the SOE at the time of privatization. The factory was closed in June 2003.

██████████ (complainant C2/8) submitted that he was employed with the SOE from 1974 until the interim measures. After 1999 he was employed with NNZ Mustafe Goga until June 2003. The complainant enclosed the following documents: employment contract, cert. copy of employment booklet, payment receipts August 2002, October 2002 from Tulloria, application to the KTA.

In written observations of 22 June 2009 the PAK submitted that the complaint should be rejected as ungrounded since the complainant reached retirement age before the date of privatization, 21 November 2006. The Complainant had not presented evidence that he fulfils the legal requirements to be on the list.

██████████ (complainant C2/9) submitted that he was employed with the SOE from May 1978 until he was dismissed from work by the authorities. After 1999 he reported to work, but there was no work. The complainant enclosed the following documents: verified copy of employment booklet.

In written observations of 22 June 2009 the PAK submitted that the complaint should be rejected as ungrounded. The complainant's employment with the SOE was terminated on 31.05.1990. The Complainant had not presented evidence that he worked with the SOE after 1990 or 1999. He was not on the payroll or on the waiting list of the SOE at the time of privatization. The factory was closed in June 2003.

In response of 15 July 2009, the complainant maintained that the factory could not be operating with 4 guards.

██████████ (complainant C2/10) submitted that he was employed with the SOE from 24.04.1971 until 31.04.1990 when he was dismissed from work by the Serbian authorities in a violent manner, which is why his workbook is closed. After 1999 he reported back to work but the enterprise was not operational. The complainant enclosed the following documents: verified copy of employment booklet.

In written observations of 22 June 2009 the PAK submitted that the complaint should be rejected as ungrounded. The complainant's employment with the SOE was terminated on 31.05.1990 and according to the employment booklet the complainant started working for another enterprise. The Complainant had not presented evidence that he worked with the SOE after 1999. He was not on the payroll or on the waiting list of the SOE at the time of privatization. The factory was closed in June 2003.

The written observations were served on the complainant on 10 July 2009. The deadline for the complainant to file a response to the written observations of the PAK expired on 20 July 2009. No response has been filed.

██████████ (complainant C2/11) submitted that he was employed with the SOE from 24 June 1972 until 31.05.1990 when he was unfairly dismissed from work by the interim measures. The complainant enclosed the following documents: verified copy of employment booklet, employment certificate;

In written observations of 22 June 2009 the PAK submitted that the complaint should be rejected as ungrounded. The complainant's employment with the SOE was terminated on 31.05.1990. The Complainant had not presented evidence that he worked with the SOE after 1990 or 1999. He was not on the payroll or on the waiting list of the SOE at the time of privatization. The factory was closed in June 2003.

██████████ (complainant C2/12) submitted that he was employed with the SOE from 1965 until 31.05.1990 when he was dismissed from work by the interim measures. He reported to work after 1999. The complainant enclosed the following documents: verified copy of employment booklet, employment certificate.

In written observations of 26 June 2009 the PAK submitted that the complaint should be rejected as ungrounded since his employment with the SOE was terminated on 31.05.1990 and the complainant, date of birth 17.04.1940, had reached retirement age before the date of privatization. The Complainant had not presented evidence that he fulfils the legal requirements to be on the list.

The written observations were served on the complainant on 11 July 2009. The deadline for the complainant to file a response to the written observations of the PAK expired on 21 July 2009. No response has been filed.

On 8 June 2010 the PAK submitted that it published a new list of employees of the SOE Luboteni in Ferizaj/Uroševac following the Special Chamber decision SCEL-09-0011 of 17 September 2009 as upheld by the Appellate Panel decision ASC-09-0067 of 9 March 2010. The complaints against such list are registered in the present case. The PAK enclosed the report of the Claims Review Committee and copies of the publications of the new list.

On 17 June 2010 the PAK clarified additionally that the employees' list of the SOE Urošev grad/ Drita Hotel Ljuboten in Ferizaj/Uroševac as referred to by the complainants registered under Complaint 1 had already been examined under SCEL-06-0021 and confirmed by the final court judgment. All the documents regarding this

SOE were presented in SCEL-06-0021. The PAK further submitted the Status Determination Request and the Employees' Matrix Book for the SOE Luboteni.

By order of 26 July 2010 Complainants 5,6,7,8,9,10,11,12,13 and 15 were served with the PAK Review Committee Note of Observations (relevant parts) submitted by the PAK to the Special Chamber on 8 June 2010. For the purpose of adjudicating the matter, the case file SCEL-09-0011 was attached to SCEL-10-0004.

On 9 August 2010 the PAK submitted the documentary evidence based on which it took the decision to include the four employees on the published list: report, employee list worksheet, employment booklets.

By order of 18 August 2010 the PAK was ordered to submit to the SCSC the English translation of all the evidence presented by the PAK with the written observations on the complaints and to supplement all the documents presented by the PAK only in English with translation into the language of the complainants including but not limited to Notes of Observations on the complaints presented by the PAK on 8 June 2010.

The SCSC held evidentiary hearing on 25 August 2010 with the Complainants and the PAK. Complainants C1/1 [REDACTED], C1/2 [REDACTED], C1/3 [REDACTED] and C1/4 [REDACTED] duly summoned by their representative attorney at law [REDACTED] were not present themselves and did not send their representative. Complainants C2/1 [REDACTED], C2/2 [REDACTED], C2/3 [REDACTED], C2/4 [REDACTED], C2/6 [REDACTED], C2/7 [REDACTED], C2/8 [REDACTED], C2/9 [REDACTED], C2/10 [REDACTED], C2/11 [REDACTED] appeared in person. C2/10 [REDACTED] submitted that the last complainant C2/12 [REDACTED] died.

On 3 September 2010 the PAK submitted the sales contract for the SOE dated 21 November 2006. The PAK submitted that the evidence attached to their written observations on the complaints is documents submitted by the parties to the PAK in support of their claims. Therefore, it should be imposed on the parties to arrange for the English translation of the documents in support of their claim and not on the PAK.

On 10 September 2010 the PAK submitted the Albanian translation of the Notes of Observations on the complaints.

Legal Reasoning:

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 "Luboteni", Ferizaj/Uroševac, as prepared and published 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 as amended by UNMIK Regulation 2004/45 On the Transformation of the Right of Use to Socially-Owned Immovable Property:

“10.1 Because of the special status of employees in Socially-owned Enterprises in relation to these Enterprises and the impact that the privatisation will have on this status, such employees shall be entitled to a share of the proceeds from the privatisation on a priority basis. This share shall be 20 per cent of the proceeds from the sale of:

- (i) shares of a subsidiary corporation of a Socially-owned Enterprise that is privatised pursuant to section 8 of Regulation No. 2002/12.; or*
- (ii) assets that are subject to the voluntary liquidation process pursuant to section 9 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 (as amended):

“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 (as amended) with a notice of the right to file a complaint at the Special Chamber until 8 May 2010. The PAK submitted publications in the Serbian language newspaper “Blic” from 14, 15 and 17 April 2010 (Saturday) and in the Albanian language newspapers “Kosova Sot” and “Koha Ditore” from 15, 16 and 17 April 2010 (Saturday).

The procedure for filing a complaint with the Special Chamber is set out at section 10.6(a) of UNMIK Regulation 2003/13 (as amended), 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 deadline for filing the complaints with the Special Chamber, pursuant to Section 10.6 of UNMIK Regulation 2003/13 expired on 8 May 2010. The Special Chamber has registered 16 complaints seeking inclusion in the final list of eligible employees established by PAK. All complaints were submitted on time.

Complainants C1/1 [REDACTED], C1/2 [REDACTED] C1/3 [REDACTED] and C1/4 [REDACTED] are referring to the company SOE Drita/ DD Urošev Grad/ Hotel Ljuboten in Ferizaj/Uroševac. The PAK argued that their complaints are ungrounded because they are former employees of Hotel Company called DD Urošev Grad/ Drita Hotel Ljuboten, which is not the same enterprise as the SOE Luboteni/ Brick Factory.

The Special Chamber finds that Complainants C1/1 – C1/4 are seeking inclusion on the list of the SOE Drita in Ferizaj/Uroševac also referred to as DD Urošev Grad and Sutjeska. The employees’ list of this SOE was reviewed by the Special Chamber under SCC-06-0021 and it had been finalised by final court judgment of 31 January 2007. The complaints of C1/1 [REDACTED] C1/2 [REDACTED] C1/3 [REDACTED] and C1/4 [REDACTED] should have been lodged the complaints for this

file – SCC-06-0021. The list of the SOE with which they were employed cannot be reviewed once again, being finally decided. As for the rights they claim related with the SOE “Luboten”, Ferizaj/Uroševac these do not exist since all the evidence submitted do not prove working relations with that SOE.

Section 10.4 of UNMIK Regulation 2003/13 (as amended) 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”*.

According to section 10.4 of UNMIK Regulation 2003/13 (as amended) an employee shall be considered eligible if registered with the SOE on the date of: *“the initiation of the liquidation procedure”*. On 5 April 2006 the Kosovo Trust Agency (KTA) filed an application for suspension of all cases pending against the SOE Luboten Brick Factory in Ferizaj/Uroševac. The KTA submitted that the liquidation of the SOE commenced with effect from 15 December 2005. However, as submitted by the PAK in the written observations on the complaints the Factory was closed in June 2003. Therefore, the court considers that the relevant date for determining which employees fulfill the requirements of section 10.4 of UNMIK Regulation 2003/13 as amended by UNMIK Regulation 2004/45 is 1 June 2003. The idea of the provisions of Section 10.4 quoted above is to compensate the employees for their contribution – in time - to the value of the assets (and for the loss of their jobs when this happens directly caused by privatization). For the SOE’s closed before the liquidation this Section would be inapplicable if read in its literally meaning. That is why the Court will verify the requirements set by the Section 10.4 taking into consideration the date of closing of the SOE.

Another interpretation valid for all the complainants is that an eligible employee is the one who works with the SOE even if there is no registration of these working relations. The proof of working relations is to be made according to general rules in this matter but the inexistence of registration does not exclude the right to claim the shares.

The Complainants C2/1 [REDACTED], C2/2 [REDACTED], C2/3 [REDACTED], C2/4 [REDACTED], C2/5 [REDACTED], C2/6 [REDACTED], C2/7 [REDACTED], C2/8 [REDACTED], C2/9 [REDACTED], C2/10 [REDACTED], C2/11 [REDACTED] and C2/12 [REDACTED] maintained that they were dismissed from work in 1990 and 1991 because they were Kosovo Albanians. 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 Special Chamber 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 (as amended) 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.

In this respect, the court makes the following clarification: the complainants have to establish before the Court some facts. From those facts a conclusion of discrimination has to be drawn. The Respondent has to either refute the facts or the conclusion that the facts represent evidence for discrimination. The complainants that alleged discrimination submitted that because their Albanian ethnicity were dismissed from work by the Serbian regime.

The Court found that the workbooks of 11 out of 12 complainants – former workers for the SOE – were closed on the same date 31.05.1990 and there is no proof that a measure for reorganization of the factory requested this or other cause for the termination of working relation was found by the management of the enterprise for a particular case. That is why the Court found that the evidence presented may lead to the conclusion that the equal treatment of the workers was not protected.

The Special Chamber finds that the Complainants fulfil the requirements set by Section 10.4 in conjunction with of UNMIK Regulation 2003/13 as amended and, therefore, their complaints are accepted as grounded.

There are two categories of complainants – former employees of the SOE- the ones who worked after the SOE re-started the activity in 2001 and the ones that did not return for working in the factory. The Court verified the criterion of the three years payroll for those who worked at the time of the closing of the factory. Those who could have worked had not they been discriminated have to show that due to discriminatory measures they were prevented from being registered at the time of the closing of the factory. The Court verified the duration of the working relations for those employees who were discriminated since a proven fact weighs more than a conclusion drawn from other connected facts (under the Section 10.4 of UNMIK Regulation 2003/13 (as amended) a complainant who claims discrimination is under no obligation to present other proof then discriminatory measures; the simple conclusion that in non-discriminatory situation they would have been in the situation of the eligible employees is to be drawn afterwards if no contrary proof is adduced against that).

The Complainant C2/1 [REDACTED] date of birth 2 May 1950, was employed with the SOE from 3 November 1975 until 12 March 1977, and from 9 March 1978 until 31 May 1991. As of 15 June 1999 he returned to work as evidenced by the copies of salary payments and according to the decision dated 8 November 2001 he was appointed as the director of the Brick Factory. At the evidentiary hearing of 25 August 2010 the complainant stated that he was dismissed from work based on discrimination and after 1999 he was the director of the company. The SOE Luboteni was a unit in the structure of NNZ Mustafe Goga, previously known as Trajko Gergovic. SOE Luboteni was also called under the name Tullorja. Silkapor was the company involved in the commercialization of the SOE, being the company to which the IMN Tullorja was leased. The complainant and the guards worked until June 2003. According to report from the company Silkapor, regarding the period 1 June 2003 – 13 June 2003, on calculation of working hours for IMN Tulloria, the complainant is listed under no.5- page with number 46 among the documents submitted by this complainant. The Respondent disputed that the complainant was employed with the SOE after 2001 and stated that the factory was closed in June 2003. But according to the document mentioned above, the Court found that his allegation was proved. 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 was employed with the company on 1 June 2003.

The complainant C2/2 [REDACTED] date of birth 17 June 1961, was employed with the SOE from 01 October 1984. His employment has not been terminated as evidenced in the employment booklet presented by the Respondent. But according to the certificate dated 17.09.1999, he was under the working relations from 01.10.1984 until 31.11.1990 At the evidentiary hearing the complainant stated that he and all the employees of Albanian ethnicity were dismissed from work by the Serbian regime because of discrimination. The complainant further contested two employees on the published list, [REDACTED] and [REDACTED]. The Respondent disputed that the complainant was employed with the SOE after 1999. The Respondent did not dispute

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 on 1 June 2003 if he had not been subject to discrimination.

The complainant C2/3 [REDACTED] date of birth 8 November 1963 was employed with the SOE from 21 January 1988 until 31 May 1990 (2 years, 4 months, 11 days). The complainant started working at Tulloria as of 1 May 2002 as evidenced by employment contract of 30 April 2002. By the decision dated 30.09.2002 he was sent on unpaid leave "for an indefinite period". That means that the working relations didn't stop at the time of the closing of the SOE. At the evidentiary hearing the complainant stated that he was dismissed from work by the Serbian regime because of discrimination. The Respondent did not dispute that the complainant was employed with the SOE prior to 31 May 1990, but disputed the statement that he returned to work after 2002. According to the documents mentioned above, the Court found that his allegation regarding the working relations that re-started in 2002 was proved. 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 was employed with the company on 1 June 2003.

The complainant C2/4 [REDACTED], date of birth 4 January 1958, was employed with the SOE from 18 January 1980 until 31 May 1990. At the evidentiary hearing the complainant stated that she was dismissed from work by the Serbian regime in 1990, then she returned to work in 2002 for six months (According to the report from the company Tullorja regarding the month July 2002, on calculation of working hours for IMN Tulloria, the complainant is listed under no.18 – page with number 114 among the documents submitted by the complainant C2/1). According to the payment receipt of personal income dated October 2002 he was employed by the SOE at that time and there is no evidence that a decision for cancelling the working relations was taken until the date of June 2003. The Respondent did not dispute that the complainant was employed with the SOE prior to 31 May 1990. The Respondent did not dispute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. The argument of the Respondent that the complaint is ungrounded because the complainant was not registered with the SOE at time of privatization, 21 November 2006, cannot be accepted for the reasons stated above. 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 on 1 June 2003 if she had not been subject to discrimination.

The complainant C2/5 [REDACTED] date of birth 28 August 1946, was employed with the SOE from 4 March 1972 until 31 May 1990. The complainant maintained that he was dismissed from work by the Serbian authorities in 1990. The Respondent did not dispute that the complainant was employed with the SOE prior to 31 May 1990. The Respondent did not dispute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. The argument of the Respondent that the complaint is ungrounded because the complainant was not registered with the SOE at time of privatization, 21 November 2006, cannot be accepted for the reasons stated above.

Therefore, the Special Chamber finds that the Complainant Ilmi Hyseni 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 on 1 June 2003 if he had not been subject to discrimination.

The complainant C2/6 [REDACTED] date of birth 3 April 1968, was employed with the SOE from 10 July 1987 until 10 September 1987 (2 months), and from 1 February 1988 until 31 May 1990 (2 years, 4 months). At the evidentiary hearing the complainant stated that he was dismissed from work by the Serbian regime because of discrimination. He stated that he as well as other employees returned to work in 1999 but in 2000 they had to stop working because of the difficulties at the factory. The Respondent did not dispute that the complainant was employed with the SOE prior to 31 May 1990, but disputed the statement that he returned to work after 1999. The PAK not dispute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. From the certificate dated 10.11.2005 the Court found that the Complainant was registered with the SOE from 01.02.1988 until 30.11.1999. The workbook is closed on 31.10.1990, the same date on which the workbooks of the other 10 complainants were closed. Therefore, the Special Chamber finds that the Complainant [REDACTED] fulfils the legal requirements of Section 10.4 of UNMIK Regulation 2003/13. The complainant worked 2 years and 6 months for the SOE according to the work book and his working relation ended because of the discrimination in 1990. He returned to work in 1999 according to certificate and there is no evidence about the way the employment ended this time. It is not clear also for what period did he work in 1999. But since the Complainant was subject of discrimination in 1990 and the employers with the same situation (and a 3 years period of being registered) were accepted as eligible the Court decided on the principle of equity that this Complaint should be accepted too. The idea of the Section 10.4 is to grant the shares to those who contributed for the SOE's activity and those who are registered at the time of privatization (closing of the SOE in this case). But the discriminated employees have no obligation to prove that they were so registered (at that date) and employed (for 3 years).

The complainant C2/7 [REDACTED], date of birth 20 May 1958, was employed with the SOE from 18 April 1986 until 31 May 1990. At the evidentiary hearing the complainant stated that he was dismissed from work by the Serbian regime because of discrimination. The Respondent did not dispute that the complainant was employed with the SOE prior to 31 May 1990. The Respondent did not dispute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. The argument of the Respondent that the complaint is ungrounded because the complainant was not registered with the SOE at time of privatization, 21 November 2006, cannot be accepted for the reasons stated above. 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 on 1 June 2003 if he had not been subject to discrimination.

The complainant C2/8 [REDACTED] date of birth 10 November 1941, was employed with the SOE from 13 May 1974 until 31 May 1990. At the evidentiary hearing the complainant stated that he was dismissed from work by the Serbian regime because of discrimination. The Respondent did not dispute that the complainant was employed

with the SOE prior to 31 May 1990 but argued that he reached retirement age before 21 November 2006. The Respondent did not dispute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. The argument of the Respondent that the complaint is ungrounded because he was not registered with the SOE at time of privatization, 21 November 2006, cannot be accepted for the reasons stated above. The Special Chamber finds that the complainant did not reach retirement age before 1 June 2003. Therefore, 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 on 1 June 2003 if he had not been subject to discrimination. According to the report from the company Tullorja, regarding the month October 2002, on calculation of working hours for IMN Tulloria, the complainant is listed under no.15– page with number 114 among the documents submitted by this complainant C2/1). According to the payment receipt of personal income dated October 2002 he was employed by the SOE at that time and there is no evidence that a decision for cancelling the working relations was taken until the date of June 2003

The complainant C2/9 [REDACTED], date of birth 5 November 1946, was employed with the SOE from 4 May 1979 until 31 May 1990. At the evidentiary hearing the complainant stated that he was dismissed from work by the Serbian regime because of discrimination. The Respondent did not dispute that the complainant was employed with the SOE prior to 31 May 1990. The Respondent did not dispute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. The argument of the Respondent that the complaint is ungrounded because the complainant was not registered with the SOE at time of privatization, 21 November 2006, cannot be accepted for the reasons stated above. 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 on 1 June 2003 if he had not been subject to discrimination.

The complainant C2/10 [REDACTED], date of birth 4 August 1949, was employed with the SOE from 24 April 1971 until 31 May 1990. At the evidentiary hearing the complainant stated that he was dismissed from work by the Serbian regime because of discrimination. He started working privately as taxi driver in 1992. The Respondent did not dispute that the complainant was employed with the SOE before 31 May 1990. The Respondent stated that he is not eligible because he started working for another company from 9 January 1992 until 31 May 1992. 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 on 1 June 2003 if he had not been subject to discrimination. The period mentioned in his workbook as the period of working for another employer does not impede the conclusion stated. At the time 1992 the SOE wasn't functioning so there is not a conflict in the complainant's situation – at the moment of June 2003 - and the rights that he claims.

The complainant C2/11 [REDACTED], date of birth 8 May 1943, was employed with the SOE from 24 June 1972 until 31 May 1990. At the evidentiary hearing the complainant stated that he was dismissed from work by the Serbian regime because of discrimination. The Respondent did not dispute that the complainant was employed

with the SOE prior to 31 May 1990. Respondent did not dispute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. The argument of the Respondent that the complaint is ungrounded because the complainant was not registered with the SOE at time of privatization, 21 November 2006, cannot be accepted for the reasons stated above. 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 on 1 June 2003 if he had not been subject to discrimination. According to the report from the company Tullorja, regarding the month October 2002, on calculation of working hours for IMN Tullorja the complainant is listed under no.30 (page with number 114 among the documents submitted by the complainant C2/1). According to that document he was employed by the SOE at that time and there is no evidence that a decision for cancelling the working relations was taken until the date of June 2003.

The complainant C2/12 [REDACTED] date of birth 17 April 1940, was employed with the SOE from 6 November 1965 until 31 May 1990. The complainant maintained that he was dismissed from work by the Serbian authorities in 1990. The Respondent did not dispute that the complainant was employed with the SOE prior to 31 May 1990 but argued that he reached retirement age before 21 November 2006. The Respondent did not dispute the statement on discrimination in the terms of Section 8.1 of the Anti-Discrimination Law. The argument of the Respondent that the complaint is ungrounded because he was not registered with the SOE at time of privatization, 21 November 2006, cannot be accepted for the reasons stated above. The Special Chamber finds that the complainant did not reach retirement age before 1 June 2003. Therefore, 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 on 1 June 2003 if he had not been subject to discrimination. In the hearing scheduled the court has been informed that this complainant died. An order was sent at his address for clarifications. The order was received but no response has been submitted. Since there is no evidence of the death of the complainant the claim will be decided on the merits.

As regards the four persons in the list, contested by the other complainants, taking into consideration their working books the Special Chamber found that there is no reason to exclude them. Moreover three of them ([REDACTED] and [REDACTED]) are mentioned in the report from the company Silkapor, regarding the period 2003 on calculation of working hours for IMN Tulloria, under no. 1-3 and [REDACTED] is mentioned in the lists corresponding to year 2002 (under number 17) and no decision for cancelling the working relations were submitted. From these documents the Court found that they have the same rights as the workers who were employed for three years and maintained working relations with the SOE at the date June 2003.

Pursuant to the Special Chamber's Additional Procedural Rules regarding Court Fees as in force from 10 March 2010 (based on Section 57.2 of UNMIK AD 2008/6) proceedings in cases concerning the List of Eligible Employees (Section 67 of UNMIK AD 2008/6) are free of charge. Thus, a decision on court fees was not to be taken.

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

[signed]