

<b>DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE NË LIDHJE ME AGJENCINË KOSOVARE TË PRIVATIZIMIT</b>	<b>SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY RELATED MATTERS</b>	<b>POSEBNA KOMORA VRHOVNOG SUDA KOSOVA O PITANJIMA KOJA SE ODNOSE NA KOSOVSKU AGENCIJU ZA PRIVATIZACIJU</b>
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**AC-I-16-0232**

***In the appeals of***

***Complainant/ Appellant***

**B. (S) H,Pejë/ Peć**

***Vs.***

***Respondent/ Appellant***

**Privatization Agency of Kosovo**, str. 'Ilir Konushevcí' 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, President of the Special Chamber, the Presiding Judge, Gertraud Marx-Leitenberger, Ondrej Pridal, Ilmi Bajrami and Sabri Halili, Judges, on the appeals of the respondent and of the complainant filed against Judgment C-IV-13-3851 of the Specialized Panel of the SCSC dated 05 October 2016, after deliberation held on 20 December 2016, issues the following:

### **JUDGMENT**

- 1. The appeal of the respondent is rejected as ungrounded.**
- 2. The appeal of the complainant is dismissed as inadmissible.**
- 3. Judgment of the Specialized Panel of SCSC, C-IV-13-3851 dated 05 October 2016 is hereby upheld. Point II of the appealed judgment enacting clause is hereby amended and the sentence: "Decision of PAK**

**– Liquidation Authority no. PEJ089-0973 dated 15 November 2013 is amended and the respondent – PAK is obliged to take into consideration complaint of the complainant B.(S).H for compensation of early termination of employment contract in amount of 2,450.00 euros in the liquidation procedure as per priorities specified by law”.**

**4. The complainant is obliged to pay the court fee for the appeal proceedings in amount of 20 euros.**

**Factual and procedural background:**

On 18 December 2013, the complainant filed a timely complaint against the decisions of the PAK Liquidation Authority no. PEJ089-0973 dated 15 November 2013, whereby the respondent has rejected as invalid the complainant’s request for compensation in amount of 2,450.00 euros due to early termination of the employment contract, then against the decision no. PEJ089-0971 dated 15.11.2013, whereby the respondent has rejected the request for compensation of three unpaid salaries in the amount of 1,050.00 euros, and against the decision PEJ089-0970 dated 02 December 2013, whereby the respondent has rejected the request for compensation of unpaid salaries in the undetermined amount of money for the period from 1992 until 11 April 2006 by the SOE “Z” “R”, “S” in Pejë/Peč (in liquidation).

The complainant by complaint requested from the SCSC to set aside three aforementioned decisions of the Liquidation Authority and to oblige the respondent for compensation of the claimed debt to the complainant.

On 05 October 2016 the SCSC Specialized Panel by judgment C-IV-13-3851 approved the complainant’s complaint as grounded and set aside the appealed decision of PAK Liquidation Authority no. PEJ089-0973 dated 15 November 2013, and obliged the respondent to pay the indemnity to the complainant due to early termination of contract, in amount of 2,450.00 euros within 15 days from the date this judgment becomes final.

The SCSC Specialized Panel by the mentioned Judgment has rejected the complaint as legally ungrounded, filed against decision of PAK Liquidation Authority no. PEJ089-0971 dated 15 November 2013 and decision no. PEJ089-0970 dated 02 December 2013.

The Specialized Panel reasoned that the complaint filed against decision no. PEJ089-0973 dated 15 November 2013, shall be approved as grounded and to set aside the appealed decision because the respondent pursuant to Article 40.1.6.2 of the Annex to the Law on PAK, is obliged to compensate the claimant for early termination of employment contract in amount of 2,450.00 euros, whilst complaints against other decisions stated above of the Liquidation Authority shall be rejected as ungrounded, and those decisions shall be upheld as correct and legally grounded.

The Specialized Panel ascertained that on 11 April 2006, the complainant was served on with a notification on termination of employment relationship as a result of the sale of assets of the SOE, and by the same notice has informed him that for the unpaid salaries and other claims he will be contacted by the respondent and these claims will be reviewed during the liquidation procedure.

The Specialized Panel further reasoned that by action of PAK – on the date of approval of sale of the SOE assets, the complainant's employment relationship was terminated and this action has been undertaken in accordance with legal powers and authorizations of PAK, pursuant to Law on PAK no. 04/L-34, thus in light of this reason, the complainant's right for compensation due to early termination of employment relationship is grounded.

Moreover, the Specialized Panel ascertained that PAK by its defence against the complaint did not object the amount of compensation sought by the complainant, hence the complainant was granted with the claimed amount of 2,450.00 euros. Further, the Specialized Panel reasoned in the appealed judgment that according to the evidence in the case file, the enterprise "Z" "R", "S" Pejë/Peč has entered in

the liquidation process on 05 September 2013 and the complainant has sought three unpaid salaries in the amount of 1,050.00 euros and sought compensation of the unpaid salaries in undetermined amount of money for the period from 1992 until 11 April 2006. He filed these claims for the period of time before 11 April 2006, when the SOE was privatised.

The Specialized Panel based on the evidence in the file, considers that the complainant was not an active employee of the SOE until the date of its privatisation, he has not worked for the SOE, therefore, claims for payment of unpaid salaries are rejected as ungrounded. The complainant attached to his complaint no evidence to prove that he has in timely manner requested to exercise his employment relationship rights or to have addressed SOE bodies or any other competent court by a claim. Thus, pursuant to Article 608 of the Law on Associated Labour the complainant's complaints against decisions of the Liquidation Authority PEJ089-0971 dated 15 November 2013 and no. PEJ-089-0970 dated 02 December 2013, are rejected as ungrounded.

On 21 October 2016 the respondent filed a timely appeal against judgment C-IV-13-3851 of the Specialized Panel dated 05 October 2016, and by this appeal contests only point **I** of the mentioned Judgment and on all appealing grounds. By the appeal introduced, given that the outcome rendered is in favour of PAK, it does not object point **III** of the appealed judgment enacting clause, which upheld the appealed decisions of the Liquidation Authority PEJ089-0971 dated 15 November 2013 and no. PEJ-089-0970 dated 02 December 2013 as legally grounded.

Furthermore, the respondent by appeal filed maintains that the appealed decision of the Liquidation Authority no. PEJ 089-0973 dated 15 November 2013 which the Specialized Panel qualified as unclear, contradictory and meaningless, is not as such and the Panel presented no detailed explanation, hence has violated Article 10.4.3 of the Law on PAK by not clarifying which part of the Liquidation Authority decision is unclear, contradictory and meaningless.

The respondent by appeal asserted that it unacceptable that the Specialized Panel contests clarification of the annulled decision no. PEJ089-0973 whilst in the other side contested no aspects of other decisions no. PEJ089-0970 and PEJ089-0971 appealed by the complainant, although basing on same legal arguments having similar format and structure. The respondent also by appeal maintains that the complainant's claim pursuant to Article 608 of the Associated Labour Law is prescribed and the prescription started to run on 29 June 2008 when the Law no. 03/L-067 on PAK was adopted and from this moment according to respondent, the complainant's right has arisen to claim compensation for early termination of the employment relationship. According to respondent, as a consequence of adoption of this law, on 29 June 2008 and until three years after, namely within 29 June 2011 the complainant should have undertaken legal actions to terminate the prescription deadline and to claim the alleged compensation within timeline, which the complainant failed to do. The respondent by appeal asserted that the stance for prescription of claims is maintained by the Specialized Panel through judgment C-IV-13-2611 dated 14 June 2016, C-IV-13-2514 dated 13 May 2016 and Judgment C-IV-14-0532 dated 09 August 2016. By these cases treatment of Liquidation Authority is considered correct pertaining to application of three years prescription.

The respondent by appeal asserted that the Specialized Panel has misinterpreted the PAK's defence when by reasoning of the judgment has ascertained that PAK did not contest the amount of compensation claimed by the complainant and records collected from the complainant's workbook based on which the latter has worked in the SOE for more than 30 years. The respondent continues to assert that did not fundamentally review the case namely whether the complainant has worked for the SOE or not in the months before privatization and the time period of his employment relationship with SOE, because according to respondent, since the complainant's claim is prescribed this circumstance did not allow the respondent to enter further in the basis of other circumstances of the contested matter.

The respondent by appeal has requested to set aside point **I** of the enacting clause of the Specialized Panel judgment which refers to decision no. PEJ089-0973 of the

Liquidation Authority and to reject the complainant's complaint against this decision, thus to uphold decision of the Liquidation Authority as correct and legally grounded.

On 27 October 2016 the Appellate Panel issued an order whereby the respondent's appeal was served on the complainant for a response.

The order was received on 29 October 2016.

On 11 November 2016 via mail service the complainant filed a submission to the SCSC in response to the respondent's appeal. By a response to appeal the complainant has requested from the Appellate Panel to reject the respondent's appeal as ungrounded and to uphold the appealed judgment as correct and legally grounded, because this judgment is based on facts and on the factual situation which is correctly determined. By this submission the complainant asserted that does not agree with point III of enacting clause of the appealed judgment rendered by the Specialized Panel, based on which the complaint was rejected, filed against the Liquidation Authority decision no. PEJ089-0971 dated 15 November 2013 and no. PEJ-089-0970 dated 02 December 2013. By these decisions of the Liquidation Authority the claim for unpaid salaries was rejected for the period of time from 1992 until privatization of SOE on 11 April 2006.

By this submission which in fact pursuant to its content is also appeal against point III of enacting clause of the Specialized Panel judgment, the complainant sought to recognise his right for payment of unpaid salaries for the specified period of time which was rejected by point III of the judgment's enacting clause, to be considered as ungrounded.

On 17 November 2016 the Appellate Panel served the complainant's submission-appeal, by an order, on the respondent, to file a response against this submission/appeal.

The respondent received the order on 18 November 2016.

The respondent on 25 November 2016 filed a submission with SCSC in response to the complainant's appeal. By this submission, PAK requested rejection of the complainant's appeal and to uphold Judgment of the Specialized Panel pertaining to points challenged by the complainant. Moreover, PAK in response to appeal asserted that the complainant's allegation is ungrounded that by notification on termination of employment was informed that all obligations of the employer against him will be compensated at the moment of the SOE liquidation. PAK asserted that the notification on termination of employment relationship received by the complainant from PAK does not constitute commitment for automatic acknowledgment of any allegations introduced by the party receiving the notification. This notification sets forth that all allegations will be considered by PAK in the course of liquidation procedure of SOE, as it has happened.

### **Legal reasoning:**

The appeal is admissible but ungrounded.

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

### **Merits of appeal and assessment of the Appellate Panel**

The appealed judgment in the challenged part – point **I** of enacting clause of the Specialized Panel, is correct in the outcome and legal reasoning, hence it shall be upheld.

The Appellate Panel assesses that the reached outcome and legal reasoning applied by the Specialized Panel in the appealed judgment pertaining to appealed decision of the Liquidation Authority no. PEJ089-0973 dated 15 November 2013, is correct and as such is accepted by the Appellate Panel. The complainant by complaint

addressed to the Liquidation Authority amongst other has sought compensation for early termination of employment contract, in amount of 2,450.00 euros as a result of sale of assets of SOE "Z" "R", "S" in Pejë/ Peć. The fact of the complainant's employment and non-payment of this compensation is not contested expressively by any of the parties.

The respondent by its appeal asserted that by bringing up the matter of the claim's prescription did not deem it needed to deal with all allegations of the complainant. This assertion of the respondent in the appeal cannot be considered to be correct because for any allegations raised by the opposing party, the other party has the possibility and it is in its interest to choose whether to undertake actions pertaining to correctness or incorrectness of the alleged fact and to present evidence to prove existence or inexistence of such fact.

Raising the matter of statutory limitation by the respondent did not hinder it to deal with all allegations introduced by the complainant in the complaint. In every legal and procedural system the alleged fact by one party in the contest, if it is not challenged during the dispute proceedings will be considered as a verified fact and over that fact the court decision may be based on.

The Appellate Panel does not agree with appeal's allegations of the respondent pertaining the course of statutory limitation deadline of the claim connecting it with date of entrance into force of the Law on PAK, given that this is an incorrect timeline when the deadline of statutory limitation of claims shall run, which shall be filed against the SOE against which the liquidation process has commenced. In the case in hand, based on the case evidence, the SOE "Z" "R", "S" in Pejë/ Peć entered the liquidation process on 05 September 2013 and only after this period of time by notification which the Liquidation Authority is obliged to provide the SOE employees for the possibility to file claims against the SOE which is in the liquidation process, only from this moment of notification, the deadline shall run for prescription of possible claims which the SOE employees may have.

Notification dated 11 April 2006 which the respondent served on the complainant, notifies the complainant on termination of employment immediately as a consequence of sale of assets of the SOE, and notifies also the complainant that "salaries which are payable to you as per employment contract with the employer, will remain responsibility of the employer and such claims will be considered as per liquidation procedures which you will be notified for". This notification of PAK on termination of employment relationship in fact notifies the complainant that it will remain the employer's responsibility to deal with the employees' salaries and other claims for compensation due to termination of employment if they are not paid.

In light of these reasons the Specialized Panel has correctly decided by approving the complainant's complaint filed against the Liquidation Authority decision no. PEJ 089-0973 dated 15 November 2013 as grounded and to set aside the said decision for the reasons stated in the judgment, the reasons which are also acceptable by the Appellate Panel.

The Appellate Panel does not agree with allegations of the respondent that the Specialized Panel judgment has violated Article 10.4.3 of the Law on Special Chamber as asserted by the respondent in the appeal, because sufficient and correct reasons have been presented to elaborate the factual matters, clearly and convincingly for the parties. The respondent by appeal has also raised the matter of statutory limitation of the complainant's claim. The Appellate Panel considers that the claim's statutory limitation is not applicable for the case in hand because the Law on PAK which regulates the liquidation procedure and way of fulfilment of the creditors' claims, as a special law shall be applied in this case versus the Associated Labour Law which is a general law. The Appellate Panel does not agree with the respondent's allegation that the notification letter dated 11 April 2006 sent to the complainant was of the nature of notification for the 20 percent right only. This letter does not expressly define the right on 20 percent share, though it may be understood, but it reads also for salaries and other credit claims which the complainant may have against the SOE in liquidation. Thus, for the given reasons

the respondent's allegation is unacceptable that this letter has no effects to exercise the right for compensation due to early termination of employment contract.

By its appeal the respondent alleges that the Specialized Panel judgment is contrary to line of opinion and considerable practice of SCSC for similar cases and is referred to some decisions rendered by the respective SCSC Specialized Panel. Without dealing with this allegation, whether it is correct or not, the Appellate Panel in relation to such cases, has already established its jurisprudence (AC-I-14-0323, AC-I-14-0179, and DHPGJS- PJ I-A18) and is related to legal opinion of a higher court, thus the respondent's allegation may not be accepted that legal security of the parties is prejudiced or the allegation that the law is not being construed uniformly by the court decisions. Moreover, the Specialized Panel shall not ignore established and solid jurisprudence of the Appellate Panel related to the alleged subject matters.

The Appellate Panel has amended point **II** of the appealed judgment enacting clause as provided by point II of this judgment because the granted claim for compensation due to early termination of employment contract shall be handled in the liquidation procedure as per priorities determined by law.

The respondent by appeal as provided hereupon did not appeal the other part of the appealed judgment's enacting clause, namely point **III** of enacting clause, whereby the complainant's complaints against decisions of the Liquidation Authority PEJ089-0971 dated 15 November 2013 and no. PEJ089-0970 dated 02 December 2013, have been rejected as ungrounded and these decisions were upheld to be correct and legally grounded. Therefore, in light with reasons introduced in the appealed judgment of the Specialized Panel in relation with these two decisions, are not subject to legal assessment of the Appellate Panel.

**The claimant's submission named as response to appeal**

Following the Appellate Panel's order dated 17 November 2016, the complainant filed a submission with the SCSC and replied to the respondent's appeal filed on 21 October 2016.

Along with the response on some appeals allegations of the respondent, in fact the complainant also challenges the point III of the enacting clause of the SCSC Specialised Panel appeal judgment, whereby his complaint against the Decision of the Liquidation Authority No.PEJ089-0971 dated 15 November 2013, and No.PEJ089-0970 dated 02 December 2013 was rejected as ungrounded. These Decisions are related to the three unpaid salaries in the amount of 1.050,00 euros and unpaid salaries with undefined amount for the period of time, from 1992 till 11.04.2006.

Therefore, the Appellate Panel has considered this submission as a second appeal filed against Judgment of the SCSC Specialised Panel, and consequently was registered by the Registry office as an appeal AC-I-16-0232-A0002.

The case files indicate that the complainant received the Judgment of the Specialised Panel on 07 October 2016. Based on Legal advice of this Judgment, the timeline for the appeal was until 28 October 2016. The complainant filed this submission (which on its content is an appeal) with the SCSC via mail service on 11 November 2016, meaning, after the legal timeline. Therefore, this appeal shall be dismissed as inadmissible.

As provided hereupon and pursuant to Article 10.10 of the Law on SCSC, it is decided as in the enacting clause.

### **Court fees**

The respondent has already paid the court fee in amount of 100 euros for the appeal proceedings hence no court fees are to be imposed.

The complainant is obliged to pay the court fee in amount of 20 euros for the appeal proceedings pursuant to KJC decision on court fees no. 97/2014 applicable from 08 July 2014.

Mr. sc. Sahit Sylejmani,  
Presiding Judge  
(signed)