



# *The Human Rights Advisory Panel*

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## **DECISION**

**Date of adoption: 17 August 2012**

**Case No. 12/10**

**Florije PERVIZAJ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 17 August 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 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 10 March 2010 and registered on 12 March 2010.
2. On 17 May 2010, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on admissibility. The SRSG submitted UNMIK's response on 3 June 2010.
3. On 16 November 2011, the Panel forwarded UNMIK's comments to the complainant and invited her to submit additional comments if she so wished. The Panel received the complainant's response on 8 December 2011.
4. On 15 June 2012, the Panel obtained further information in relation to the complaint from the Municipal Court of Prizren.

## II. THE FACTS

### A. Concerning the complainant's dismissal from the enterprise "NSh Liria" and the related judicial proceedings

5. The complainant is a former employee of the socially-owned enterprise "NSh Liria" (hereafter: the enterprise).
6. She states that she was first employed at the enterprise from 1 October 1973 until 27 December 1993, when her employment was terminated by a decision of the disciplinary committee of the enterprise of 14 December 1993, due to "coercive management measures" in place at the time.
7. She also states that on 21 June 1999, after NATO's arrival in Kosovo, she reported to work at the enterprise, but was not allowed to resume duty due to alleged redundancy of staff.
8. On 28 June 2004, the complainant filed a lawsuit against the enterprise with the Municipal Court of Prizren, which issued a judgment in her favour on 17 February 2005. The Court held that, notwithstanding the decision of the disciplinary committee of 14 December 1993, the complainant should be considered to be in an employment relationship with the enterprise since 21 June 1999. It ordered the enterprise to reinstate the complainant and to pay her unpaid salaries since 21 June 1999.
9. On 14 June 2005, the enterprise filed an appeal with the District Court of Prizren. This appeal was rejected on 3 March 2006 as being filed beyond the time limit.
10. According to information gathered by the Panel, the Municipal Court of Prizren on 24 July 2006 ordered the execution of its above-mentioned judgment of 17 February 2005.
11. The enterprise filed an objection to the execution order. On 1 March 2007, the Municipal Court of Prizren declared itself incompetent to decide on the matter and referred the execution case to the Special Chamber of the Supreme Court of Kosovo for Kosovo Trust Agency Related Matters (hereafter: the Special Chamber).
12. On 28 March 2007, the complainant filed an appeal with the District Court of Prizren against the decision of the Municipal Court of Prizren of 1 March 2007. On 8 May 2007, the District Court upheld the appeal, quashed the latter decision and returned the case for retrial to the Municipal Court.
13. On 19 December 2007, the Municipal Court of Prizren held a hearing on the matter. On 30 June 2008, it issued a supplementary decision to its above-mentioned execution decision of 24 July 2006, again in favour of the complainant.
14. On 17 July 2008, the enterprise filed an appeal against the supplementary decision with the Special Chamber. On 8 July 2009, the Trial Panel of the Special Chamber declared the appeal inadmissible on the ground that the Special Chamber did not have jurisdiction over appeals against execution decisions.
15. On 10 August 2009, the Privatisation Agency of Kosovo (PAK) filed an appeal pursuant to Section 9.5 of UNMIK Regulation No. 2008/4 of 5 February 2008 Amending UNMIK Regulation No. 2002/13 on the Establishment of a Special Chamber of the Supreme Court

of Kosovo on Kosovo Trust Agency Related Matters, requesting an Appellate Panel of the Special Chamber to review the decision of the Trial Panel.

16. By judgment of 11 October 2010, the Appellate Panel of the Special Chamber reformed the decision of the Trial Panel. It quashed not only the execution decisions of the Municipal Court of Prizren of 24 July 2006, 1 March 2007 and 30 June 2008, but also the judgment of the Municipal Court of Prizren of 17 February 2005 and the judgment of the District Court of Prizren of 8 May 2007. The Appellate Panel held that the regular courts had been illegally exercising jurisdiction over the case, in violation of Section 4.1 of UNMIK Regulation No. 2008/04. That provision established that the Special Chamber had primary jurisdiction for claims, including creditor claims, brought against an enterprise or corporation currently or formerly under the administration of the Kosovo Trust Agency or its successor in interest, the PAK, where such claims arose during or prior to the time that such enterprise or corporation was subject to the administrative authority of the KTA or the PAK. In addition, the Appellate Panel found that the above-mentioned decisions were null and void due to the fact that neither the complainant had notified the KTA or the PAK of her intention to sue the enterprise, nor had the regular courts informed the KTA or the PAK of the claim pending before them, in violation of Section 29 of UNMIK Regulation No. 2005/18 of 22 April 2005 Amending UNMIK Regulation No. 2002/12 on the Establishment of the Kosovo Trust Agency. The Appellate Panel decided that the case was withdrawn from the regular courts and that the complainant's claim was to be decided by the Trial Panel of the Special Chamber.
17. The case is currently pending before the Special Chamber.

#### **B. Concerning the shares of privatisation**

18. On 2 December 2011, as the enterprise was in the process of being privatised, the PAK published its preliminary list of workers eligible for receiving 20% of the privatisation proceeds. The complainant was not included in that list.
19. On an unspecified date, the complainant appealed the published list to the PAK, requesting to be included in the list. In the final list of eligible employees, which was published by the PAK on 27 February 2012, the complainant's name appears among those whose request for reconsideration was rejected as ungrounded.
20. The complainant states that, on an unspecified date, she lodged an appeal regarding her exclusion from the preliminary list with the Special Chamber. No information was provided to the Panel on the status of the proceedings at the Special Chamber.

#### **III. THE COMPLAINT**

21. The complainant complains about the fact that the judgment of 17 February 2005 and the execution order of 24 July 2006 issued by the Municipal Court of Prizren have not been implemented. She complains that, as a result, she was not reinstated in her workplace and did not receive payment of outstanding salaries.
22. The complainant further complains that her name was not included in the list of workers eligible for receiving 20% of the proceeds of privatisation of the enterprise.

#### **IV. THE LAW**

23. 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. Concerning the complainant's dismissal from the enterprise and the related judicial proceedings**

24. Insofar as the complainant complains that the 17 February 2005 judgment and the subsequent execution decisions of the Municipal Court of Prizren have not been implemented, the Panel notes that the above-mentioned judgment and decisions have in the meantime been quashed by the Special Chamber. There is therefore no more any ground for implementation of that judgment and those decisions.

25. In this respect, this part of the complaint must be considered manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.

26. It is true that the question could arise whether the Special Chamber's judgment is compatible with the complainant's fundamental rights.

27. In this respect, however, the Panel notes that according to Section 1.2 of UNMIK Regulation No. 2006/12, it has jurisdiction only over complaints relating to alleged violations of human rights by UNMIK. This means that it can only review acts or omissions attributable to UNMIK.

28. The Special Chamber's judgment was handed down on 11 October 2010. As the Panel has already held, UNMIK's responsibility with regard to the judiciary in Kosovo ended on 9 December 2008, 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.

29. It follows that, when the Special Chamber handed down its judgment, UNMIK was no longer exercising authority over the Kosovo judiciary and had 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).

30. It follows that the Panel cannot express an opinion on whether that judgment may have violated the complainant's fundamental rights.

31. Moreover, while the decision on the lack of jurisdiction of the regular courts is final, the complainant's employment case is still pending before the Special Chamber.

32. For the reasons stated above (see in particular §§ 24-25), this part of the complaint must be declared inadmissible.

##### **B. Concerning the shares of privatisation**

33. As noted above, according to Section 1.2 of UNMIK Regulation No. 2006/12, the Panel has jurisdiction only over complaints relating to alleged violations of human rights by UNMIK.

34. The Panel notes that the list of workers considered to be eligible for receiving a part of the privatisation proceeds was adopted by the PAK, an institution set up by the Kosovo authorities. The PAK took over the functions previously exercised by the KTA (see report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 24 November 2008, S/2008/692, § 20).
35. The object of this part of the complaint is a decision that is exclusively imputable to the Kosovo authorities. There is no indication of any concrete involvement of UNMIK in the adoption of that position. The conclusion therefore is that the decision of the PAK does not engage the responsibility of UNMIK (see Human Rights Advisory Panel (HRAP), *Bojković*, no. 42/10, decision of 17 February 2012, § 11; HRAP, *Dimić*, no. 87/10, decision of 16 March 2012, §§ 17-18; HRAP, *Krstić*, nos 49/08 and 50/08, decision of 9 June 2012, § 27).
36. It follows that this part of the complaint falls outside the jurisdiction *ratione personae* of the Panel.

**FOR THESE REASONS,**

The Panel, unanimously,

**DECLARES THE COMPLAINT INADMISSIBLE.**



Andrey ANTONOV  
Executive Officer



Marek NOWICKI  
Presiding Member