

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 ODNOSE NA
KOSOVSKU AGENCIJU
ZA PRIVATIZACIJU

AC-I-16-0263

In the lawsuit of

Claimant/Appellant

A.K.H, Prishtinë/Priština,

Vs.

Respondent

**Privatization Agency of Kosovo, "Ilir Konushevci" Street, No.8
Prishtinë/Priština**

The Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (SCSC) composed of Mr. sc. Sahit Sylejmani, as Presiding Judge, Ondrej Pridal, Gertraud Marx Leitenberger, Sabri Halili and Ilmi Bajrami, Judges, deciding on the appeal of the claimant filed against the Judgment rendered by single judge under the delegated competences of the Specialized Panel of the SCSC, C-IV-13-2764, dated 24 October 2016 after the deliberation held on 20 January 2017, with majority of votes issues the following:

J U D G M E N T

- 1. The appeal of the claimant is grounded.**
- 2. The Judgment of the single judge under the delegated competences of Specialized Panel of the SCSC, C-IV-13-2764, dated 24 October 2016, is set aside.**
- 3. The case is returned for retrial to the respective Specialized Panel of SCSC.**
- 3. The appellant is exempted from the payment of court fee for the appeals procedure.**

Factual and Procedural Background

On 31 October 2013, the complainant filed a complaint with the SCSC by which she requested reconsideration of the decision of the Liquidation Authority of PAK, no. PRN047-0300 dated 08 October 2013, whereby her claim for additional compensation of financial means – incomes from renting of the premises of SOE -“A” in Prishtinë/Priština (under liquidation) was rejected as invalid.

Moreover, the complainant in her complaint stated that the SOE management arbitrarily, unequally and without criteria distributed to workers the amount of 2.160.380.48 euro, incomes generated from payments of rental of SOE premises. The complainant stated that from this amount she was compensated with 708.15 euro, instead of being compensated with 5.784.61 euro. The complainant requested to annul the decision of liquidation authority, to grant her complaint and to recognize her

rights on compensation of the amount of 5.784.61 euro, by deducting the amount of 708.15 euro she has already received.

On 24 October 2016, the single judge under the delegated competences of the Specialized Panel of the SCSC by the Judgment C-IV-13-2764 has rejected the complaint of the complainant as ungrounded and upheld the challenged decision of the Liquidation Authority of PAK no. PRN047-0300, dated 08 October 2013 as correct and legally grounded. The single judge under the delegated competences of the Specialized Panel of the SCSC reasoned that the challenged decision of Liquidation Authority is correct, based on facts and well-reasoned, does not contain procedural violations, it is clear and comprehensible to parties and contains all decisive facts of contested matter. The single judge under the delegated competences of the Specialized Panel of the SCSC found that claim of the complainant was rightly rejected as invalid as the complainant failed to challenge the decision of the Committee for distribution of financial means collected from the rental, decision no. 379/1 dated 23 December 2010, which could be challenged with Management Board of the SOE. Further, the single judge under the delegated competences of the Specialized Panel of the SCSC found that the allegation of the complainant is inadmissible because in the moment when it was decided for distribution of rental means by the Committee for distribution of means, she was not an active employee, was not personally informed about that decision and subsequently the complainant did not contest it, this for the fact that decision for distribution of financial means was published on notice board of the SOE and there were a considerable number of employees who filed their objections against this decision and such objections were considered by the management of the SOE. In addition, the single judge under the delegated competences of the Specialized Panel of the SCSC assessed that PAK – Liquidation Authority

correctly stated that, in conformity with its duties and responsibilities as set forth in Article 18 of the Annex to the Law on PAK no. 04/L-034 the authority has no powers to annul the decision of the Committee of SOE for distribution of rental means, therefore her claim for reconsideration of the decision on distribution of financial means collected from rent was correctly rejected.

On 05 December 2016, the complainant (hereinafter: the appellant) filed a timely appeal with the SCSC against the Judgment rendered by the single judge under the delegated competences of the Specialized Panel of SCSC C-IV-13-2764 dated 24 October 2016, and requested from the Appellate Panel to grant her appeal and quash the appealed Judgment and the case be returned for retrial or to grant her claim for recognition of compensation in amount of 5.784.61 euro. Moreover, in her appeal, the appellant alleges that conclusion of First Instance Court that Liquidation Authority has no powers to annul decision of the SOE's Committee for distribution of means collected from rent, is not correct since this Authority decides on the claims of employees towards the enterprise under liquidation. The object of the claim was the right on employee's payments from employment relation and related to the employment, namely compensation of employee from means collected from rent. The appellant further claims that she offered sufficient arguments to prove that she was an employee of SOE and enjoys the right to be part of decision-making to set up criteria for distribution of financial means collected from the rent. According to the appellant, the First Instance Court did not provide reasoning for the legal basis on which the Committee on distribution of financial means collected from rental of business premises was formed. No reasons were provided as to whether mentioned actions by the Committee were in compliance with normative acts of the enterprise. It was provided no reason that would have explained why the appellant being in position of an employee did not have right to actively participate in

decision-making, in procedure of establishing of Committee and definition of criteria for distribution of financial means and it is not a legal base on which the enterprise had right to post decisions on notice board and not to personally inform employees on decision about distribution of financial means collected from the rent. According to the appellant, the Decision of Management Board of SOE no. 379/1 is in contradiction with normative acts of the enterprise and it should be annulled. Also, the appellant alleges that she was not given the opportunity to file any legal remedy against the procedure of distribution of financial means including decision no. 379/1; as such decision was never served on her in person.

On 06 December 2016, by an Order, the Appellate Panel of SCSC served on the respondent the appeal of the appellant for a response to the appeal. On 08 December 2016, The respondent received the order.

On 21 December 2016, the PAK filed a submission with the SCSC and responded to the appeal of the appellant. In this submission, PAK stated that because the appellant did not appeal internal decisions of the SOE, those decisions became final and enforceable, therefore relevant funds are distributed on the basis of such decisions and the Appellant received her share on this case. As decision of SOE are final and those are already enforced (funds have been distributed), today there are no funds to be distributed, and therefore this judicial matter has no genuine subject as funds have been already distributed and that situation is irreversible. In this submission, PAK requested to reject the appeal as ungrounded and uphold the appealed Judgment as correct and legally grounded.

Legal Reasoning

The Appeal is admissible and grounded.

Pursuant to Article 64.1 of the Annex to the Law no. 04/L-033 on SCSC (hereinafter: Annex), the Appellate Panel decided to dispense with the oral part of the proceeding.

The Appellate Panel, after reviewing allegations raised on the appeal, the appealed Judgment and evidence from the case file found that the appeal is grounded and the case has to be returned for retrial for the following reasons.

The Liquidation Authority (LA) rejected the complainant's claim with no specific reason. The LA had no legal ground to reject the complainant's claim because she failed to challenge the list with the provided deadline. The Appellate Panel found that the deadline provided by the SOE and PAK cannot have preclusive effect of the deadline.

It is obvious that the claimant's claim is a creditor claim against the SOE, whereas the deadlines for filing creditor claims are sanctioned by the Law No. 03/L-67 on PAK which do not match with the deadlines stipulated with the decision on distribution of monetary funds.

The Specialized Panel issued the appealed judgment whereby it confirmed the Decision of the LA with no sufficient analysis of the relevant facts, in conflict with the law, determining the employees' right for distribution of the amount of financial means they are entitled to.

In retrial, the Specialized Panel should analyse all the relevant facts for employees' rights, for the amount they are entitled to, the criteria according to which such distribution was made, which seems to be arbitrary rather

than being based on the applicable provisions of the law. The Specialized Panel should determine in specifics whether the amount distributed to the appellant is the adequate one, in compliance with the set criteria, if any, and it should render a correct legally grounded decision.

In line with the above legal reasoning, for cases similar with the present one, in its previous jurisprudence the Appellate Panel made its decision as in the closed cases AC-I-14-0346 and AC-I-15-0027.

For the above reasons, the appeal's allegations of the appellant are grounded and the Appellate Panel approves the appeal and sets aside the appealed judgment as unlawful, and therefore returns the case for retrial.

Therefore, pursuant to Article 101.10 of the Law on Special Chamber, the Appellate Panel decided as in enacting clause of present Judgment.

Court Fees

On the basis of the Decision of the Presiding Judge of the Appellate Panel for exemption from court fees AC-I-16-0263, dated 19 December 2016, the appellant is exempted from payment of court fees for the appeal procedure.

It was decided by the Appellate Panel of SCSC, on 20 January 2017.

Mr. Sc. Sahit Sylejmani,

Presiding Judge

(signed)