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GJYKATËS SUPREME TË
KOSOVËS PËR ÇËSHTJE QË
LIDHEN ME AGJENSINË
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 ODRNOSE NA
KOSOVSKU AGENCIJU ZA
PRIVATIZACIJU

C-V-13-0002

Applicant

Privatization Agency of Kosovo,
Ilir Konushevcı str. no. 8, Pristina

Acting in the capacity of the Administrator of the SOE "Trepca" under PAK administration

To: the Applicant

The Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, Specialized Panel-V-, composed of Vladimir Kanev, EULEX judge, Sylejman Shumolli and Ilmi Bajrami, judges, after deliberations held on this 23 April 2013, issues the following:

JUDGMENT

1. The PAK's application in capacity of Administrator of "Trepca" Enterprises for approving of the increase of salaries of Stan Terg mine and Tuneli i Pare flotation facility, is hereby rejected as UNGROUNDED.
2. All payments of recipients of early retirement paid by the financial resources of Enterprise Trepca shall be SUSPENDED. All the payments paid by financial resources of Trepca Enterprise in the name of "Stipend" system shall be SUSPENDED.
3. The payment of € 30,573.00 as a part of wages of regular workers of other Trepca Enterprises located in the north is hereby GRANTED.
4. The PAK is instructed to review the existing salary systems in all "Trepca" Enterprises under its administration and take the necessary steps (make the necessary amendments) to create a single system of salaries for all "Trepca" enterprises. In this regard, the PAK is to submit a report to the Special Chamber no later than 31 July 2013.

Procedural and factual background

On 15 February 2013, the Applicant in the capacity of Administrator of Trepca Enterprises (hereinafter: PAK) has submitted to the Special Chamber the request for a meeting with the Panel to clarify monthly amounts of approved salaries, by the court Decision no. C-V 13-0001, dated 1 February 2013.

On 22 February 2013, the Special Chamber submitted an order to the PAK seeking some clarifications, and among others, has notified the PAK that the only way to hear the party's legal position in the court, is through a regular court hearing.

On 1 March 2013, PAK requested 15 days extension, to prepare responses to the aforementioned order. On 5 March 2013, this application was approved by the Special Chamber.

On 21 March 2013, in its response, PAK stated that the submission filed on 15 February 2013 aimed to inform about changes in wages after calculations for January 2013. PAK further claimed that the monthly amount of € 30,573.00 for Trepca Enterprises located in the north is an incentive bonus given due to the quality, quantity and price of metal on metal's international market. Therefore the salaries' tolerance is 10%, but it was erroneously shown as 1%. As to the workers of Trepca Enterprises located in the south, PAK stated that the company officials had unilaterally (without the consent of the PAK as Administrator) increased the salaries of employees on 1 February 2013. This Decision was issued by the Acting Director of the Enterprise with retroactive effect from January 2013, with financial implications of 57,223.07 € per month. The Administrator has not received any request for salary increase except those of Stan Terg Mine workers. The response of the enterprise officials to the explanations required (by PAK) for increase of the salaries was that the increase in production is the main reason for the increase of salaries. PAK has notified the enterprise that the salary increase is in contradiction to the Decision of the court C-V-13-0001 and as such does have its approval. The Board of Directors in its meeting held on 21 March 2013 has set aside the unilateral Decision of the enterprise officials to increase the salaries, allowing only the salary increase for Stan Terg mine and Tuneli i Pare flotation facility and estimated as reasonable the monthly amount of € 30,573.00, as part of regular wage for workers of Trepca enterprises located in the north.

Regarding the other questions submitted by the order dated 22 February 2013, the PAK claims that in November 2012 the Stani Terg Mine workers requested a salary increase of 5%, due to the increased production, for which the PAK stance remains positive. The production trend in the Mine concerned is growing up, the metal's price in the international market has gone up and we have also an increased inflation as to the citizens' basket and an increase on public services. There is no increase in the number of workers. Because of the these reasons, PAK argues that it salary increase should be allowed, because the enterprise has sufficient funds to cover up the increase in question

and that funds for covering the increase derive exclusively from its own incomes- from the sale of the concentrate.

On 27 March 2013, the Special Chamber submitted another order to the PAK, by which it sought additional clarification on the wage system of "Trepca".

On 11 April 2013, a hearing was held, in which the PAK also submitted its response to the order of 27 March.

Among others:

The Managing Director of the PAK claimed that the court is aware that the PAK has functioned 8 months without board members. The PAK encountered many problems especially with Trepca. The application which is submitted to the court is a request of Stan Terg Trade Union to increase the salaries of employees of that Mine and flotation to 10% and demand the payment of € 30,573.00 per month, which amount is paid as a bonus to the workers of northern units. The PAK has found the workers salary system and Trepca has its own management concerning these issues.

Managing Director of Trepca enterprises located in the south, has claimed that there is an increase at the Mine production and Stani Terg flotation facility Tuneli i parë and we are aiming to increase the salaries based on such results. The executive official of Trepca enterprises located in the north asserted that we are not demanding salary increase.

The Court adjourned upon the request of PAK. The court requested the PAK, to submit in writing the "Early Retirement Scheme".

On 15 April 2013, the hearing continued.

A Chief of Reorganization Unit stated that the recent increase in wages for Trepca Enterprise workers located in the south has taken place in March 2012 and it was 5%. The recent increase in wages for Trepca Enterprises workers located in the north, has taken place in March 2010, cannot remember the exact month, it was 5%, said the executive officer of Trepca Enterprises in the north said.

The Managing Director of the PAK claimed that the Board of Directors by Decision dated 10 April 2013, has set aside the Decision of the Director of Trepca Enterprises from the south for the increase of the salaries. The demand was for increase of the salaries of Stani Terg mine workers and flotation facility Tuneli i Parë.

The court requested the PAK, to submit not later than 19 April 2013, monthly reports on production for Trepca enterprises for the year 2011 and 2012 with clarifications on possible increases and reductions in productivity, to provide official data on the course of inflation for the second half of 2012, and the first three months of 2013, to provide an explanatory document to prove who should be the beneficiaries of the 10% salary increase. The agency also assumed the responsibility to specify which salary systems are

applied – a system based on salaries per hour, or the system based on the salaries per production.

On 15 April 2013 the PAK filed the submission with explanations about early retirement scheme. The PAK argued that the pension scheme is defined by the Administrative Direction (AD) no. 02/2006 of MLSW (Ministry of Labour and Social Welfare). According to the PAK, this instruction was aimed at providing a better social welfare for Trepca Enterprise workers, which is implemented from 1 March 2006 and applies by Kosovo Pension Administration. PAK stated that the amount for early retirement was initially 50.00 € for beneficiaries-workers of Trepca enterprises and is paid from the budget of the Republic of Kosovo, while from the incomes of Trepca enterprises, an amount of 30 € was paid to each worker. There are 2874 workers of Trepca enterprise located in the south belonging to this category (December 2012) and 181 (December 2012) in Trepca enterprises located in the north.

PAK further explains that another category of payments to the Trepca employees is the so-called Stipends. This kind of payment of 30 € per month, is rather an aid for workers, whose workplaces are not active and this aims at maintaining a kind of social peace to the employer-employee relations. There are about 200 beneficiaries of this category are employees (December 2012) to the Trepca enterprises located in south and 1873 (February 2013) of Trepca enterprises located in the north.

PAK further claims that the *Early retirement system* and the so-called *Stipendia*, were already introduced since the KTA time and it didn't find it suitable to interfere, as these payments are symbolic and rather correspond on welfare payments.

In its response submitted by 19 April 2013, PAK among others submitted the report for 2012 and the first three months of 2013 for Trepca enterprises located in south. On the same date through another submission, the PAK the report on production for 2012 and the first three months of 2013, for Trepca enterprises located in the north. At the hearing on 15 April 2013, the PAK was instructed to provide the reports on production from 2011 and up to now for all Trepca enterprises.

PAK attached to that submission some statistical evidence about the level of inflation rate in the country for the period October 2012-March 2013, as monthly reports (Consumer Price Index).

Legal reasoning:

Rise in the salaries

In industrial enterprises, the salary increase is only appropriate in two occasions, when labor efficiency goes up - when more production is manufactured with the same number of workers` or in case of a significant devaluation of the currency. The main argument of PAK was that the two units - Stan Terg and Tuneli i parë had much better production (performance) in 2012 than in 2011. At the hearing of 15 April, the court instructed the PAK officials to present statistics on production of the two units for the years 2011, 2012

and for the first three months of 2013. The Agency, along with the analysis, was to provide analysis on the reasons of fall/rise in regular production.

PAK has submitted only the statistics for 2012 and the first three months of 2013, therefore the Agency has failed to provide evidence to support the claim for rise in salaries. PAK has provided evidence on the inflation ratio for the year 2012 - according to a report of Kosovo Agency of Statistics the ratio is 3,6%. However, court shall not approve such a compensatory rise in the salaries for only part of the employees. Agency has not produced neither social nor economic reasons why only part of Trepca Enterprises workers shall be compensated for inflation and majority left behind.

Review of salary systems

In the course of proceedings the court has noticed that PAK officials had only basic and superficial knowledge on the different salary systems at different Trepca Enterprises. Senior officials have admitted at a court hearing that salary systems had been introduced by UNMIK, long before the re-organization process began and never reviewed by the Agency after assuming capacity of the Administrator under the new Law on Reorganization. Remuneration system is among major functional rules of an Entity and the Administrator has to assume more pro-active role in establishment of salary system compatible with the needs of Entities under reorganization. The court finds that Agency is to be advised to re-view salary systems and file report with the Chamber not later than 31 July.

Early Retirement scheme:

In a 12th of April submission PAK specified that Trepca Enterprises have paid in the year 2012 2 975 390 euro “Early Retirement” contribution to 3055 beneficiaries and 136 150 euro “stipends” contribution to 199 workers of the south Trepca Enterprises. Submission specifies that Early Retirement system was established under Kosovo Ministries’ of Labor and Welfare Administrative Instruction 02/2006 on early pension for workers of Trepca Complex. Under numerous conditions this regulation provides for 560euro monthly compensation to those workers, who got disabled as performing duties with Trepca Complex. According to article 5 of the Instruction financial means for this contribution shall all come from Kosovo Budget. However, in 12th of April submission as well as in the submission dating 22nd of April Agency explicitly specifies that part of the contribution is paid at the expense of “Trepça Enterprises” own financial means. Both submissions specify that monthly amount paid by Trepca Enterprises is 30 euro per beneficiary. Such payments – as long as income from regular business activities is used for – are completely void of legal grounds. According to the Instruction at hand Trepca Enterprises could execute payments to beneficiaries of the System, but money shall come as budgetary subsidies. Therefore and based on Art. 42.3 of the Law on Reorganization Court shall order PAK to immediately discontinue such illegal payments.

Stipendiary Contribution:

According to the 12th of April submission Trepca Enterprises in the North pay 30 euro per month “stipends” money to 1873 persons and Enterprises in the South pay the same monthly contribution to 199 persons. Agency has not provided any legal justification for that type of payments. According to the submission, that contribution is to the benefit of workers, who failed to report to their workplaces due to ethnic tensions in Kosovo. These payments also must discontinue as long as Trepca Entities pay from their regular business proceeds. Such social benefits shall only be paid at the expense of the state budget or charitable organizations, but not at the expense of an Industrial Enterprises under reorganization. Therefore and based on Art. 43.2 of the Law on Reorganization Court shall order PAK to immediately discontinue these illegal payments..

Persons who were not considered before execution of payment in North

In the original submission Agency explains that it forgot to ask for approval of a part of salary fund for workers of the Trepca Enterprises in the North. The issue is clarified in that submission as well as during 11th of April court hearing. Due to the peculiar salary system up to 10 per cent of the salary fund is to be calculated at the end of the production period, therefore the salary amount may not be known in advance. In the first three months of 2013, an additional amount of 30 573 euro should have been paid to these workers, but not included in the court decision (C-V-13-0001, dated 1 February 2013) for approving salary payments. These issues were discussed by the PAK Board of Directors on 10th of April 2013 and payment of 30 573 euro was approved. Therefore, court shall approve this payment as well as a part of regular salary payment for the workers in the concerned issue.

Therefore, it was decided as in the enacting clause of this Decision.

Legal Advice

Against this Decision, within 21 days an appeal may be submitted to the appellate panel of the Special Chamber. The prescribed time limit shall begin to run at midnight on the day the Decision in writing was provided to the appellant.

The appellate panel shall reject the appeal as inadmissible if Appellant fails to submit it within prescribed time limit.

Vladimir Kanev, Presiding Judge _____

Sylejman Shumolli, Judge _____

Ilmi Bajrami, Judge _____