



# *The Human Rights Advisory Panel*

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## **DECISION**

**Date of adoption: 15 September 2011**

**Case No. 314/09**

**M. Š.  
against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 15 September 2011,  
with the following members present:

Mr Marek NOWICKI, Presiding Member  
Mr Paul LEMMENS  
Ms Christine CHINKIN

Assisted by  
Mr Andrey ANTONOV, Executive Officer

Having considered the aforementioned complaint, introduced pursuant to Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel,

Having deliberated, decides as follows:

### **I. PROCEEDINGS BEFORE THE PANEL**

1. The complaint was introduced on 18 September 2009 and registered on 23 September 2009.

### **II. THE FACTS**

2. The complainant is a displaced person currently residing in Novi Sad, Serbia. The complainant states that he was the owner of a two-bedroom apartment located in Prizren. On 15 June 1999, they left Kosovo due to fear for their security.
3. The complainant alleges that on 1 July 1999, soldiers of the KFOR German contingent broke into his apartment in Prizren and occupied it without his consent. The occupation of the apartment by the German KFOR lasted until 1 August 2004. The complainant states

that, after KFOR soldiers had moved out of his apartment, he found that furniture and household items of the apartment had been damaged or destroyed.

4. The complainant claims that from 1999 to 2004 on several occasions he requested that KFOR prepare a rental contract and pay him for the occupation of the apartment and that he provided KFOR with relevant documentation to the effect, including a copy of the purchase contract and a receipt of taxes paid for transfer of property. However, KFOR allegedly responded that the complainant must also provide copies of the “building plan” or “registry books report”. According to KFOR, due to the unavailability of registry records for the Prizren area, it was not possible to determine which house was given a certain registry number in order to verify property deeds.
5. By decision dated 27 June 2003, the Housing and Property Claims Commission of the Housing and Property Directorate established that the complainant had a property right on the disputed residential property.

### **III. THE COMPLAINT**

6. The complainant complains that the occupation of his apartment by KFOR was unlawful and requests compensation for the use of the apartment as well as for the damage to furniture and household items therein.

### **IV. THE LAW**

7. Before considering the case on the merits, the Panel must first decide whether to accept the case, considering the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.
8. According to Section 1.2 of the Regulation the Advisory Panel has jurisdiction over complaints relating to alleged violations of human rights by UNMIK.
9. As results clearly from operative paragraphs 5 to 11 of the UN Security Council Resolution 1244 (1999), a distinction is to be made between the international civil presence and the international security presence in Kosovo. UNMIK is established as the civil presence, KFOR as the security presence. The reference to UNMIK in Section 1.2 of the Regulation therefore cannot be interpreted so as to include KFOR.
10. Insofar as the complaint concerns acts allegedly committed by members of KFOR, it is outside the Panel’s jurisdiction (see Human Rights Advisory Panel, *Sahiti*, no. 03/08, decision of 10 April 2008).
11. This reason suffices to declare the complaint inadmissible *ratione personae*.

### **FOR THESE REASONS,**

The Panel, unanimously,

### **DECLARES THE COMPLAINT INADMISSIBLE.**

Andrey ANTONOV  
Executive Officer

Marek NOWICKI  
Presiding Member