

DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENCINË KOSOVARE TË PRIVATIZIMIT	SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY OF KOSOVO RELATED MATTERS	POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODNOSE NA KOSOVSKU AGENCIJU ZA PRIVATIZACIJU
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SCEL - 11-0022

Complainants

Employees of SOE XX, XX

C1. Đ.S., XX

C2. J.Š., XX

C3/1. M.S., XX

Represented by attorney-at-law XX, XX;

C3/2. N.S., XX

Represented by attorney-at-law XX, XX;

C3/3. M.P., XX

Represented by attorney-at-law XX, XX;

C3/4. S.N., XX

Represented by attorney-at-law XX, XX;

C3/5. B.S., XX

Represented by attorney-at-law XX, XX;

C3/6. M.S., XX

Represented by attorney-at-law XX, XX;

C4. Đ.S., XX

C5. I.L., XX

C6. K.J.A., XX

C7. M.D.J., XX

C8. M.M., XX

C9. N.M., XX

C10. R.H., XX

C11. Z.S., XX

Vs.

Respondent

Privatization Agency of Kosovo (PAK)

Ilir Konushevci 8 Street, Pristinë/ Priština

The Specialised Panel 1 of the Special Chamber of the Supreme Court of Kosovo on Kosovo Privatization Agency Related Matters composed of the Presiding Judge Alfred Graf von Keyserlingk, Judge Shkelzen Sylaj and Judge Ćerim Fazliji, after deliberation held on 22 February 2013, issues the following

JUDGMENT

- 1. The Complaints of Đ.S.(C1), J.Š.(C2), M.S.(C3/1), N.S.(C3/2), M.P.(C3/3), S.N.(C3/4), B.S.(C3/5), M.S.(C3/6), Đ.S.(C4), I.L.(C5), K.J.A.(C6), M.D.J. (C7), M.M.(C8), N.M.(C9), R.H.(C10), Z.S.(C11) are grounded.**

2. These Complainants have to be included into the Final list of employees eligible to a share of the privatization proceeds of the SOE XX, XX

Factual and Procedural Background

The Complainants are former employees of the Socially-owned Enterprise SOE XX, XX (the SOE), whose core activity was training candidates for driving license tests.

On 30.6.1999, when many of its employees had left their working place it issued a decision calling all workers to show up for work within 60 days. On 1.9.1999 it issued a decision “on work termination“of 37 workers for absence from work. The workers were listed by name. In this list appeared also the names of The Complainants C3/2, C3/6, C6 and C7. The list was published on a board in the enterprise.

The SOE later was privatized through ordinary Spin Off by the Respondent. The sales contract with the winning bidder was ratified on 27.12.2006.

The provisional list of eligible employees was published on 18.07.2009 and the closing date for the submission of complaints with the PAK against the Provisional list was the 08.08.2009.

The Final list was published on 7, 8, 9 and 10 April 2011 with a deadline on 30 April 2011 for filing complaints with the Special Chamber.

On 22 April 2011 Đ.S. (**complainant C1**) filed a complaint seeking inclusion on the list of employees eligible to receive shares from the 20% of the privatization proceeds of the SOE as published in “Danas” on 5 April 2011. The complainant worked at the SOE from 1 March 1975 until June 1999. He states that he could not go to work after June 1999 because he had to leave Gjilan/Gnjilane due to the life-threatening situation. He complains he was discriminated because he is of Serbian ethnicity. He submits employment booklet in copy.

In written observations of 26 May 2011 the Respondent argues that the complaint should be rejected as inadmissible because the complainant had failed to file an appeal with the Agency against the provisional list of employees. The Respondent argues that the complainant therefore failed to exhaust all the administrative remedies of appeal before addressing the court as required under Section 127.4 Law on Administrative Procedure 02/L-28.

On 22 April 2011 J.Š. (**complainant C2**) filed a complaint seeking inclusion on the list of employees eligible to receive shares from the 20% of the privatization proceeds of the SOE as published in “Danas” on 5 April 2011. The complainant worked at the SOE from 7 October 1986 until June 1999. She states that she could not go to work after June 1999 because she had to leave Gjilan/Gnjilane due to the life-threatening situation. She complains she was discriminated because she is of Serbian ethnicity. She states that when she took her employment booklet from the SOE, her employment record was terminated on 30 June 2003. She submits employment booklet in copy.

In written observations of 26 May 2011 the Respondent argues that the complaint should be rejected as inadmissible because the complainant had failed to file an appeal with the Agency against the provisional list of employees. The Respondent argues that the complainant therefore failed to exhaust all the administrative remedies of appeal before addressing the court as required under Section 127.4 Law on Administrative Procedure 02/L-28.

On 23 April 2011 M.S. (**complainant C3/1**) filed a complaint seeking inclusion on the list of employees eligible to receive shares from the 20% of the privatization proceeds of the SOE. The complainant states that Respondent's decision of 26 January 2011 rejecting his complaint on the basis that his employment booklet was closed and he was not employed with the SOE at the time of privatization is ungrounded. The complainant states that he could not continue working at the SOE due to the circumstances after the war. Further, he had to take any job in order to provide for his family. He states that he and other employees were waiting for the situation to get back to normal and were interested in going back to work. However, they were never invited back to work and were not served with a decision on termination of their employment.

In written observations of 31 May 2011 the Respondent argues that the complaint should be rejected as ungrounded because the complainant does not fulfil the legal requirements to be on the list. The Respondent submits that the statement of discrimination is ungrounded because it was not substantiated with evidence. Further, that the complainant's booklet is closed and his employment was terminated as of 01.09.1999. The Respondent refers to a Declaration of the SOE Director that the complainant was employed with the SOE until 01.09.1999 when the employment was terminated on the basis that he failed to answer to the invitation to return to work within 3 months. The Respondent submits Decision on reassigning all employees from 1999 and Decision on termination of employment from 1999. The Respondent submits that the Complainant was not on the payroll or registered with the SOE at the time of privatization.

On 23 April 2011 N.S. (**complainant C3/2**) filed a complaint seeking inclusion on the list of employees eligible to receive shares from the 20% of the privatization proceeds of the SOE. The complainant states that the Respondent's decision of 26 January 2011 rejecting his request on the basis that his employment booklet was closed and he was not employed with the SOE at the time of privatization is ungrounded. The complainant states that he could not continue working at the SOE due to the circumstances after the war. Further, he had to take any job in order to provide for his family. He states that he and other employees were waiting for the situation to get back to normal and were interested in going back to work. However, they were never invited back to work and were not served with a decision on termination of their employment.

In written observations of 31 May 2011 the Respondent argues that the complaint should be rejected as ungrounded because the complainant does not fulfil the legal requirements to be on the list. The Respondent submits that the statement of discrimination is ungrounded because it was not substantiated with evidence. Further, that the complainant's booklet is closed and his employment was terminated as of

01.09.1999. The Respondent refers to a Declaration of the SOE Director that the complainant was employed with the SOE until 01.09.1999 when the employment was terminated on the basis that he failed to answer to the invitation to return to work within 3 months. The Respondent submits Decision on reassigning all employees from 1999 and Decision on termination of employment from 1999. The Respondent submits that the Complainant was not on the payroll or registered with the SOE at the time of privatization.

On 23 April 2011 M.P. (**complainant C3/3**) filed a complaint seeking inclusion on the list of employees eligible to receive shares from the 20% of the privatization proceeds of the SOE. The complainant states that the Respondent's Decision of 26 January 2011 rejecting his request on the basis that his employment was terminated while his employment booklet is open is ungrounded. The complainant states that it was not his fault that his employment was terminated unilaterally and he was not informed of that. The complainant states that he was discriminated by the Respondent because he is entitled to be on the list and that he was treated unfairly by the SOE management.

In written observations of 31 May 2011 the Respondent argues that the complaint should be rejected as ungrounded because the complainant does not fulfil the legal requirements to be on the list. The Respondent submits that the statement of discrimination is ungrounded because it was not substantiated with evidence. The Respondent states that while the complainant's booklet is open he failed to present evidence that he tried to re-establish the employment after June 1999. The Respondent submits that the Complainant was not on the payroll or registered with the SOE at the time of privatization.

On 23 April 2011 S.N. (**complainant C3/4**) filed a complaint seeking inclusion on the list of employees eligible to receive shares from the 20% of the privatization proceeds of the SOE. The complainant states that the Respondent's decision of 26 January 2011 rejecting his request on the basis that he started new employment is ungrounded. He states that the Respondent has erred in establishing the facts; he only registered for social benefits because he had no income, which does not mean that he started a new job. The decision of the Respondent therefore, rejecting his claim for 20% share is ungrounded.

In written observations of 31 May 2011 the Respondent argues that the complaint should be rejected as ungrounded because the complainant does not fulfil the legal requirements to be on the list. The Respondent submits that the statement of discrimination is ungrounded because it was not substantiated with evidence. The Respondent states that while the complainant's booklet is open his employment was terminated as of 01.09.1999. The Respondent refers to a Declaration of the SOE Director that the complainant was employed with the SOE until 01.09.1999 when the employment was terminated on the basis that he failed to answer to the invitation to return to work within 3 months. The Respondent submits Decision on reassigning all employees from 1999 and Decision on termination of employment from 1999. The Respondent submits that the Complainant was not on the payroll or registered with the SOE at the time of privatization.

On 23 April 2011 B.S. (**complainant C3/5**) filed a complaint seeking inclusion on the list of employees eligible to receive shares from the 20% of the privatization proceeds of the SOE. The complainant states that Respondent's decision of 26 January 2011 rejecting his request on the basis that he started new employment is ungrounded. He states that the Respondent has erred in establishing the facts; he only registered for social benefits because he had no income, which does not mean that he started a new job. The decision of the Respondent therefore, rejecting his claim for 20% share is ungrounded.

In written observations of 31 May 2011 the Respondent argues that the complaint should be rejected as ungrounded because the complainant does not fulfil the legal requirements to be on the list. The Respondent submits that the statement of discrimination is ungrounded because it was not substantiated with evidence. The Respondent states that while the complainant's booklet is open his employment was terminated as of 01.09.1999. The Respondent refers to a Declaration of the SOE Director that the complainant was employed with the SOE until 01.09.1999 when the employment was terminated on the basis that he failed to answer to the invitation to return to work within 3 months. The Respondent submits Decision on reassigning all employees from 1999 and Decision on termination of employment from 1999. The Respondent submits that the Complainant was not on the payroll or registered with the SOE at the time of privatization.

On 23 April 2011 M.S. (**complainant C3/6**) filed a complaint seeking inclusion on the list of employees eligible to receive shares from the 20% of the privatization proceeds of the SOE. The complainant challenges the decision of the Respondent rejecting his request on the basis of lack of evidence to support his complaint. The complainant states this is ungrounded because his employment booklet was lost at the SOE, but his employment could be verified from the other documents available at the SOE. He submits two decisions on annual leave, which are the only documents he has.

In written observations of 31 May 2011 the Respondent argues that the complaint should be rejected as ungrounded because the complainant does not fulfil the legal requirements to be on the list. The Respondent submits that the statement of discrimination is ungrounded because it was not substantiated with evidence. The Respondent states that the complainant's employment was terminated as of 01.09.1999. The Respondent refers to a Declaration of the SOE Director that the complainant was employed with the SOE until 01.09.1999 when the employment was terminated on the basis that he failed to answer to the invitation to return to work within 3 months. The Respondent submits Decision on reassigning all employees from 1999 and Decision on termination of employment from 1999. The Respondent submits that the Complainant was not on the payroll or registered with the SOE at the time of privatization.

On 24 April 2011 D.S. (**complainant C4**) filed a complaint seeking inclusion on the list of employees eligible to receive shares from the 20% of the privatization proceeds of the SOE. The complainant states that the decision of the Respondent rejecting his request is ungrounded, because it establishes that he worked at the SOE for many years and his employment booklet is open with the SOE. He states that he was always engaged with the SOE activities although there was no work for him. He states that he

has not received a decision on termination of employment and therefore it is unfair that the Respondent rejected his request based on the employment records of the SOE. He states he was on the payroll in 2001. He requests the SCSC to schedule a hearing.

In written observations of 31 May 2011 the Respondent argues that the complaint should be rejected as ungrounded because the complainant does not fulfil the legal requirements to be on the list. The Respondent states that according the records of the SOE matrix book and Declaration of the SOE director the complainant worked at the SOE from 01.07.1999 until 15.08.2000 when his employment was terminated because he started a new job. The Respondent states that the complainant has not presented other documents to substantiate his request.

On 29 April 2011 I.L. (**complainant C5**) filed a complaint seeking inclusion on the list of employees eligible to receive shares from the 20% of the privatization proceeds of the SOE. The complainant states that the decision of the Respondent rejecting his request is ungrounded. The complainant states the Respondent erred in establishing the facts, because he worked at the SOE for many years, and he returned to work after 1999 and continued working for years. He states that he was always engaged with the SOE activities although there was no work for him. He states that he has not received a decision on termination of employment and therefore it is unfair that the Respondent rejected his request based on the employment records of the SOE. He states he was on the payroll in 2001. He requests the SCSC to schedule a hearing.

In written observations of 31 May 2011 the Respondent argues that the complaint should be rejected as ungrounded because the complainant does not fulfil the legal requirements to be on the list. The Respondent states that according the records of the SOE matrix book and Declaration of the SOE director the complainant worked at the SOE from 01.07.1999 until 15.08.2000 when his employment was terminated because he started a new job. The Respondent states that the complainant has not presented other documents to substantiate his request.

On 29 April 2011 K.J.A. (**complainant C6**) filed a complaint seeking inclusion on the list of employees eligible to receive shares from the 20% of the privatization proceeds of the SOE. The complainant states that the decision of the Respondent rejecting his request is ungrounded, because it establishes that he worked at the SOE for many years, his employment booklet is open and the records of the SOE do not show termination of employment, however his request was rejected. The complainant states he worked at the SOE before the war and returned to work after 1999. However, it was not safe for him to remain in Kosovo after 1999 because he received threats and had to leave. He states he is not aware of how his employment records in the SOE were kept after he left the enterprise. He requests the SCSC to schedule a hearing.

In written observations of 31 May 2011 the Respondent argues that the complaint should be rejected as ungrounded because the complainant does not fulfil the legal requirements to be on the list. The Respondent states that the submitted employment booklet is not sufficient evidence and that the complainant failed to submit evidence that he re-established employment after 1999 and that he sought security from UNMIK or KFOR. The Respondent states that according to SOE Decision of 01.09.1999 the employment was terminated due to absence from work for more than 60 days.

On 29 April 2011 M.D.J. (**complainant C7**) filed a complaint seeking inclusion on the list of employees eligible to receive shares from the 20% of the privatization proceeds of the SOE. The complainant states that the decision of the Respondent rejecting his request is ungrounded, because it is based on the fact that his employment booklet is closed. The complainant states that while his employment was terminated in 1998 he returned to work in 1999 together with all other employees. However, it was not safe for him to remain in Kosovo after 1999 because he received threats and had to leave. He states he is not aware of how his employment records in the SOE were kept after he left the enterprise. He requests the SCSC to schedule a hearing.

In written observations of 31 May 2011 the Respondent argues that the complaint should be rejected as ungrounded because the complainant does not fulfil the legal requirements to be on the list. The Respondent states that the submitted employment booklet is closed as of 1998 and therefore the complainant was not on the payroll or employed with the SOE at the time of privatization.

On 29 April 2011 M.M. (**complainant C8**) filed a complaint seeking inclusion on the list of employees eligible to receive shares from the 20% of the privatization proceeds of the SOE. The complainant states that the decision of the Respondent rejecting her request is ungrounded, because it established that she was employed with the SOE, that her employment booklet is open and that she returned to work after 1999. She states that she has not received a decision on termination of employment and therefore it is unfair that the Respondent rejected her request based on the employment records of the SOE. She states that she was always engaged with the SOE activities although there was no work for her. She requests the SCSC to schedule a hearing.

In written observations of 31 May 2011 the Respondent argues that the complaint should be rejected as ungrounded because the complainant does not fulfil the legal requirements to be on the list. The Respondent states that the complainant failed to submit sufficient evidence. It refers to statement from the SOE director that her employment was terminated on 16.08.2000 because she started a new job.

On 29 April 2011 N.M. (**complainant C9**) filed a complaint seeking inclusion on the list of employees eligible to receive shares from the 20% of the privatization proceeds of the SOE. The complainant states that the decision of the Respondent rejecting his request is ungrounded, because it is based on the fact that his employment booklet is closed. The complainant states that he returned to work in 1999 and continued working for years. He states that he was always engaged with the SOE activities although there was no work for him. He states that he has not received a decision on termination of employment, his employment booklet is open and therefore it is unfair that the Respondent rejected his request based on the employment records of the SOE. He states he was on the payroll in 2000. He requests the SCSC to schedule a hearing.

In written observations of 31 May 2011 the Respondent argues that the complaint should be rejected as ungrounded because the complainant does not fulfil the legal requirements to be on the list. The Respondent states that according to the records of the SOE matrix book and Declaration of the SOE director the complainant worked at

the SOE from 01.07.1999 until 15.08.2000 when his employment was terminated because he started a new job. The Respondent states that the complainant has not presented other documents to substantiate his request.

On 29 April 2011 R.H. (**complainant C10**) filed a complaint seeking inclusion on the list of employees eligible to receive shares from the 20% of the privatization proceeds of the SOE. The complainant states that the Respondent's decision of 26 January 2011 rejecting his request on the basis closed employment booklet is ungrounded. The complainant states that he returned to work in 1999 and continued working for years. He states that he was always engaged with the SOE activities although there was no work for him. He states that he has not received a decision on termination of employment, his employment booklet is open and therefore it is unfair that the Respondent rejected his request based on the employment records of the SOE. He states he was on the payroll in 2000 and 2001. He requests the SCSC to schedule a hearing.

In written observations of 31 May 2011 the Respondent argues that the complaint should be rejected as ungrounded because the complainant does not fulfil the legal requirements to be on the list. The Respondent states that according the records of the employment booklet, SOE matrix book and Declaration of the SOE director the complainant worked at the SOE from 01.07.1999 until 30.06.2003 when his employment was terminated. The Respondent states that the complainant has not presented other documents to substantiate his request.

On 29 April 2011 Z.S. (**complainant C11**) filed a complaint seeking inclusion on the list of employees eligible to receive shares from the 20% of the privatization proceeds of the SOE. The complainant states that the Respondent's decision of 26 January 2011 rejecting her request is ungrounded. The complainant states that her employment booklet is open and she returned to work in 1999 at the SOE where she continued working for years. She states that she was always engaged with the SOE activities although there was no work for her. She states that she has not received a decision on termination of employment, her employment booklet is open and therefore it is unfair that the Respondent rejected her request based on the employment records of the SOE. She states she was on the payroll in 2000. She requests the SCSC to schedule a hearing.

In written observations of 31 May 2011 the Respondent argues that the complaint should be rejected as ungrounded because the complainant does not fulfil the legal requirements to be on the list. The Respondent states that according the records of the SOE matrix book and Declaration of the SOE director the complainant worked at the SOE from 01.07.1999 until 16.08.2000 when her employment was terminated because she started new job with another employer. The Respondent states that the complainant has not presented other documents to substantiate her request.

Legal Reasoning

The decision is issued without having held a hearing because the facts and legal arguments are submitted sufficiently clear. The panel does not expect further relevant information and arguments in a hearing (Art 68.11 Annex Special Chamber Law).

I Admissibility

All submitted complaints are admissible.

They are submitted within the deadline of Section 67.6 UNMIK Administrative Direction No2008/6 in connection with section 10.6(a) UNMIK Regulation 2003/13. The omission of Complainants to challenge the Provisional list according to Section 67.2 UNMIK Administrative Direction 2008/6 does not make the complaint against the Final List inadmissible.

- a. Article 127 Law on Administrative Procedure No 02/L-28 does not apply. Article 127 reads

“Administrative appeal

127.1. The administrative appeal may be submitted in the form of request for review or an appeal.

127.2. Any interested party has a right to appeal against an administrative act or against unlawful refusal to issue an administrative act.

127.3. The administrative body the appeal is addressed to shall review the legality and consistency of the challenged act.

127.4. The interested parties may address the court only after they have exhausted all the administrative remedies of appeal.”

The UNMIK Administrative Direction 2008/6 in Section 70.3 (a) and (b) under the heading Applicable Law does not refer to the Law on Administrative Procedure No 02/L-28 but refers to the Code of Contested Procedure which does not contain any provision requesting the exhaustion of all administrative remedies before going to court.

But even if Article 127 Law on Administrative Procedure No 02/L-28 would apply, the Complainants would not have needed to challenge the Provisional List before complaining against the final list. Their Complaint does not regard the Provisional List (which could have been challenged) but the Final List (against which no administrative remedy is possible).

- b. Also the wording of Section 67.2, first sentence ,UNMIK Administrative Direction 2008/6 cannot be interpreted in a way that the employee must challenge the Provisional List in order to be entitled later to complain against the Final List. Section 67.2, first sentence, UNMIK Administrative Direction 2008/6 reads:

“Upon receiving the list of eligible employees pursuant to Section 10 UNMIK Regulation 2003/13, the Kosovo Trust Agency shall publish a provisional List of eligible employees together with a notice to the public of the right of any person to file a complaint within 20 days with the Agency requesting the inclusion in or challenging the list of eligible employees.”

The law only states a right to challenge the provisional list, but does not say that who does not challenge the provisional list may later not challenge the final list.

- c. The panel is aware, that an obligation to challenge any deficiencies in the provisional list combined with the sanction, that, if this is not done, the complaint against the final list becomes inadmissible, would help the Agency to establish in shorter time a correct final list.

The procedure to have first established a Provisional List and give the chance to everybody to challenge this list and submit facts and evidence within 20 days shall help the PAK to establish without unnecessary delay a correct Final List. It purports to concentrate and speed up the procedure. The collection of all necessary facts and evidence as early as possible is an essential asset in a procedural context in which the monetary amount of the 20% share of every employee is depending on the decision on acceptance or rejection of the complaints filed.

UNMIK Administrative Direction No 2008/6 does not allow sanctioning lack of cooperation of the Employee in the stage of establishing the Final List by making the complaint against the Final List inadmissible (similar: Special Chamber Supreme Court Judgements SCEL-09-0001 and SCEL - 10 - 0027)

Reasoning on the grounds

The Complaints of the Complainants are grounded.

Section 10.4 of UNMIK Regulation 2003/13, as amended by UNMIK Regulation 2004/45, provides the requirements for an employee to be considered eligible and Section 10 sets out the procedure for filing a complaint with the Special Chamber as follows:

“10.4 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”.

D.S. (Complainant C1) and J.S. (Complainant C2)

Both complainants have been not less than three years on the SOE's payroll. The law does not request that the period of being on the payroll must last without break till privatization. The first requirement of three years being on the payroll and the second requirement of being an employee at the day of privatization may be met separate from each other at different times. However these Complainants on 27.12.2006, the day of privatization also were not any more registered as employees of the SOE. They had left Gjilan June 1999, respectively after June 1999 due to a life-threatening situation and they both complain that they were discriminated due to their Serbian ethnicity. The Respondent did not contest this but only argued that they both failed to challenge the Provisional List of eligible employees. However, as stated above, this is no reason to exclude them from the Final List. In a contested procedure non contesting means admitting. The court must not and may not put in doubt uncontested facts. They both meet the requirements of Section 10.4 of UNMIK Regulation

2003/13, as amended by UNMIK Regulation 2004/45. They would have been employed at the time of privatization if they would not have fled from threatening discrimination. Therefore they have to be accepted on the list (Judgements of SCSC SCEL-09-0001 and SCEL-10-0027).

M.S.(Complainant C3/1), N.S.(Complainant C3/2), M.P.(Complainant C3/3), D.S.(Complainant C4), I.L.(Complainant C5), M.M.(ComplainantC8), N.M.(Complainant C9), R.H.(Complainant C10) and Z.S.(Complainant C11).

Regarding all these Complainants the Respondent refuses the acceptance on the Final List on the ground that before the day of privatization their employment was terminated by a notice of termination. But these Complainants have all declared that they never received this notice and also the Respondent did not allege that they received it. Without the Complainants receiving such notice the employment contract did not end because Art 90 of the Labour Code of Serbia of 10 July 1991 prescribes:

“A decision on dismissal shall be served on an employee in writing. It shall contain in particular: grounds for dismissal, a justification and a note on legal remedy and rights of the employee during temporary unemployment.”

This regulation is non-discriminatory and therefore applies (Section 3 of UNMIK Regulation 1999/1 of 15 July 1999 on the Law Applicable in Kosovo. But even if it would not apply the dismissal would be invalid because it is a general principle that a legal act performed by a declaration of will is only valid if the declaration of will is communicated to the other party. The panel must not assess whether there was a right of the SOE to dismiss these Complainants due to long absence from work. Supposed there was a right it was not exerted validly. Without being validly dismissed, their employment contract remains existing.

This means these Complainants were still employees of the SOE when the privatization took place. As them being three years on the Payroll is not contested they also have to be accepted on the Final list.

S.N. (Complainant 3/4) and B.S. (Complainant C3/5)

Also to these both Complainants the acceptance to the list of eligible employees cannot be denied. The fact that they applied for social benefits did not affect their employment contract with the SOE. They have never been validly dismissed from the SOE.

As the other requirements for entering the list are not contested they have to be accepted.

M.S. (Complainant C3/6), K.J.A.(Complainant C6) and M.D.J.(Complainant C7)

To these Complainants applies the same. The notification of the decision of 1.9.1999 on a board of the SOE declaring that these three Complainants (and also the Complainant C3/2) are dismissed is no valid declaration of dismissal because it has not been served to the persons concerned. The other requirements for entering on the list of eligible employees are not contested. Therefore these complainants also have to be accepted on the list.

Court fees

The court does not assign costs to the Complainants as the courts presidium till now did not issue a written schedule which is approved by the Kosovo Judicial Council (Art.57 Paragraph 2 of the Annex to the Special Chamber Law). This means that till now there is no sufficient legal base to impose costs.

Legal Remedy

An appeal may be filed against this Judgment within 21 days with the Appellate Panel of the Special Chamber. The Appeal should be served also to the other parties and to the Trial Panel by the Appellant within 21 days. The Appellant should submit to the Appellate Panel evidence that the Appeal was served to the other parties.

The foreseen time limit begins at the midnight of the same day the Appellant has been served with the written Judgment.

The Appellate Panel rejects the appeal as inadmissible if the Appellant fails to submit it within the foreseen time limit.

The Respondent may file a response to the Appellate Panel within 21 days from the date he was served with the appeal, serving the response to the Appellant and to the other parties.

The Appellant then has 21 days after being served with the response to his appeal, to submit his response to the Appellate Panel and the other party. The other party then has 21 days after being served with the response of the Appellant, to serve his rejoinder to the Appellant and the Appellate Panel.

Alfred Graf von Keyserlingk
Presiding Judge

[signed]