

<b>DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHITJE QË LIDHEN ME AGJENSINË KOSOVARE TË PRIVATIZIMIT</b>	<b>SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY OF KOSOVO RELATED MATTERS</b>	<b>POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODRNOSE NA KOSOVSKU AGENCIJU ZA PRIVATIZACIJU</b>
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*Decision of 4 March 2015 – AC-I.-14-0323*

**Factual and Procedural Background:**[1] On 9 July 2013 the Claimant *S B* from P./P. filed a complaint against the decision of the Liquidation Authority for SOE *D* (in liquidation) no. PRN..., dated 6 June 2013, whereby his request for compensation of unpaid salaries in an amount of ... euros was rejected.

[2] On 25 September 2014, the SCSC Specialized Panel by Judgment C-IV.-13-1201 granted the Claimant's complaint as grounded and set aside the PAK/Liquidation Authority decision no. PRN..., dated 06 June 2013. By this Judgment the Respondent was obliged to pay the Complainant - *S B* -, compensation for unpaid salaries covering the period March – November 2006 the amount of ... euros within 15 days from the date the Judgment becomes final.

[3] The Specialized Panel reasoned that the Claimant's complaint is grounded and shall set aside the appealed PAK's decision given that the Complainant's request for compensation of unpaid salaries was rejected with no grounded reasons, and the reasons provided were not grounded and admissible for the Court. Further, the Specialized Panel reasons that the justifications are unclear and meaningless for the parties. According to the Specialized Panel, the Respondent - PAK - by its defence against the complaint and counter-response filed on the Complainant's response did not contest the fact that the Complainant has worked for the SOE covering the period March – November 2006, until when the Complainant's employment with the SOE by the PAK's notice dated 17 November 2006 was terminated. By this notice the Complainant was made aware that the salaries pending to be paid pursuant to the contract of employment with the employer remain to be reviewed in the liquidation procedure, for which he will be informed about the commencement of these procedures. Further, the Specialized Panel has reasoned that [it] has not accepted the PAK/ Liquidation Authority's defence that the Claimant's request is prescribed given that such request was not filed with the Court within 3 years, nor the consideration of the Respondent that Art608 of the Law on Associated Labour shall apply. The Specialized Panel replied to this Respondent's defence by an opinion that the PAK Law 2011 is a special law (*lex specialis*) and its Annex and by this law is regulated the liquidation procedure including the way of meeting creditor requirements, namely those for the employees of SOEs in liquidation.

[4] On 24 October 2014, the Respondent filed an Appeal against the Decision of the Specialized Panel C-IV.-14-1201 dated 25 September 2014, which contests the Judgment over procedural grounds and based on merits. The Respondent by the Appeal alleges that the procedural background prescribed in the appealed Judgment is incorrect and consequently the outcomes [correct: reasoning] of the Specialized Panel are wrong. Moreover according to the Respondent, this judgment failed to meet requirements under Art 10.4.1 of the LSC. The Respondent further

by the Appeal contests the appealed Judgment over the matter related to grounds of the case. The Respondent alleges that the legal opinion of the Specialized Panel was wrong that Art 608 of the Law on Associated Labour may not apply, which according to the Respondent is still applicable pursuant to UNMIK Reg 1999/24 (Sec 1). The Respondent in [its] Appeal contests the legal opinion of the Specialized Panel, that the complaint's prescription is not a matter of the case in hand. The Respondent repeats that the Claimant filed a request which has been prescribed and that the Claimant provided no evidence that [he] has requested from any court to be compensated for his unpaid salaries. According to the Respondent, the letter sent to the Claimant on termination of employment relationship, says that the Complainant was only notified for his right to apply for the 20 percent proceeds from privatization, and this letter has not effects on salary matters and alleges that the conclusion of the Specialized Panel is incorrect to consider this letter as to make aware the Claimant that his request for [the unpaid] salaries based on employment agreement will be reviewed after the commencement of the SOE liquidation. The Respondent requests from the Appellate Panel to set aside the appealed Judgment of the Specialized Panel or to adjudicate the case over on grounds [correct: merits] and to reject the Claimant's complaint against the decision of the liquidation authority or to uphold the Liquidation Authority's decision of the SOE *D*.

[5] On 24 November 2014 the Claimant filed a response to the Appeal whereby he requested from the Appellate Panel to reject the Respondent's appeal and to uphold the Judgment of the Specialized Panel as correct and legally grounded. Moreover, the Claimant by a response to the appeal stated that the Law on Associated Labour is no longer applicable which is abrogated by the Law on Enterprises, therefore he contests the Respondent's assertion concerning the prescription of the request in virtue of Art 608 of the Law on Associated Labour. The Claimant stated that the conclusions and legal reasoning of the Specialized Panel are correct and therefore the appealed Judgment shall be upheld.

**Legal Reasoning:** [6] The Appeal is admissible but ungrounded.

[7] Based on Art 64.1 of 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

[8] The appealed Judgment of the Specialized Panel is correct in the outcome and in the legal reasoning; therefore it shall be upheld.

[9] The Appellate Panel considers that the conclusions reached and legal reasoning utilized by the Specialized Panel in the appealed Judgment is correct and as such are accepted by the Appellate Panel. The Claimant by his request filed with the Liquidation Authority is requested the unpaid salaries from March – November 2006. None of the parties contest the fact of the Claimant's employment and the unpaid salaries for the said period. The Respondent stands by the assertion that the Claimant's request for the unpaid salaries is prescribed pursuant to Art 608 of the Law on Associated Labour. However, this reason used in its decision when rejecting the request is incorrect. The letter dated 17 November 2006 which the Respondent served on the Claimant, whereby notifies the Claimant on termination of employment on the date the SOE was

sold, namely 17 November 2006, and also informs the Claimant that the salaries owed pursuant to contract of employment with the Employer remain the responsibility of the Employer whereas such requests will be reviewed in accordance with liquidation procedures for which he will be notified. This letter in fact notifies the Claimant that it is the Employer's responsibility to deal with the employees' salaries if they were not paid. In view of these reasons, the Specialized Panel has correctly decided when granting the Claimant's complaint as grounded and set aside the decision of the Liquidation Authority for the reasons stated in the Judgment, the reasons which are also accepted by the Appellate Panel.

[10] The Appellate Panel disagrees with the allegations of the Respondent that the appealed Judgment has an incorrect procedural background and because of this the conclusions and reasoning of the Specialized Panel ended up to be wrong. The Judgment of the Specialized Panel did not breach Art 10.4.1 of the LSC, as it is alleged by the Respondent in the Appeal considering that reasons are provided and the matters are clearly and convincingly clarified for the parties. The Respondent also in the Appeal raised the matter of prescription of the Claimant's request. The Appellate Panel considers that the request's prescription is not applicable for the case at hand, given that the Law on PAK which regulates the liquidation procedure and the way to fulfil creditors' requirements as a special law shall apply for this case in relation with the Law on Associated Labour which is a general law. The Appellate Panel disagrees with the Respondent's assertion that the information letter dated 17 November 2006 served on the Claimant, was of a nature of notification only for the 20 percent entitlement. This letter does not expressly address the 20 percent entitlement issue, although it can be understood [in such way], but it refers to salaries and other creditor claims which the Claimant may have against the SOE in liquidation. Therefore, for the said reasons the Respondent's assertion is inadmissible that this letter has not impacted on the realization of the right of the Claimant for unpaid salaries by the SOE.

[11] From the above and pursuant to Art 10.10 of the LSC, it is decided as in the enacting clause.