

AC-I.-14-0298

In the appeals of

Complainants/Appellants

1. **A0001 M.R.**, Vushtrri/Vučitrn
2. **A0002 M.G.**, Vushtrri/Vučitrn

Vs.

Respondent

Privatization Agency of Kosovo,
“Ilir Konushevci” Street, 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, Sabri Halili, Gertraud Marx-Leitenberger, Vladimir Kanev and Ilmi Bajrami, Judges, on the appeal of the Appellants against the judgment of the Specialized Panel of the SCSC of 16 September 2014, C-II.-13-0340, after deliberation held on 13 October 2016, issues the following

J U D G M E N T

1. **The appeals of the Appellants are rejected as unfounded.**
2. **The judgment of the Specialized Panel of the SCSC C-II-13-0340 dated 16 September 2014 is upheld.**

Procedural and factual background

The Socially Owned Enterprise ‘M-E’ Prishtinë/Priština was privatized on 18 April 2011.

The PAK published the final list of eligible employees of the SOE (SOE final list) pursuant to Section 10.3 of UNMIK Regulation and the deadline for filing the complaints with the SCSC was 20 April 2013.

Three complaints were filed with the Special Chamber against the final list of eligible employees entitled to 20% of the proceeds of the privatization of SOE published by the PAK.

On 16 September 2014 the Specialized Panel IV of the SCSC issued the judgment dismissing as inadmissible the complaints of all three complainants.

The judgment of the Specialized Panel was served on the complainant M.R on 20 September 2014 and M.G on 23 September 2014 and 9 October 2014.

Against this judgment appeals were filed by the complainants M.R (appeal **A0001**) and M.G (appeal **A0002**).

By order of 21 July 2015 the appeals filed by the Complainants/Appellants were served on the PAK. PAK did not respond on the appeals.

Submissions of the parties:

A-0001 The appeal of M.R C-0002

On 8 October 2014 the Complainant/Appellant M.R filed an appeal against the judgment by which his complaint against the final list published by PAK was dismissed as inadmissible. He requested from the Appellate Panel to approve his appeal and include him in the SOE final list.

In the appeal he confirms that he filed his complaint beyond the deadline. He reasoned that at that time he was sick and he underwent three medical intervention/surgeries. He also stated that his workbook was closed on 2 November 1999 as consequence of forced dismissal by the Serbian management.

He submitted to the Appellate Panel the copies of: medical report of Emergency Centre, Prishtinë/Priština dated 22 October 2008; referrals for histopathological and cytological examination of 12 January 2008 and 6, 8 February 2008; medical report dated 12 January 2008 and 20 January 2009; medical discharge letters from UCCK Prishtinë/Priština of 14 February 2008 and 24 April 2008; medical discharge letter from Euromed clinic dated October 2010; medical tests dated 31 December 2008, 14 July 2009, 16 March 2009; complaint submitted to the Liquidation Committee of SOE 'M-E' (in liquidation) (LC) dated 9 January 2014 and Decision of LC dated 26 March 2013.

A-0002 M.G C-0001

On 21 October 2014 the Complainant/Appellant M.G filed an appeal against the judgment by which his complaint against the final list published by PAK was dismissed as inadmissible. He requested from the Appellate Panel to approve the appeal and include him in the SOE final list.

The Appellant claimed that he was entitled to be included in the list as he worked for the SOE for more than 16 years. During '90 he was dismissed in discriminatory manner by the Serbian management. After the war he has reported to work but he was

not reinstated as there was no need for him. He admitted that he was late with his complaint but the reasons for this are that he has health problems as he is suffering from kidney stones.

He alleges to be victim of discrimination because he is not included in the list although he fulfils the conditions set by the UNMIK Regulation 2003/13.

He submitted to the Appellate Panel the copies of: certificate no.187 dated 25 December 2002 issued by the SOE Director M.Zh certificate 08 nr.87/13 dated 3 September 2013 issued by the Directorate of Urbanism and Protection of Environment, discharge list dated 20 February 2013, medical report of 21 September 2012 and 15 September 2012, his birth certificate.

Reasons at law

The appeals are admissible but unfounded.

The Appellate Panel has decided to dispense with the oral part of the proceedings under Article 64.1 of the Annex to the Law on Special Chamber (Annex).

Appeal A 0001

The Appellate Panel finds that the Specialized Panel correctly established that the complaint of M.R is inadmissible as it was filed after the deadline expired.

The Complainant/Appellant was not included in the final list published by the Agency therefore he filed his complaint. The last day for filing the complaints with the Special Chamber was 20 April 2013. His complaint was dismissed as inadmissible as it was filed on 18 November 2013, after the deadline has expired for approximately 7 months.

In his appeal the appellant explained that he has health problems which in a way prevented him for submitting timely complaint. As evidence he presented several medical reports and discharge letter from hospital, which covers the period from 2008 until October 2010.

Pursuant to Article 129 of the Law on Contested Procedure (LCP), the parties in the procedure who claim to be reasonably late with their submissions have the possibility to file an application for return to the *status quo ante*. Such application may be considered only if it is filed within sixty (60) days from the date of the failure to act (as per Article 130.3 of the LCP).

In the case at hand the complainant/appellant was late with his complaint against the SOE final list published by PAK. The Appellate Panel finds that the appellant cannot apply for restitution *to the status quo ante* at the stage of appeal proceedings because he missed the deadline to file a complaint with the first instance court. The deadline to file such application expired on 19 June 2013, which is long before the complaint was filed. Moreover, the documents submitted to support his justification as mentioned above do not cover the period when the list was published by the PAK and he was supposed to undertake any action to challenge it.

The considerations above lead to the conclusion that the Specialized Panel rightfully dismissed the complaint of the complainant; therefore, the Appellate Panel rejects the appeal as unfounded.

Appeal A-0002

The Appellate Panel finds that the Specialized Panel correctly established that the complaint of M.G is inadmissible as it was filed after the deadline expired.

The Complainant/Appellant was not included in the final list published by the Agency therefore he filed a complaint on 4 September 2013. The last day for filing the complaints with the Special Chamber was 20 April 2013. His complaint was dismissed as inadmissible as it was filed after the deadline has expired for approximately 4 months and 15 days.

In his appeal the Complainant/Appellant same as he did in his complaint indicated that he has health problems which prevented him from filing a timely complaint.

The parties in the procedure who claim to be reasonably late with their submissions have the possibility to file an application for return to the *status quo ante* pursuant to Article 129 of the LCP. However, an application for a return to *the status quo ante* may be considered only if it is filed within sixty (60) days from the date of the failure to act (as per Article 130.3 of the LCP). The law provides that such application can be filed along with the submission that the party was supposed to file, but missed the deadline. Since the complainant/appellant as mentioned above in his complaint tried to justify his late actions, the Specialized Panel considered his application and the documents presented, but it concluded that the situation presented is not sufficient to justify the late submission.

The Appellate Panel finds that the deadline to file such application for return to *the status quo ante* expired on 19 June 2013, which is long before his complaint was filed; therefore the application filed along with his complaint had to be dismissed as inadmissible. Moreover it agrees with the finding of the Specialized Panel that the documents presented by the complainant/appellant do not support his allegation that his health conditions prevented him in any way to act in time. The discharge letter from UCCK Prishtinë/Priština presented by the complainant/appellant dates from 20 February 2013, which means that he was not hospitalized at the time the list, was published and complaint was supposed to be filed.

Court fees / costs:

No court fees shall be imposed to the cases with employees` list.

Decided by the Appellate Panel of the SCSC on this 13 October 2016.

Mr. sc. Sahit Sylejmani Presiding Judge

(signed)

