

**DHOMA E POSAÇME E
GJYKATËS SUPREME
TË KOSOVËS PËR
ÇËSHTJE QË LIDHEN
ME AGJENSINË
KOSOVARE TË
PRIVATIZIMIT**

**SPECIAL CHAMBER OF
THE SUPREME COURT
OF KOSOVO ON
PRIVATISATION AGENCY
OF KOSOVO RELATED
MATTERS**

**POSEBNA KOMORA
VRHOVNOG SUDA
KOSOVA ZA PITANJA
KOJA SE ODRNOSE NA
KOSOVSKU
AGENCIJU ZA
PRIVATIZACIJU**

ASC-10-0057-A0001

appeallants/complainants

- 1. S.J,**
- 2. S.M.1,**

respondents/complainants

- 1. S.M.2,**
- 2. M.T,**
- 3. V.N,**
- 4. D.S,**
- 5. I.D,**

Vs.

respondent/appeallant

Privatization Agency of Kosovo
Ilir Konushevci Str.8, Prishtinë/Priština

The Appeals Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (SCSC), composed of Mr.sc Sahit Sylejmani, the Presiding Judge, Vladimir Kanev, Sabri Halili, Ondrej Pridal and Ilmi Bajrami Judges, on the appeals of the PAK and complainants Skender Jonuzi and Suzana Marković against the judgement of the Specialised Panel of SCSC, dated 23 June 2010 in case SCEL-09-0025 after deliberations held on 1 December 2016, issues the following:

JUDGEMENT

- 1. The appeal of PAK filed against complainants S.M, M.T, V.N, D.S, I.D who were including in the final list of employees with the Specialised Panel judgement dated 23 June 2010, SCEL-09-0025 is ungrounded, and the judgment is upheld while these complainants remain in the list.**

2. **The appeal of complainant S. J against Specialised Panel judgement, dated 23 June 2010, SCEL-09-0025 is ungrounded.**
3. **The appeal of complainant S.M against Specialised Panel judgement, dated 23 June 2010, SCEL-09-0025 is grounded and PAK is ordered to include her in the final list of beneficiaries of privatization of SOE. “K”,”H”.**
4. **Court fees for the appeals proceedings are not to be imposed.**

Factual and Procedural background

The Kosovo Trust Agency (KTA) launched the 5th Wave of Privatization, in which the Socially Owned Enterprise “K”,”H” in Pristinë/Priština (also referred to as the SOE “H”) was included (hereinafter called the “SOE”). On 22 May 2006 the privatization sales contract was ratified and entered into force.

On 5, 6, 8 August 2009 the Privatization Agency of Kosovo (PAK) published in Serbian language newspaper Blic and on 5, 6, 8 August 2009 in Serbian language newspaper Marketing the list of the employees eligible to 20% of the privatization proceeds.

On 6 and 8 August 2009 the Privatization Agency of Kosovo (PAK) published the list of the eligible employees in Albanian language newspaper Kosova Sot; on 7 and 8 August 2009 in Albanian language newspaper Infopress; on 6, 7, 8 August 2009 in Albanian language newspaper Koha Ditore. Deadline to file complains expired on 28 August 2009.

On 20 August 2009 **S.J (complainant no 3/appellant)** filed a complaint at the Special Chamber of the Supreme Court on Kosovo Privatisation Agency Related Matters against the PAK in which he requested to be included in the list of the employees. The complainant submits that he was employed with the SOE in the period 1 October 1989 and 31 July 1999 and from 1 November 1999 until 5 December 2004 as the Head of Legal and Administrative Services. Since the complainant was on a payroll for more than three years and was not included on the list, he felt discriminated. S.J submitted a certified copy of his employment booklet, copy of the employment contract and a Decision on appointment as acting managing director.

The complaint was served on the PAK on 24 August 2009. In written observations of 27 August 2009 the PAK submitted that the complaint should be rejected as ungrounded because the complainant was not registered as an employee of the SOE at the time of privatization - 22 May 2006. The respondent indicated that the matrix book under no 537 showed that S.J was an employee in the period 10 October 1989 and 30 July 1990. The PAK concluded that the data of the matrix book do not correspond with data in the workbook. According to the PAK the complainant did not fulfil the legal requirements of Section 10.4 and Section 10.6 of UNMIK Regulation 2003/13 and should not be considered eligible.

The complainant was served with the written observations (24 September 2009) and on 28 September 2009 filed a response. He stated the PAK did not provide legal grounds for his exclusion from the list and have not considered the facts of his case.

On 27 August 2009 **S.M.1 (complainant no 9/appellant)** filed a complaint at the Special Chamber of the Supreme Court against the PAK seeking the inclusion on the list of employees of the SOE “K”,”H” on the basis of the fact that she was employed with the SOE since 26 October 1993 until June 1999 when fearing for her and her family lives she had to leave Kosovo due to the poor security situation. The complainant maintained that she fulfils the legal requirements and the fact that she is not on the list is a discrimination based on her Serbian ethnicity. She submitted a certified copy of her employment workbook.

The Special Chamber served the complaint on the respondent on 3 September 2009. In the written observations of 10 September 2009 the PAK stated that the complaint should be rejected as ungrounded because the complainant was not registered as employee of the SOE at the time of privatization.

The written observations were served on the complainant on 28 September 2009, but no response has been filed until the day of the deliberation.

On 25 August 2009 **S.M.2 (complainant No 4)** filed a complaint at the Special Chamber of the Supreme Court against the PAK claiming to be included on the list of employees on the basis of the fact that she was employed with the SOE and was on the payroll for more than 3 years: from 21 July 1980 until June 1999 when she left Prishtinë/Priština due to the poor security situation. She left Prishtinë/Priština fearing for her life and for life of her family members. S.M claimed that the only reason why her name was not included on the list was discrimination on the basis of her Serbian nationality. The complainant submitted also a certified copy of her employment workbook.

The Special Chamber served the complaint on the PAK on 27 August 2009. The respondent submitted written observations on 2 September 2009. It claimed that the complaint should be rejected as ungrounded because the complainant was not registered as an employee of the SOE at the time of privatization. According to the respondent, the complainant failed to present evidence that she was employed with the SOE after 21 July 1980 and has not presented evidence that she was discriminated. Since the employment booklet is presented in a non-certified copy it cannot be accepted as relevant legal evidence in terms of Section 64.4 UNMIK AD 2006/17. The PAK proposed to ask the complainant to submit additional information and evidence in that regard.

The complainant was served with the written observations on 25 November 2009 and filed a response on 24 December 2009, while the deadline expired on 5 December 2009. The complainant stated that the certified copy of her employment booklet already attached to the complaint should be sufficient evidence for her employment. Further she stated that the PAK for compiling the list was requesting only (uncertified) copies of employment booklets. She maintained that after 1999 the freedom of movement was not guaranteed to the members of Serbian ethnicity, which is a well known fact and therefore he was not able to return to work.

On 27 August 2009 **M.T (complainant No 5)** filed a complaint at the Special Chamber of the Supreme Court against the PAK asking to determine that he was an eligible employee to obtain 20% of proceeds from the sale of shares of the SOE “K”,”H”. He submitted a certified copy of the employment booklet and an unreadable copy of decision on employment.

On 3 September 2009 the complaint was served on the respondent. In written observations of 9 September 2009 the PAK submitted that that the complaint should be rejected as ungrounded because the complainant was not registered as an employee of the SOE at the time of privatization, 22 May 2006. In the respondent’s point of view the complainant did not present any evidence that he was employed with the SOE after 1991 or after 1999. The respondent stated also that the allegation of the complainant about being discriminated, since not accompanied by the evidence cannot be accepted.

The Special Chamber served the written observations on the complainant on 28 September 2009. The deadline for the complainant to file a response to the written observations of the PAK expired on 8 October 2009. No response has been filed until the day of the deliberation.

On 27 August 2009 **V.N (complainant No 6)** filed a complaint at the Special Chamber of the Supreme Court against the PAK requesting to be included on the list of eligible employees of the Enterprise “K”,”H” ,since she was an employee of that SOE since 1 August 1981 until June 1999 when she had to leave Prishtinë/Priština in June 1999 due to the poor security situation and because of fear for her and her family’s life. The complainant indicated that the fact that she is not on the list is a discrimination based of her Serbian ethnicity. She has submitted a copy of her employment booklet which shows employed with the SOE from 1 August 1981 and still open.

The Special Chamber served the complaint on the PAK on 3 September 2009. In written observations of 7 September 2009 the PAK submitted that the complaint should be rejected as ungrounded because the complainant was not registered as an employee of the SOE at the time of privatization, 22 May 2006. According to the respondent the complainant did not present evidence that she was employed with the SOE after 1 August 1981, respectively after June 1999 and did not present the evidence that she was discriminated.

The written observations were served on the complainant who filed a response on 11 December 2009. V.N stated that the evidence for her employment is the certified copy of her employment booklet already attached to the complaint. She further underlined that it is a well known fact that after 1999 the freedom of movement was not guaranteed to members of Serbian ethnicity and therefore she was not able to return to work as there was no transport arrangement for the SOE employees.

On 27 August 2009 **D.S (complainant No 7)** filed a complaint at the Special Chamber of the Supreme Court against the PAK claiming to be included on the list of employees as he was employed with the SOE from 14 June 1981 until June 1999 when he left Prishtinë/Priština due to the poor security situation fearing for his life and for the lives of his family. He maintained that he fulfilled the legal requirements and the fact that he is not on the list is a discrimination based of his Serbian ethnicity. He has submitted a certified copy of his employment booklet, which shows employment with the SOE from 14 June 1981 and is still open.

The Special Chamber served the complaint on the PAK on 3 September 2009. In written observations of 9 September 2009 the PAK submitted that the complaint should be rejected as ungrounded because the complainant was not registered as employee of the SOE at the time of privatization. According to the respondent the complainant did not present any evidence that he was employed with the SOE after 14 June 1981 and did not present the evidence that he was discriminated.

The written observations were served on the complainant on 24 November 2009. In response to the written observations of 4 December 2009 the complainant maintained that the evidence for his employment with the SOE was his employment booklet. He further submitted that he had to leave Kosovo in 1999 and therefore was not in a position to return to work. He stated that it is a notorious fact that after 1999 the freedom of movement for the members of Serbian community was not guaranteed. The complainant underlined that his house in Devet Jugović/Devet Jugoviq village was destroyed and he did not have the place to live in Kosovo. The facts that in that village crimes were committed during the conflict between Serbs and Albanians were well known. Therefore the complainant could not stay and continue living in his village even though he did not take part in the conflict.

On 27 August 2009 **I.D. (complainant No 8)** filed a complaint at the Special Chamber of the Supreme Court against the PAK claiming to be included on the list of employees as he was employed with the SOE for many years but had to leave Kosovo in 1999 due to the poor security situation. He maintained that he fulfilled the legal requirements and the fact that he is not on the list is a discrimination based of his Serbian ethnicity. He has submitted a certified copy of employment booklet, which shows employment with the SOE from 1 March 1985 and still open.

The Special Chamber served the complaint on the PAK on 3 September. In written observations of 10 September 2009 the PAK submitted that the complaint should be rejected as ungrounded because the complainant was not registered as an employee of the SOE at the time of privatization. According to the respondent the complainant did not provide any evidence that he was employed with the SOE at the time of privatization and did not present the evidence that he was discriminated.

The written observations were served on the complainant on 24 November 2009. The deadline for the complainant to file a response to the written observations of the PAK expired on 4 December 2009. No response has been filed until the date of the deliberation.

On 2 October 2009 the PAK submitted to the Special Chamber additionally: a copy of the Decision of the PAK Claims Review Committee, a copy of the SOE “K”, ”H” SDR file, and a copy of the Matrix Book of the SOE.

In additional clarification of 29 January 2010 the PAK submitted that pursuant to Decision no 1/1999 the SOE’s “Professional college” invited all employees to return to work until 1 July 2000. The employees that returned to work were included in this list, while the rest were considered not interested in returning to work. The PAK enclosed copies of the following

publications in the press: Blic of 5, 6 and 8 August 2009, Kosova Sot of 6 and 8 August 2009, Infopress of 7, 8 August 2009, Koha Ditore 6, 7 and 8 August 2009. The PAK further clarified that after 1999 the SOE operated with around 60% of its capacity with 63 employees.

On 30 June 2010, the PAK submitted additionally that following the establishment of Employee List Review Committee chaired by its international member comprising also two local members the employee list did not undergo any changes. The PAK has enclosed a Note of Observations by the new Employee List Review Committee.

The facts:

The complainant **S.J** was employed by the privatized SOE in the periods between 1 October 1989 and 31 July 1990, as well as between 1 November 1999 and 5 December 2004 (proof: workbook submitted by the complainant)

The complainant **S.M.1** was employed with the privatized SOE since 21 July 1980. Her Work booklet is still open. The Matrix book under No. 302 related to the complainant 4 does not contain any remarks about termination of the employment relation (proof: workbook submitted by the complainant, Matrix book submitted by the respondent under No. 302, p.75).

The complainant **M.T** was employed with the privatized SOE in the periods between: 26 August 1980 and 31 December 1980, 24 February 1981 and 24 November 1981, 11 March 1982 and 11 December 1982, 28 March 1983 and 21 December 1983, 16 April 1984 and 16 October 1984, 13 June 1985 and 7 October 1985, 8 October 1985 and 13 December 1985 and finally since 6 May 1986. The Work booklet is open (proof: workbook submitted by the complainant, matrix book submitted by the respondent under No. 426, p. 63).

The complainant **V.N** was employed with the privatized SOE on 1 August 1981. She worked for the Enterprise until June 1999 when fearing for her and her family lives, she left Kosovo. The Work booklet was never closed. The Matrix book contains no remarks about the termination of the contract (proof: workbook submitted by the complainant, Matrix book submitted by the respondent under No. 386, p. 69).

The complainant **D.S** was employed with the privatized SOE since 14 June 1981 until June 1999, when he left Kosovo because of the military conflict. The Work booklet was never closed. The Matrix book contains no remarks about the termination of the contract (proof: workbook submitted by the complainant, Matrix book submitted by the respondent under No. 362, p. 69).

The complainant **I.D** was employed with the privatized SOE since 1 March 1985 until June 1999, when he left Kosovo because of the military conflict. The workbook was never closed. The Matrix book contains no remarks about the termination of the contract (proof: workbook submitted by the complainant, Matrix book submitted by the respondent under No. 306, p. 65).

The complainant **S.M.2** was employed with the privatized SOE in the periods: from 26 October 1993 until 26 April 1994, from 28 April 1994 until 28 October 1994, from 1 November 1994

until 1 May 1995 and from 5 May 1995. The Work booklet of the complainant is open (proof: workbook submitted by the complainant).

On 23 June 2010 SCSC issued judgement and decided to grant complains of **S. M, M.T, V.N, D.S, I.D** as grounded. Respondent was ordered to include them in the final list of employees eligible to 20% of share in the privatization proceeds of SOE “K”, ”H”. Complaints of **Rr.I, A.B, S.J, S.M, B.G, H.K, Xh.V (për të ndjerin A.V) dhe L.L** were rejected as ungrounded. The complaint of **R.B** was rejected as untimely.

On 18 August 2010 KPA filed appeal against SCSC judgement from 23 June 2010 in the part granting complains. Case was registered as ASC-10-0057-A0001. PAK in appeal submitted for wrong application of substantive law as well as wrong confirmation of factual background. PAK stated that SCSC’s reasoning was based on already abolished Art. 221, par. 4 of the Code of Contested Procedure which was replaced by the Law on Contested Procedure of Kosovo (Law no. 03/1-006) and got into force in 30 June 2008. PAK also submits for wrong establishment of the fact of discrimination against claimants who were included in the list of beneficiaries. PAK submits that general and common facts should be subsumes in the individual cases.

On 19 August 2010 complainant **S.J** filed appeal against decision of the Specialized Panel no. SCEL-09-0025, dated 23 June 2010. Appeal was registered as no. ASC-10-0057-A0002. Complainant claim wrong and not completed verification of facts, violation of procedures and wrong implementation of material law.

On 30 August 2010 complainant **S.M** filed appeal against decision of the Specialized Panel no. SCEL-09-0025, dated 23 June 2010. Appeal was registered as no. ASC-10-0057-A0003. Complainant claim that she was permanent employee of SOE since 5 May 1995 up to June 1999 and that she don’t know what was a reasons that termination of her employment was registered in employment book. She proposed 5 witnesses, also complainants in that case - S.M, M.T, V.N, D.S, I.D., which will be able to confirm her statement.

On 22 February 2012 KPA appeal was served to complainants.

On 22 February 2016 SCSC ordered: (1) the appeal of PAK from 18 August 2010, no. ASC-10-0057-A0001 and appeal of claimant S.J from 19 August 2010, no. ASC-10-0057-A0002, both against decision of the Specialized Panel no. SCEL-09-0025, dated 23 June 2010 to be served again to respondents: V.N and I.D. (2) Moreover SCSC ordered appeal of S.M from 30 August 2010, no. ASC-10-0057-A0003 against decision of the Specialized Panel no. SCEL-09-0025, dated 23 June 2010 to be served to all parties.

The SCSC’s order of 22 February 2016, in relation to appeal of PAK and of the complainant S. J as specified under point 1 of the said order, has been successfully delivered to I.D and V. N. In regards to point 2 of order appeal of claimant S.M from 30 August 2010 was served with success to all parties except Rr.I who change his residence and S.J whose residence is unknown.

Only the respondent-V.N replied to the mentioned above order, on 10 March 2016 whereby she supports claim of S.M and confirmed that they were working together for several years between 1995- June 1999. In regards to appeal of second appellant I.D she confirmed that he was working with her, but she was not able provide data.

Legal Reasoning

The Appeals Panel decided to dispense with the verbal proceedings, pursuant to Article 64 paragraph 1 of the Annex to Law no. 04/L-033 on the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters.

The appeal of **PAK** is admissible but ungrounded. Despite the referral to already abolished law, Specialized Panel correctly applied procedural and substantive provisions. Appeal Panel upholds first instance findings that all the complainants who got successful had been working in the SOE at hand until June 1999 and have their work-books open. The rapid and dramatic deterioration in security for members of Serbian ethnicity in Kosovo after the advent of international forces is well known fact and should be considered judicial notice. In accordance to long established practice of the SCSC Appeals Panel lack of security equals discrimination. All the claimants granted by first instance are of Serbian minority and they explicitly submitted for discrimination.

The appeal of complainant **S.J** is admissible but ungrounded. As evidence reveals he worked at the SOE in the period after June 1999 but quit before the day of privatization. Therefore second instance shares conclusion of the first instance in regards to that appellant.

Appeal of **S.M** is admissible and grounded. Indeed in the SOE's Matrix book there is a record no. 602, dating 1 May 1995 for termination of her the contract due to end of the term. But in the appellant's workbook there is an entry reading a new contract was concluded only 3 days later. Court considers this as a proof that she worked beyond the day of the entry no. 602 and until June 1999. S.M explicitly submits for discrimination and as a member of Serbian ethnicity she should be considered in the same way as claimants whose complains were granted by the first instance.

For the above, it is decided as in the enacting clause.

Court fees

No court fees are imposed for the proceeding because the approved schedule of court fees of the SCSC, which entered into force in 27 March 2014, cannot be applied, in a retrospective way, to pending cases.

Decided by the Appeals Panel of the SCSC on 1 December 2016

Mr. sc. Sahit Sylejmani, Presiding Judge

