

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 ODNOSI NA
KOSOVSKU AGENCIJU
ZA PRIVATIZACIJU

AC-I-13-0198-A0001

In the lawsuit of:

Complainants

I.K, and others,
Deçan/Deçane

Vs.

Respondent/Appellant

Privatization Agency of Kosovo,
Street Ilir Konushevci, no. 8, Prishtinë/Priština

The Appellate 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, Gertraud Marx-Leitenberger, Ondrej Pridal, Ilmi Bajrami and Sabri Halili, Judges, on the appeal of the Appellant against the judgment of the Specialized Panel of the SCSC, of 11 September 2013, SCEL-11-0020, after deliberation held on 10 February 2017, issues the following:

J U D G M E N T

- 1. The appeal of the Appellant is grounded.**
- 2. The Point 2 (two) of the enacting clause of the judgment SCEL-11-0020, of 11 September 2013 is amended, thus the complaint of the Complainant C2 I.K is dismissed as inadmissible.**
- 3. No court fees are imposed for the appeals proceedings.**

Procedural and factual background:

The Socially Owned Enterprise (SOE) "D" in Dečan/Dečane was privatized through ordinary Spin Off. The contract of sale with the winning bidder was ratified on 24 July 2007.

The Final List of the eligible employees entitled to 20% share of the proceeds from the privatization of the SOE was published on 31 March, 1, 2 and 3 April 2011. The deadline for filling the complaints with the SCSC against the Final List was on 25 April 2011.

The Complainant C2 I.K filed the complaint with the SCSC on 7 May 2011, requesting to be included on the final list of the eligible employees to receive a share from the privatization proceeds of the SOE. The Complainant stated that he worked with the SOE from 22 February 1980 until the date of privatization and that he fulfils the legal requirements.

In its written observation, submitted on 7 June 2011, the Respondent PAK states that the complaint should be dismissed as inadmissible for the reason that it was filed after the deadline for filling the complaints with the SCSC which was on 25 April 2011.

In his reply to the written observation, the Complainant C2 states that he filed his complaint after the deadline because he lives under harsh conditions, both technically and financially and could not afford buying the newspaper every day. He further stated that he initiated the procedure as soon as he was informed by a former colleague about the list.

On 11 September 2013, the Specialized Panel of the SCSC, issued a judgment SCEL-11-0020, by which the complaint of the Complainant C2 was approved as grounded, and the Respondent was obliged to include him in the final list of the eligible employees. The Specialized Panel among others reasoned that the aim of the publication of the employees list on the newspaper is not immediate knowledge, but rather to enable the spread of knowledge of the list. That those who read the newspaper will, by word of mouth ('viva voce'), spread the news, in this case the

content of the list, enabling whom it may concern to acknowledge the content of the employees list and complain against it. Further, was stated that the Complainant acted as soon as he heard about the employee list within 12 days following the time limit.

On 24 October 2013, the Respondent PAK (hereinafter: Appellant) filed an appeal with the Appellate Panel of the SCSC due to erroneous verification of factual situation and erroneous application of substantive law. The Appellant partially contested the judgment of the Specialized Panel of the SCSC, SCEL-11-0020 of 11 September 2013, point 2 (two) of the enacting clause. The Appellant among others stated that the ascertainment in the legal reasoning of the appealed judgment is inadmissible because we are dealing with the legal deadlines which cannot be amended by the will of the party and that the deadlines cannot either be amended or extended by the Court. The Appellant further stated that according to the Article 21.1 of the Annex of the Law No. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters (Annex), the Presiding Judge may extend the time limit upon application of the party for the extension prior to the expiration of the concerned deadline and if the application sets forth circumstances and reasons that the Presiding Judge considers sufficient to justify the extension and the Presiding Judge determines that no other party would be seriously prejudiced by the extension. However, the Complainant failed to do so. Further stated that the Complainant has the possibility to submit a return to the status quo ante, according to the Article 129 of the Law on Contested Procedure, but the Complainant failed to do so. The Appellant proposed the Appellate Panel to approve the appeal and to quash the challenged part of the appealed judgment.

On 4 March 2014, the appeal and supporting documents were served on the Complainant C2 that was included in point two of the enacting clause of the appealed judgment.

On 25 March 2014, the Complainant C2 submitted the response to the appeal whereby objects the allegations of the Appellant considering them as ungrounded. He also stated that he considers that the Respondent should have individually

notified each employee separately. He proposes the Appellate Panel to reject the appeal of the Appellant as ungrounded.

On 29 April 2014 the response to the appeal was served to the Appellant. No response to the response to the appeal was filed.

Reasons at law

Appeal is grounded.

Based on Article 64.1 of the Annex, the Appellate Panel decided to dispense with the oral part of the proceedings.

According to Article 10.6 (a) of UNMIK Regulation 2003/13 (in conjunction with Article 68.6 of the Annex) a complaint against the final list published by PAK, must be filed within the legal time limit of 20 days after such list has been finally published on the media.

In the case at hand the deadline for filing the complaint was 25 April 2011. The Complainant C2 submitted his complaint against final list of the eligible employees on 7 May 2011, thus 12 days after the deadline expire. The Complainant as the reason for filling the complaint after the deadline stated that because of harsh conditions both technically and financially he could not afford buying the newspaper every day. He also stated that he filed the complaint as soon as he was informed by the former colleague about the list.

As already mentioned above, the complaint must be filed within legal time limit of 20 days after the final publication in the media of the list of eligible employees by the Agency.

The Complainant has had the opportunity to seek an extension of the deadline according to Article 21.2 of Annex which stated: *"If a party seeks an extension of time, such party shall submit an application for the extension prior to the expiration of the concerned time period. The Presiding Judge may grant the extension if the application sets forth circumstances and reasons that the Presiding Judge considers*

sufficient to justify the extension and the Presiding Judge determines that no other party would be seriously prejudiced by the extension”.

Also the Article 129 of the Law on Contested Procedure provides that the party who fails to undertake within the prescribed period of time a procedural action and therefore loses the right to undertake the procedural action at a later time bound to the time limit, the court may permit this party, upon his proposal to complete this action with delay, if there are reasonable circumstances which cannot be determined or avoided.

However the Complainant C2 did not seek the extension of the time limit as per Article 21.2 of the Annex nor has filed the proposal for return to the status quo ante.

The Appellate Panel considers that the Specialized Panel of the SCSC has not ruled correctly when decided to approve the complaint of the Complainant even if it was filed 12 days after the time limit expired. Because the complaint was not filed in accordance with the time limit set out in the Article 10.6 (a) of UNMIK Regulation 2003/13, the challenged part of the judgment, thus point two (2) of the enacting clause of the appealed judgment shall be amended and the complaint of the Complainant C2 I.K shall be dismissed as inadmissible.

Furthermore the allegation of the Complainant C2 that the Respondent should have individually notify each employee separately is not correct, because according to Article 10.3 of UNMIK Regulation 2003/13, the official list of eligible employees issued by the Agency shall be published, together with a notice of a right of complaint pursuant to Article 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. From the above it is clear that the Agency has no any obligation to inform all employees separately about the final list.

For the above reasons it is decided as in 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 Appellate Panel of the SCSC on this 10 February 2017.

Mr. sc. Sahit Sylejmani, Presiding Judge

signed

