



# ***The Human Rights Advisory Panel***

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## **DECISION**

**Date of adoption: 9 June 2012**

**Cases Nos 49/08 and 50/08**

**Svetislav KRSTIĆ and Stana KRSTIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 9 June 2012,  
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 complaints, 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 complaints of Mr and Mrs Krstić were introduced on 2 October 2008 and registered on 21 November 2008.

2. On 6 April 2009 and 26 August 2009, the Panel requested Mrs Krstić to provide additional information. Mrs Krstić replied by a letter dated 10 September 2009.
3. On 8 April 2009, the Panel requested information from the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters. It asked for further information on 26 August 2009. The Special Chamber has not replied to these letters.
4. On 6 March 2012, the Panel contacted the complainants by phone, and obtained further information from them.
5. On 29 March 2012, the Panel requested information from the Privatisation Agency of Kosovo (PAK). The PAK responded on 30 April 2012.

## **II. THE FACTS**

6. The complainants are former residents of Kosovo, currently residing in Serbia proper. They state that in June 1999 they had to leave Kosovo for security reasons. Following their departure, they were no longer able to continue working at the socially-owned enterprise “Silosi dhe Fab. E Bukes”/“Poslovanje i aktiva DP Silosi i Fab. hleba” in Xërxë/Zrze village, Rahovec/Orahovac municipality (hereafter: Silosi), where they had previously been employed. They also state that since that time they have not received any salary or other compensation from Silosi.

### **Facts related to the privatisation of Silosi**

7. Upon learning that Silosi was being privatised, on unspecified dates the complainants filed claims with the Kosovo Trust Agency (KTA) to be included among the workers considered to be eligible for receiving a share of 20% of the privatisation proceeds.
8. On 11 June 2005, the KTA published its final lists of workers eligible for receiving 20% of the privatisation proceeds regarding Silosi, but the complainants were not included in the list.
9. The complainants appealed the KTA’s decision to the Special Chamber. On 24 October 2006, the Special Chamber declared their claims inadmissible due to the fact that the powers of attorney which their legal representative presented to the Special Chamber were not properly verified. In accordance with the law applicable at that time, the decision of the Special Chamber was final.
10. Nevertheless, in a letter dated 20 March 2008 Mr Krstić addressed the KTA, stating that after he was informed about the formal problem with the power of attorney, he submitted a properly verified one to his legal representative. He states that he never received a reply to this letter.
11. In a letter dated 30 April 2012, the PAK, the successor-in-interest to the KTA, informed the Panel that there is no ongoing procedure between the complainants and the KTA/PAK.

### **Facts related to the allegedly unpaid wages**

12. On unspecified dates the complainants filed claims with the KTA, seeking unpaid wages. Documents submitted by the complainants show that their claims were forwarded by the UNMIK Office in Belgrade to the KTA on 25 August 2006. On 31 August 2006, they submitted additional information to the KTA.
13. On 19 February 2007, the KTA asked the complainants to clarify their claims. In a response letter dated 9 March 2007, Mr Krstić explained the nature of his claim to the KTA.
14. On 18 June 2010, the relevant Liquidation Committee of the PAK rejected the complainants' claims for unpaid wages as ungrounded. In the above-mentioned letter of 30 April 2012 (see § 11 above), the PAK informed the Panel that the decisions have not been served on the complainants because of the difficulties between the Kosovo and the Serbian postal services.

### **III. THE COMPLAINTS**

15. The complainants argue that the Special Chamber rejected their claims related to the proceeds of the privatisation of Silosi on the basis of a formal omission that could easily have been corrected if they had been instructed to do so. They essentially complain about a violation of the right to a fair trial before an impartial tribunal, the right to property, the right to an effective remedy, and the right to be free from discrimination.
16. They invoke a number of provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the European Convention on Human Rights.

### **IV. JOINDER OF THE COMPLAINTS**

17. The Panel decides, pursuant to Rule 20 of its Rules of Procedure, to join the two complaints.

### **V. THE LAW**

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

#### **A. Complaints with regard to the shares of privatisation**

19. Pursuant to Section 3.1 of UNMIK Regulation No. 2006/12, the Panel may only deal with a matter within six months from the date on which the final decision was taken. The purpose of the six-month rule is to promote legal certainty and to ensure that cases raising issues under UNMIK Regulation No. 2006/12 are dealt with within a reasonable time (see, for example,

European Court of Human Rights (ECtHR), *Opuz v. Turkey*, no. 33401/02, judgment of 9 June 2009, § 110).

20. Where a complainant or his representative has been served with a written copy of the final decision, the object and purpose of the six-month requirement is best achieved by counting the six-month period as running from the date of service of that written decision (ECtHR, *Worm v. Austria*, judgment of 29 August 1997, *Reports of Judgments and Decisions*, 1997-V, p. 1547, § 33).
21. The Panel notes that it is not clear from the complainants' submissions to the Panel when they or their representatives were served with written copies of the above-mentioned Special Chamber decisions, both dated 24 October 2006 (see § 9 above). However, it is obvious that the complainants knew about those decisions by 20 March 2008, when Mr Krstić wrote a letter to the KTA (see § 10 above).
22. The Panel notes that the complaints were introduced on 2 October 2008, more than three years after the issuance of the above-mentioned Special Chamber decisions, and more than six months after Mr Krstić's letter to the KTA.
23. Accordingly, this part of the complaints falls outside the six-month time limit set by Section 3.1 of UNMIK Regulation No. 2006/12.

#### **B. Proceedings related to the unpaid wages**

24. Although the complainants do not formally complain about the proceedings relating to their claims for unpaid wages for the period when they were not able to work for Silosi, the Panel notes that they submitted certain documents relating to these claims. It therefore considers it appropriate to examine whether there is any reason to consider such a complaint of its own motion.
25. 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.
26. The Panel notes that the complainants are probably not aware of the PAK decisions rejecting their claims, as these decisions have not been notified to them. However, the PAK is an institution set up by the Kosovo authorities. It took over the functions previously exercised by the KTA (see report of the UN Secretary-General on the United Nations Interim Administration Mission in Kosovo, 24 November 2008, S/2008/692, § 20).
27. Any decision of the PAK is exclusively imputable to the Kosovo authorities. In this case, there is no indication of any concrete involvement of UNMIK in the adoption of that position. The conclusion therefore is that the decisions of the PAK do not engage the responsibility of UNMIK (see Human Rights Advisory Panel, *Bojković*, no. 42/10, decision of 17 February 2012, § 11).
28. There is therefore no room for the Panel to examine whether the decisions of the PAK are compatible with human rights standards.

**FOR THESE REASONS,**

The Panel, unanimously,

**DECLARES THE COMPLAINTS INADMISSIBLE.**

Andrey ANTONOV  
Executive Officer

Marek NOWICKI  
Presiding Member