



# *The Human Rights Advisory Panel*

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## **DECISION**

**Date of adoption: 16 March 2012**

**Case No. 40/10**

**Vesna BOJKOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 16 March 2012, with the following members taking part:

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 30 March 2010 and registered on the same date.
2. On 23 February 2011, in response to a request from the Panel, the complainant submitted additional information relating to her employment.
3. At the request of the Panel, on 10 November 2011 the complainant submitted further clarification.

## II. THE FACTS

4. The complainant is a former resident of Kosovo, currently residing in Serbia. She states that in June 1999 she had to leave Kosovo for security reasons. Following her departure, she was not able to attend her workplace at the “Đurđevak” pre-school, a governmental educational institution in Prishtinë/Priština, where she had worked as chief accountant since 1 November 1996.
5. The complainant clarifies that regardless of the fact that as a displaced person she is not able to actively perform her duties, she is still paid a minimum wage by the Republic of Serbia. However, that wage is significantly lower than the one she would have received at her workplace, if she were able to attend it.
6. The complainant also states that in 2007 she addressed the Kosovo Trust Agency (KTA) with a request to be included in the list of the workers eligible to receive shares of the proceeds from the privatisation of the enterprises "Kosovodravo", where she worked from 1 June 1981 until 4 June 1991, and “Napredak” where she worked from 1 June 1992 until 31 October 1996. She claims that she has not received any answer from the KTA on this matter.

## III. THE COMPLAINT

7. The complainant complains about the fact that she has been dismissed from her workplace. She also complains about the loss of income, as the compensation for loss of wages which she now receives is significantly less than the salary, which she would have received at her workplace. In addition, she complains about the lack of action of the KTA with regard to her claim for a share of the proceeds of the privatisation of the Napredak and Kosovodravo enterprises.
8. She generally invokes the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. The Panel considers that in regard to the last two complaints the complainant may be deemed to invoke a violation of her right to property as guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR).

## IV. THE LAW

9. Before considering the case on its merits, the Panel has to decide whether to accept the case, taking into account the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.

### A. Complaint with regard to the dismissal from workplace

10. The Panel recalls that, according to Section 2 of UNMIK Regulation No. 2006/12, it has jurisdiction only over “complaints relating to alleged violations of human rights that had occurred not earlier than 23 April 2005 or arising from facts which occurred

prior to this date where these facts give rise to a continuing violation of human rights”.

11. The Panel considers that the complainant’s dismissal from her workplace was an instantaneous act which does not give rise to any possible continuous situations (see European Court of Human Rights (ECtHR), *Jovanović*, no. 59109/00, decision of 28 February 2002; Human Rights Advisory Panel (HRAP), *Novokmet*, no. 51/10, decision of 13 April 2011, §§ 5-8).
12. The Panel notes that the dismissal occurred in 1999. It follows that this part of the complaint lies outside the Panel’s jurisdiction *ratione temporis*.

### **B. Complaint with regard to the loss of income**

13. According to Section 1.2 of the Regulation No. 2006/12, the Panel has jurisdiction over complaints relating to alleged violations of human rights by UNMIK.
14. Insofar as the complaint concerns the loss of income, the Panel notes that the object of the present complaint is a decision that is exclusively imputable to the authorities of the Republic of Serbia. The matter complained of does in no way engage the responsibility of UNMIK (see HRAP, *Hasanaj*, no. 67/10, decision of 15 August 2011, §§ 8-9).
15. It follows that this part of the complaint lies outside the Panel’s jurisdiction *ratione personae*.

### **C. Complaint with regard to the shares of privatisation**

16. As far as the complaint over the shares of the privatisation of the “Napredak” and “Kosovodrvno” enterprises is concerned, the Panel notes that the rights of the employees to obtain share of the privatisation of a company are regulated by UNMIK Regulation No. 2003/13 of 9 May 2003 On the Transformation of the Right of Use to Socially-Owned Immovable Property.
17. Section 10.1 of UNMIK Regulation No. 2003/13 envisages that “*eligible employees*” are entitled to receive 20 per cent of the proceeds from the sale of shares of a privatised enterprise, and Section 10.4 explains that to be considered eligible, an employee shall be “*registered as an employee ... at the time of privatisation*” and he/she should be established to have been on the payroll of the privatised enterprise “*for not less than three years.*” In addition, Section 10.4 of UNMIK Regulation No. 2003/13, states that the employees, who claim that they would have been so registered and employed, “*had they not been subjected to discrimination,*” can submit a complaint to the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters.
18. The Panel notes that a complainant can allege a violation of Article 1 of Protocol No. 1 to the ECHR only in so far as the impugned actions or omissions are related to his or her “possessions” within the meaning of this provision. “Possessions” can be either “existing possessions” (see ECtHR, *Van der Musselle v. Belgium*, judgment of 23

November 1983, Publications of the Court, Series A, no. 70, p. 23, § 48) or assets, including claims, in respect of which the complainant can argue that he or she has at least a “legitimate expectation” of obtaining effective enjoyment of a property right (see ECtHR, *Pressos Compania Naviera S.A. and others v. Belgium*, judgment of 20 November 1995, Publications of the Court, Series A, no. 332, p. 21, § 31; ECtHR (Grand Chamber), *Kopecký v. Slovakia*, no. 44912/98, judgment of 28 September 2004, § 35, ECHR, 2004-IX).

19. The Panel notes that the documents presented by the complainant clearly show that her employment in the mentioned enterprises was discontinued long before the KTA was established by UNMIK, in 2002, let alone before each of the enterprises was set for privatisation. Furthermore, she does not allege that her employment there was terminated as a result of discrimination. Thus, the complainant failed to meet the requirements established by UNMIK Regulation No. 2003/13 for claiming a share of the proceeds from the privatisation of the Napredak and Kosovodrvno enterprises. The Panel therefore finds that the complainant had no “legitimate expectation” of having her claim accepted.
20. It follows that this part of the complaint is incompatible *ratione materiae* with Article 1 of the Protocol No. 1 to the ECHR, and must therefore be declared inadmissible.

**FOR THESE REASONS,**

The Panel, unanimously,

**DECLARES THE COMPLAINT INADMISSIBLE.**

Andrey ANTONOV  
Executive Officer

Marek NOWICKI  
Presiding Member