



The Human Rights Advisory Panel

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DECISION

Date of adoption: 6 June 2013

Case No. 58/10

Jugobanka A.D. Under Receivership II

against

UNMIK

The Human Rights Advisory Panel, sitting on 06 June 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 lodged with the Panel on 29 March 2010 and registered on 30 March 2010.
2. On 6 April 2011, the Panel contacted the complainant's representative and requested further information. On 24 May 2011, the Panel received additional documentation from the complainant's representative.

3. On 31 August 2011, the Panel requested additional information from the complainant's representative, to which a response was received on 26 October 2011.
4. On 2 February 2012, the Panel requested additional information from the complainant's representative, to which a response was received on 14 March 2012.
5. On 28 April 2011, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the case. On 18 July 2011, the SRSG provided UNMIK's response.
6. On 6 June 2012, the Panel re-communicated the case to the SRSG for UNMIK's additional comments on the admissibility of the case. On 9 July 2012, the SRSG provided UNMIK's response.
7. On 5 September 2012, the Panel sent a letter to the complainant's representative inviting his response to UNMIK's comments.
8. On 24 September 2012, the complainant's representative responded to UNMIK's comments.
9. On 26 November 2012, the Panel re-communicated the case to the SRSG for UNMIK's additional comments on the admissibility of the case. On 31 December 2012, the SRSG provided UNMIK's response.
10. On 26 February 2013, the Panel re-communicated the case to the SRSG for UNMIK's additional comments on the admissibility of the case. On 4 April 2013, the SRSG provided UNMIK's response.

II. THE FACTS

11. The complainant is a joint stock commercial bank chartered in Serbia that has been put into receivership. The organ operating as the bankruptcy administrator while the complainant bank is in receivership is the Deposit Insurance Agency of Serbia. The complainant's representative states that the complainant is owed substantial sums of money by the socially-owned enterprise (SoE) Feronikl/Ferronikeli based in Glogovac/Glogovac from loans outstanding. The complainant has been trying to collect these debts via various court proceedings in Kosovo since 1997, without success.
12. On 12 August 2005, the complainant's representative states that the complainant submitted a notice to the Kosovo Trust Agency (the KTA) that it would be submitting a claim against Feronikl/Ferronikeli.
13. On 18 October 2005, the complainant completed its submissions against Feronikl/Ferronikeli to the KTA.
14. On 21 November 2005, the SRSG promulgated UNMIK Regulation No. 2005/48 of 21 November 2005 On the Reorganization and Liquidation of Enterprises and Their Assets under the Administrative Authority of the Kosovo Trust Agency. This regulation specified how the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (the Special Chamber) and the KTA were to proceed with claims by creditors against enterprises that were unable to fulfill their due and outstanding contractual and monetary obligations. According to UNMIK Regulation No. 2005/48, the

KTA would commence reorganisation proceedings by applying to the Special Chamber. If warranted, the Special Chamber would issue a moratorium decision suspending all claims against the enterprise, and then the KTA would recommend that the Special Chamber appoint an administrator for the reorganisation of the enterprise or, should that not be possible, proceed with the liquidation of the assets of the enterprise.

15. On 23 December 2005, the complainant lodged two claims with the Municipal Court of Prishtinë/Priština against Feronikl/Ferronikeli for the realisation of possessory liens against property held by Feronikl/Ferronikeli. The complainant's representative states that the Municipal Court of Prishtinë/Priština did not respond to these two claims.
16. On 20 January 2006, the complainant submitted its claim against Feronikl/Ferronikeli to the Special Chamber.
17. According to the complainant's representative, on 21 April 2006, the KTA privatized Feronikl/Ferronikeli and transferred its assets and liabilities to NewCo Feronikl. On 15 June 2006, the KTA Board issued its decision to initiate liquidation proceedings for Feronikl/Ferronikeli, according to UNMIK Regulation No. 2005/48.
18. Meanwhile, on 4 May 2006, the KTA submitted an application to the Special Chamber for a stay of the proceedings between the complainant and Feronikl/Ferronikeli and for the dismissal of the complainant's claim against the KTA.
19. On 12 September 2006, the complainant submitted its liquidation claim against Feronikl/Ferronikeli to the KTA.
20. On 13 June 2007, the Special Chamber issued its decision suspending the complainant's claim against Feronikl/Ferronikeli on the grounds that the KTA had already initiated liquidation proceedings as of the KTA Board's decision of 15 June 2006.
21. Following the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK was no longer able to perform effectively the vast majority of its tasks as an interim administration, and the SRSG was unable to enforce the executive authority that is still formally vested upon him under Security Council Resolution 1244 (1999) (see, *e.g.*, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 12 June 2008, S/2008/354, §§ 7 and 17; Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 15 July 2008, S/2008/458, §§ 3-4 and 29; Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 24 November 2008, S/2008/692, § 21). As such, the KTA ceased its operations in these areas. At the time of its cessation, the KTA had not recommended a liquidation manager for Feronikl/Ferronikeli.
22. According to the complainant, the liquidation proceedings for Feronikl/Ferronikeli have not been completed and the complainant's claims against Feronikl/Ferronikeli have not been resolved.

III. THE COMPLAINT

23. The complainant alleges that the KTA and Special Chamber, by issuing a decision suspending the complainant's claim against Feronikl/Ferronikeli and then not completing the liquidation of the assets of the enterprise, has delayed the proceedings and denied it a decision within a reasonable time, in violation of Article 6 § 1 of the European

Convention on Human Rights (ECHR). It alleges a violation of its right of property guaranteed by Article 1 of Protocol No. 1 to the ECHR, as a result of the Special Chamber's decisions suspending the complainant's claim against Feronikl/Ferronikeli and the KTA not completing the liquidation proceedings.

IV. THE LAW

24. Before considering the case on the 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.
25. The SRSG argues that the complainant is a Belgrade based enterprise, either socially-owned or state owned, operating under and in accordance with the legislation of the State of Serbia. The SRSG highlights the Panel's decision in its case *Deposit Insurance Agency* where the Panel found that a complaint submitted by the Deposit Insurance Agency, a public agency under the laws of the Republic of Serbia, was outside of the Panel's jurisdiction *ratione personae* (see Human Rights Advisory Panel (HRAP) *Deposit Insurance Agency*, no. 59/10, §§ 9-10, decision of 26 October 2011). According to the SRSG, the complaint in this case is similar and should be rejected as falling outside of the Panel's jurisdiction *ratione personae*.
26. According to Section 1.2 of UNMIK Regulation No. 2006/12 the Panel has jurisdiction over complaints "from any person or group of individuals" claiming to be the victim of a human rights violation by UNMIK. The Panel is of the view that reference to complaints submitted from any person or group of individuals in Section 1.2 of the Regulation cannot be interpreted so as to include complaints submitted by a State, any of its agencies, or as in this case, entities under the control of such agencies.
27. The Panel recalls that it has already considered whether it had jurisdiction to hear a complaint from Deposit Insurance Agency of Serbia, in *Deposit Insurance Agency* (cited in § 20 above). The Panel found that the complaint from the Deposit Insurance Agency of Serbia was outside of the Panel's jurisdiction *ratione personae*. The Panel must now consider to what extent the complainant Jugobanka A.D. is independent from the Deposit Insurance Agency of Serbia such that the Panel would have jurisdiction *ratione personae* to decide the complaint.
28. The Panel in this regard refers to the case-law of the European Court of Human Rights where it has held in comparable cases involving Serbian banks established prior to the dissolution of Federal Republic of Yugoslavia that Serbia is liable for debts of socially-owned companies that are closely controlled by a Serbian Government agency (see ECtHR, *R. Kačapor and Others v Serbia*, nos. 2269/06 *et al.*, §§ 97-98, judgment of 15 January 2008, concerning a company mainly comprised of socially-owned capital, and *Rašković and Milunović v. Serbia*, nos. 1789/07 and 28058/07, § 71, judgment of 31 May 2011, as to a company comprised of both socially- and State-owned capital). In a similar case, *Ališić and Others*, the Court concluded that there were sufficient grounds to deem Serbia liable for the Serbian bank's debt. The Court noted "that the debtor is currently owned by a holding company predominantly comprised of social capital and that, as such, it is closely controlled by the Privatisation Agency, itself a State body, as well as the Government, irrespective of whether any formal privatisation had been attempted in the past." (see ECtHR, *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia*, no. 60642/08, §§ 94-97, judgment of 6 November 2012, not yet final).

29. The Panel notes that the complainant, Jugobanka A.D., is a joint stock commercial bank chartered in Serbia that has been put into receivership in 2002. The Panel also notes that during this time, the complainant has been under the administration of the Deposit Insurance Agency of Serbia, whose complaints the Panel has already found to be outside of its jurisdiction *ratione personae* (see HRAP, *Deposit Insurance Agency*, cited above at § 20). Noting that the Deposit Insurance Agency of Serbia exercised close control over Jugobanka A.D. during the period concerned, the Panel sees no reason to depart from its earlier findings.
30. Therefore the Panel considers that the complaint is outside of its jurisdiction *ratione personae*.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Andrey ANTONOV
NOWICKI Executive Officer

Marek
Presiding Member