



The Human Rights Advisory Panel

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DECISION

Date of adoption: 6 June 2013

Case No. 57/10

Jugobanka A.D. Under Receivership I

against

UNMIK

The Human Rights Advisory Panel, sitting on 6 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. The complainant is represented by Mr Nikola Radosavović.
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 6 June 2012, 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 9 July 2012, the SRSG provided UNMIK's response.
6. On 5 September 2012, the Panel sent a letter to the complainant's representative inviting his response to UNMIK's comments.
7. On 24 September 2012, the complainant's representative responded to UNMIK's comments.
8. 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 2013, the SRSG provided UNMIK's response.
9. 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

10. 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 it is owed substantial sums of money by the socially-owned enterprise (SoE) RMHK Trepča based in Mitrovicë/Mitrovica, a subsidiary of SoE Trepča Mines and Flotation, Kišnica and Novo Brdo, Priština (Trepča Mines), from loans outstanding. The complainant has been trying to collect these debts via various court proceedings in Kosovo since 1997, without success.
11. The complainant's representative states that, on 18 October 2005, the complainant submitted a notice to the Kosovo Trust Agency (the KTA) that it would be submitting a claim against RMHK Trepča.
12. 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 the above regulation, 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.

13. On 9 March 2006, the Special Chamber issued a moratorium decision suspending all claims against Trepča Mines, pursuant to Section 5.1 of UNMIK Regulation No. 2005/48. However, the KTA was not able to recommend an administrator for Trepča Mines, due to the complexity of the assets and liabilities of the enterprise.
14. On 26 June 2006, the complainant lodged three claims with the Commercial Court of Mitrovicë/Mitrovica against RMHK Trepča for the realization of three mortgages in the form of possessory liens against property held by RMHK Trepča. The complainant's representative states that on 8 August 2006, the Municipal Court of Mitrovicë/Mitrovica responded to these three claims by issuing a Note stating that the claims could not be registered because the claims were within the jurisdiction of the Special Chamber.
15. On 10 August 2006, the Special Chamber issued a decision suspending the proceedings against RMHK Trepča, as it found that its moratorium of 9 March 2006 concerning Trepča Mines extended to include RMHK Trepča (see § 13, above).
16. 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 was unable to recommend an administrator for Trepča Mines.¹
17. On 4 March 2011, the KTA's successor-in-interest, the Privatization Agency of Kosovo (PAK), published an explanation of the developments in regard to Trepča Mines, which included the necessary steps that would be required to reorganise Trepča Mines. However, the status of both Trepča Mines and its subsidiary RMHK Trepča, including their assets and liabilities remains unclear, as the moratorium decided by the Special Chamber in 2006 continues to be operative.

III. THE COMPLAINT

18. The complainant alleges that the Special Chamber, by issuing a moratorium in 2006 for the SoE Trepča Mines, that was extended to its subsidiary RMHK Trepča but then not followed by the appointment of an administrator for the reorganization of the enterprise or with the liquidation of the assets of the enterprise, has delayed the Special Chamber proceedings (see § 13, above) and denied it a decision within a reasonable time, in violation of Article 6 § 1 of the ECHR. It also alleges a violation of its right to property guaranteed by Article 1 of Protocol No. 1 to the ECHR, as a result of the Special Chamber's moratorium covering the SoE RMHK Trepča, thereby denying it the ability to recognise its property rights.

¹See *Explanation of Privatization Agency of Kosovo in Regards to the recent developments for industrial complex 'Trepca'*, published by the Privatization Agency of Kosovo on 4 March 2011, available at info@paks.org, accessed on 6 June 2013.

IV. THE LAW

19. 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.
20. 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*.
21. 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.
22. 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.
23. 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 the 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).
24. 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.

25. 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