

DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE NË LIDHJE ME AGJENCINË KOSOVARE TË PRIVATIZIMIT	SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY RELATED MATTERS	POSEBNA KOMORA VRHOVNOG SUDA KOSOVA O PITANJIMA KOJA SE ODNOSE NA KOSOVSKU AGENCIJU ZA PRIVATIZACIJU
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AC-I-16-0243

In the appeal of

Complainant/Appellant

Xh.B, Podujevë/Podujevo

Represented by **Attorney-at-Law V.H**, Prishtinë/Pristina

Vs.

Respondent

**Privatization Agency of Kosovo, "Ilir Konushevi" Str., No. 8,
Prishtinë/Pristina**

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 President of the Special Chamber, Presiding Judge, Gertraud Marx-Leitenberger, Ondrej Pridal, Ilmi Bajrami, and Sabri Halili, Judges, deciding on the appeal of the complainant filed against the Judgement of the Single Judge with the competencies delegated by the Specialised Panel of the SCSC, C-IV-13-0346, dated 22 September 2016, after deliberation held on 8 December 2016, renders the following:

J U D G E M E N T

1. The appeal of the complainant is rejected as ungrounded.

- 2. The Judgement of the Single Judge with competencies delegated by the Specialised Panel of the SCSC, C-IV-13-0346, dated 22 September 2016, is upheld. Point II of the enacting clause of the appealed Judgment is amended with the following sentence “the respondent – PAK is obliged to take into account the complaint of the complainant Xh.B for compensation of paid goods (3000 pieces of bricks) but undelivered by the SOE “19”, “Q” in Podujevë/Podujevo, in the amount of €1.200,00 as well as the legal interest from €120, in the liquidation procedure, according to the priorities determined by the law”.**

- 3. The appellant is obliged to pay the court fees for the appeals proceedings in the amount of €100.**

Factual and Procedural Background:

On 25 March 2013, the complainant filed a timely complaint with the SCSC against the decision of Liquidation Authority of PAK, nr. PRN028-0158, dated 21 February 2013, whereby his request for monetary compensation of prepaid goods (bricks) which had never been delivered to him from the SOE “19”, “Q”, Podujevë/Podujevo (under liquidation) and thus he asks the amount of €1,200.00, was rejected. The complainant stated in the complaint that SOE “19”, “Q” in Podujevë/Podujevo has never delivered 3000 pieces of bricks, which he has paid and he proves this with the invoice No. 4844 of 04.10.1989. The complainant in his complaint also alleges that he has filed a claim to get the above compensation even with the Municipal Court in Podujevë/Podujevo on 14 June 1993, but the case was not decided.

On 22 September 2016, the Single Judge with the competencies delegated by the Specialised Panel of the SCSC, with the Judgment C-IV-13-0346, has approved as grounded the complaint of the complainant and has annulled the appealed Decision of Liquidation Authority of PAK, no. PRN028-0158, dated 21 February 2013, as well

as it obliged the respondent that on behalf of the compensation for prepayment of goods (bricks) which were not delivered with the complainant, to pay the amount of €1.200,00 and €120 on behalf of the legal interest all within 15 days from the date this Judgment becomes final. The Single Judge with the competencies delegated by the Specialised Panel, in the appealed Judgment concluded that the appealed decision of the Liquidation Authority is contrary to the reasoning, is incomprehensible, and does not contain sustainable reasons to which it is based. Furthermore, the Single Judge with the competencies delegated by the Specialised Panel concluded that based on the evidence reviewed it was confirmed that the complainant has paid 3000 pieces of bricks on behalf of the SOE "19", " Q" in Podujevë/Podujevo, and that the SOE has issued the invoice to the complainant having the number 4844 dated 04.10.1989, and that these goods were never delivered with the complainant. Moreover, the Single Judge with the competencies delegated by the Specialised Panel concluded that the complainant on 14 June 1993 has filed a compensation claim for not receiving the said goods even with the Municipal Court in Podujevë/Podujevo, and that this claim was never resolved based on the merits. The Single Judge with the competencies delegated by the Specialised Panel concluded that since the liquidation procedure for liquidation of the said SOE has begun, the complainant within the legal timeline has directed to the Liquidation Authority with a request for monetary compensation in the amount of €1.200,00. The Liquidation Authority rejected the request of the complainant without any right and any grounded reason. The Single Judge with the competencies delegated by the Specialised Panel, in the appealed Judgment, concluded that the defence of the PAK is not grounded, that the request of the complainant has expired, and this due to the fact that the complainant on 14 June 1993 has filed a compensation claim with the Municipal Court in Podujevë/Podujevo, whereby it terminated statutory limitation, thus cannot be consider that we have to deal with statutory request. The Single Judge with the competencies delegated by the Specialised Panel concluded that the initial requested amount of €1.200,00 is not disputed between parties and the Liquidation Authority with the appealed decision rejected this amount on the basis of statutory limitation, an amount which was not contested by the PAK with its submission of 15

April 2016, when it responded and it presented the remarks about the financial expertise submitted by the complainant. First Instance Court further reasoned that the amount of €3.390,78, as it is determined by the financial expertise presented by the complainant, was not accepted by the court, given that such expertise can be conducted only by the appointed expert by the court and in this case was not done by the court. Also, the accepting of this said amount in the expertise would represent amending of the claim, as from initial amount requested by the Claimant, which cannot be accepted at this stage of the proceedings.

On 27 October 2016, the complainant (hereinafter, the appellant) filed a timely appeal against the Judgment of the Single Judge with the competencies delegated by the Specialised Panel of the SCSC, C-IV-13-0346 dated 22 September 2016, due to erroneous application of the material law, and by the appeal he requested that the appealed judgment by the judge be amended thus enabling the compensation to the complainant in the amount € 1.200,00 and 10% of legal interest, from the moment the complainant submitted the claim with the Municipal Court in Podujevë/Podujevo on 14.06.1993 up until the liquidation of the SOE on 24.08.2005. Consequently, from the content of the appeal it can be seen that the appellant has requested that the legal interest be calculated from 14.06.1993 when he filed the claim with the Municipal Court in Podujevë/Podujevo. The appellant, together with the appeal, has submitted with the SCSC a new power of attorney for the Attorney-at-Law V.H from Prishtinë/Pristina and submitted a notary document LRP.nr. 20541/16 dated 21.10.2016, by which document it is confirmed that the appellant has revoked the authorization for his previous lawyer M.Sh from Prishtinë/Pristina.

On 03 November 2016, the Appellate Panel has issued an order whereby the appeal of the appellant was served to the respondent to reply to the appeal. The PAK received the order on 04 November 2016.

On 14 November 2016, the respondent filed a submission with the SCSC and responded to the appeal of the complainant. The Respondent requested from the Appellate Panel to reject the appeal as ungrounded and the appealed Judgment be upheld as correct and based on the law. Furthermore, the PAK stated in this submission that it objects the appealed allegations of the appellant that the requested calculation of the timeline for the legal interest be done from 14.06.1993 and that the allegations of the appellant that he can request compensation on behalf of the interest over 10% for the amount of €1.200,00 is ungrounded.

Legal Reasoning:

The appeal is admissible but ungrounded.

Based on Article 64.1 of the Annex of the Law of the Republic of Kosovo No. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (the Annex), the Appellate Panel decided to dispense with the oral part of the proceedings.

Merits of the appeal and the assessment of the Appellate Panel

The appealed Judgement of the Single Judge with the competencies delegated by the Specialised Panel of the SCSC is correct in the outcome and in the legal reasoning, therefore it shall be upheld.

With the appealed Judgment, the Single Judge with the competencies delegated by the Specialised Panel, by approving the compliant of the complainant has annulled the decision of Liquidation Authority nr. PRN028-0158, dated 21 February 2013, whereby the request of the complainant was rejected to compensate him in the amount of €1.200,00, for 3000 pieces of bricks paid and delivered by the SOE "19", " Q" in Podujevë/Podujevo.

With the appealed Judgment, the Single Judge with the competencies delegated by the Specialised Panel, has obliged the PAK to pay the amount of €1.200,00 and €120 on behalf of the legal interest to the Claimant and that within 15 days from the date this Judgment becomes final.

From the content of the appeal of the appellant filed against the Judgment of the Single Judge with the competencies delegated, it can be seen that the appellant contests this Judgment only with regards the legal interest determined, respectively only about the timeline as from when according to him the calculation of the legal interest shall begin, while the appellant does not contest this Judgment in other aspects.

Based on Article 37.3 of the Annex to the Law No.04/L-034 on the Privatization Agency of Kosovo **"All Claims made against the Enterprise may include interest on any principal amount that accrued prior to the date of the Liquidation Decision, provided that such interest shall not exceed 10 % (ten per cent) of the principal amount"**. Based on this legal provision, the Single Judge with the competencies delegated by the Specialised Panel, calculated accurately the amount of the legal interest determined in point **II** of the appealed Judgment, thus the allegation regarding the appeal of the Appellant that the legal interest shall be calculated from 14.06.1993, when he filed the claim with the Municipal Court in Podujevë/Podujevo, is not correct.

Based on the mentioned legal provision of the Annex to the Law on PAK, which is a special law with regards to provisions of other laws that regulate this issue, the permitted legal interest shall not exceed 10% of the principal amount.

In this case, the permitted compensation based on the appealed Judgment is €1.200,00 and the interest for this amount in the said provision is only €120, it means 10% of the approved amount for compensation. Therefore, the appellant cannot seek to get a higher amount of the interest for the permitted compensation nor claim that this interest shall be calculated from 14.06.1993.

Due to these reasons, the appeal of the appellant shall be rejected as ungrounded and the appealed Judgment of the Single Judge with the competencies delegated by the Specialised Panel be upheld.

Given that the appellant in his appeal did not contest the other aspects of the Judgment, the Appellate Panel will not provide legal assessments for the accuracy of the factual findings and legal reasoning for the approval of the claim, and to which the appealed Judgment is grounded.

The Appellate Panel amended point II of the enacting clause of the appealed Judgment and the respondent – PAK is obliged to take into account the complaint of the complainant Xh.B for compensation of paid goods (3000 pieces of bricks) but undelivered by the SOE "19", "Q" in Podujevë/Podujevo, in the amount of €1.200,00 as well as the legal interest from €120, in the liquidation procedure, according to the priorities determined by the law.

Based on the above reasons and pursuant to Article 10.10 of the LSC, it is decided as in enacting clause.

Court Fees:

The Appellant is obliged to pay the court fees in the amount of €100 for the appeals proceeding, pursuant to KJC Decision on Court Fees No. 25, dated 05 March 2014, which entered into force on 27 March 2014.

Mr. sc. Sahit Sylejmani
Presiding Judge

(signed)

