



The Human Rights Advisory Panel

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DECISION

Date of adoption: 31 January 2013

Cases Nos. 308/09

Milorad RAJOVIĆ

against

UNMIK

The Human Rights Advisory Panel sitting on 31 January 2013,
with the following members present:

Mr Marek NOWICKI, Presiding Member
Ms Christine CHINKIN
Ms Françoise TULKENS

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 7 September 2009 and registered on 14 September 2009.
2. On 17 September 2009, the Panel received further representation from Avni Q. Vula representative of the complainant.
3. On 22 May 2010, the Panel requested the complainant to provide additional information. No response was received.
4. On 18 September 2012, the Panel communicated the complaint to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the

admissibility and the merits of the case. On 1 November 2012, the SRSG provided UNMIK's response.

5. On 9 November and 4 December 2012, the Panel requested additional information from the OSCE Mission in Kosovo (OMiK). On 15 November and 14 December 2012, OMiK provided its response.
6. On 18 December 2012, the Panel sought further comments on admissibility of the complaint from the SRSG. On 10 January 2013, the SRSG provided UNMIK's response.

II. THE FACTS

7. The complainant is the owner of a company "Udarnik Komerc LLC" which owns a property in Pejë/Peć. On 1 March 2000 OMiK took over this property as part of its regional offices within the municipality. During this period and up to 1 November 2007, the complainant alleges that no rental agreement was established or rent paid to the company.
8. On 1 November 2007, the complainant's company signed a contract to rent the same premises to OMiK, the terms of which have been complied with to-date. The complainant alleges, however, that he has been unable to enter into negotiations with OMiK regarding the occupation of the premises between 1 March 2000 and 1 November 2007 and the backdated rental payments owed to the company.

III. THE COMPLAINT

9. The complainant complains about a violation of his human rights and property rights. The Panel considers that he may be deemed to invoke a violation of his right to the peaceful enjoyment of his possessions, guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR).

IV. THE LAW

10. Before considering the case on its 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.
11. According to Section 1.2 of the Regulation, the Panel has jurisdiction over complaints relating to alleged violations of human rights by UNMIK.

a) Submissions of the parties

12. The complainant's contention is that the continuous denial of access to his company's property by the OMiK and the ensuing loss of all control over it, for the period 1 March 2000 and 1 November 2007, is attributable to the activities of UNMIK and thereby constitutes a violation of Article 1 of Protocol No. 1 of the ECHR by UNMIK.
13. In his comments the SRSG argues, that OMiK "constitutes a distinct component different from the United Nations". As such the claim should be deemed inadmissible *ratione*

personae. Specifically he cites the Panel's decision in the case of (HRAP) *Jovanović*, no. 39/08 decision of 17 October 2008:

“The OSCE is an inter-governmental organisation, different from the United Nations and from UNMIK. It is true that the OSCE Mission in Kosovo is included in the activities of UNMIK as the organisation leading the Pillar III activities, dealing with democratisation and institution building. However, the present dispute does not concern any of the functions for which UNMIK bears final responsibility under resolution 1244 of the Security Council of 10 June 1999”.

14. In a similar vein, the SRSG argues further that as the matter relates to a private claim between OMiK and the complainant the complaint should be deemed inadmissible *ratione materiae*. As above the SRSG refers to the case of *Jovanović* and specifically the distinction between the private contractual matters of OMiK and its activities under UN Security Council Resolution 1244 (1999):

[The case] “concerns a matter related to the private employment contract between the complainant's father and the OSCE and the application of OSCE internal rules. The facts complained of are not attributable to UNMIK”.

The Panel's assessment

a) Organisational relationship between UNMIK and the OMiK

15. The Panel recalls that OMiK was established on 1 July 1999. Its deployment was based on Permanent Council Decision 305 (P.C.DEC/305) which referred to UN Security Council Resolution 1244 (1999) and charged the Mission with activities related to institution and democracy building and human rights as a “distinct component within the overall framework of the United Nations Interim Administration Mission in Kosovo”.
16. The Panel notes further that the UN Secretary-General Report on 12 June 1999, subsequently confirmed by OSCE Permanent Council Decision No. 305 (see above), recognised the role that OSCE would play in Kosovo under the leadership of the UN. Paragraph 3 of this report stated that “The Special Representative of the Secretary-General will have overall authority to manage the Mission and coordinate the activities of all United Nations agencies and other international organizations as part of UNMIK” (S/1999/672). This was further confirmed on 12 July 1999 in the UN Secretary-General Report which re-enforced UNMIK as being the lead organisation in the administration of Kosovo and OMiK's position within this structure (S/1999/779).
17. Finally, the Panel refers to the exchange of letters between UN Under-Secretary General for Peacekeeping Operations, Ambassador Bernard Miyet, and Ambassador Kim Traavik, Representative of the OSCE Chairman-in-Office, dated 16 and 19 July 1999, which represented an agreement regarding the allocation of tasks to be undertaken by OMiK under UNMIK (cited in *The OSCE in the New International Environment in Kosovo*, Marcin Czapliński). It confirmed among other things that the institution-building component of UNMIK would be headed by a Deputy Special Representative of the UN Secretary-General, who would be the Head of OMiK. In his or her capacity as the Deputy Special Representative, he or she would also report on activities of the institutional-building component to the SRSG. The SRSG would also retain overall and ultimate authority for the interpretation and implementation of provisions for UN Security Council Resolution 1244 (1999) in relation to its civil aspects. The SRSG would have responsibility for ensuring that all UNMIK activities, including the OSCE-led institution building component, were carried out in an integrated, cohesive and effective manner.

18. The Panel therefore concludes that although OMiK represented a distinct pillar of the international presence in Kosovo, responsibility for its overall activities remained within UNMIK.

b) Activities of OMiK

19. In relation to the activities of OMiK the Panel draws a distinction between its private contractual activities and those public actions performed as a part of its role as a pillar of UNMIK within Kosovo. The period between 1 March 2000 and 1 November 2007, in which OMiK took over the premises of the complainant's company without express agreement and consent for the purposes of undertaking its public activities, must be seen in the context of performing an action relating to the role of UNMIK pursuant to UN Security Council Resolution 1244 (1999). No express agreement or otherwise was made with the complainant's company for the use of the premises as part of OMiK operation in Pejë/Peć during this period. Indeed the OMiK's authority to take over such premises in this context can only, therefore, have derived from its inclusion with the UNMIK administrative framework (see § 15 to 17 above) and UN Security Council Resolution 1244 (1999).

20. The Panel contrasts this with the signing of a contract between the complainant and OMiK for the period beginning 1 November 2007. At that stage a private contractual relationship was agreed between consenting parties for the use of the premises by OMiK. Any dispute with respect to the terms and conditions of this contract would then be regarded as a private contractual matter and one which would not concern any of the functions for which UNMIK bears final responsibility.

21. The Panel therefore concludes that the occupation by OMiK of the complainant's property between 1 March 2000 and 1 November 2007 may raise an issue concerning his rights under Article 1 of Protocol No.1 of the ECHR attributable to UNMIK.

22. No other ground for declaring this complaint to be inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member