



# **The Human Rights Advisory Panel**

Building D, UNMIK HQ Prishtinë/Priština, Kosovo | E-mail: hrap-unmik@un.org | Tel: +381 (0)38 504-604, ext. 5182

## **DECISION**

**Date of adoption: 6 April 2012**

**Case No. 82/10**

**Bajram BUTAJA**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 6 April 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, including through electronic means, in accordance with Rule 13 § 2 of its Rules of Procedure, decides as follows:

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

1. The complaint was registered on 19 April 2010.
2. On 22 September 2010, the Panel requested the complainant to provide additional information. No response to this request was received by the Panel.
3. On 1 February 2012, the Panel repeated its request. The complainant responded on 28 February 2012.

## **II. THE FACTS**

4. The complainant is a former resident of Kosovo currently living in Montenegro. He states that he worked for the enterprise PKB “Pećka Pivara” (hereafter: the enterprise) until 12 June 1999, when he left Kosovo for security reasons. He states that since that time he has not received any compensation from the enterprise.
5. The complainant submits that he did not undertake any steps to return to work due to “widely-known security reasons”. He adds that he never submitted any claim to the regular courts in Kosovo with regard to his *de facto* dismissal from workplace, as he “was not informed of such possibility”.
6. The complainant further clarifies that upon learning that the enterprise was being privatised, he filed a claim with the Privatisation Agency of Kosovo (PAK), to be included among the workers considered to be eligible for receiving a share of 20% of the privatisation proceeds. On 9 July 2009, the PAK published its final list of workers eligible for receiving 20% of the privatisation proceeds regarding the enterprise, but the complainant was not included in the list. The complainant does not indicate to the Panel that he is aware of that decision made by the PAK.
7. The same decision of the PAK also set the deadline for appealing it to the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (Special Chamber) for 1 August 2009. The Panel has no information as to whether or not the complainant filed such an appeal.

## **III. THE COMPLAINT**

8. The complainant complains about the fact that since his dismissal he has not received any financial or other type of compensation from the enterprise. In addition, he may be deemed to complain about the lack of action of the PAK with regard to his claim for a share of the proceeds of the privatisation of the enterprise.

## **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 *de facto* dismissal from his 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. There were no further proceedings in relation to it.
13. It follows that this part of the complaint lies outside the Panel's jurisdiction *ratione temporis*.

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

14. According to Section 1.2 of UNMIK Regulation No. 2006/12, the Panel has jurisdiction over complaints relating to alleged violations of human rights by UNMIK.
15. The Panel notes that the list of workers considered to be eligible for receiving a part of the privatisation proceeds was adopted on 9 July 2009 by the PAK, an institution set up by the Kosovo authorities. The PAK took over the functions previously exercised by the Kosovo Trust Agency (see report of the UN Secretary-General on the United Nations Interim Administration Mission in Kosovo, 24 November 2008, S/2008/692, § 20). Therefore, the relevant decision regarding this issue has been taken by the PAK, an institution set up by the Kosovo authorities.
16. In case the complainant did in fact duly file an appeal of the said decision of the PAK, he would have had to have done so between 9 July and 1 August 2009.
17. In that regard, the Panel has already considered that on 9 December 2008, UNMIK's responsibility with regard to the judiciary in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX) assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.
18. It follows that, whatever decision the Special Chamber might take concerning a possible appeal by the complainant from the relevant decision of the PAK, UNMIK is no longer exercising authority over the Kosovo judiciary and has no responsibility for any violation of human rights allegedly committed by the courts (see, among many others, HRAP, *Jovanović and Others*, no. 28/10, decision of 20 January 2012, § 12).
19. It follows that this part of the complaint is outside of the Panel's jurisdiction *ratione personae*.

**FOR THESE REASONS,**

The Panel, unanimously,

**DECLARES THE COMPLAINT INADMISSIBLE.**

Andrey ANTONOV  
Executive Officer

Marek NOWICKI  
Presiding Member