



# **The Human Rights Advisory Panel**

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## **DECISION**

**Date of adoption: 9 September 2010**

**Case No. 13/08**

**Gani THAÇI**

**against**

**UNMIK**

The Human Rights Advisory Panel sitting on 9 September 2010,  
with the following members present:

Mr Paul LEMMENS, Presiding Member  
Ms Christine CHINKIN

Assisted by

Mr Rajesh TALWAR, Executive Officer

Having noted Mr Marek Nowicki's withdrawal from sitting in the case, pursuant to Rule 12 of the Rules of Procedure,

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 2 June 2008 and registered on the same date. On 24 June 2008 the complainant sent a supplement to his complaint.
2. By letter dated 6 October 2008 the Human Rights Advisory Panel (the Panel) requested clarifying information from the SRSG. The Special Representative of the Secretary-General (SRSG) responded to the Panel by letter dated 12 December 2008, indicating that he was not in possession of the disciplinary file against the complainant, but that he asked his offices to locate it. Upon a new request by the Panel on 27 January 2010, the SRSG replied on 1<sup>st</sup> February 2010 that he still could not retrieve the file.
3. The Panel requested further information from the SRSG on 4 February 2010. The SRSG replied on 19 May 2010 that he was unable at that moment to provide that information. On 2 August 2010 that information was received.
4. The complainant has on several occasions spontaneously submitted additional documents and letters to the Panel.

## **II. THE FACTS**

5. In October 1999 the complainant was appointed commander of a sheltering command in the Kosovo Protection Corps (KPC).
6. In 2000 he was demoted to a lower position. He brought action against this decision before the courts, but his claim was dismissed. Other efforts to be restored to his previous (or a higher) post also failed.
7. On 1<sup>st</sup> August 2001 the KPC Commander (Lieutenant General Çeku) suspended the complainant, *inter alia* on the ground that in July 2001 he had made unauthorised statements about or on behalf of the KPC. The suspension would stay in effect pending the outcome of disciplinary proceedings brought against the complainant based on the same facts. The decision mentioned that the approval had been obtained from the Joint Security Executive Committee (JSEC). On 13 August 2001 the complainant appealed against his suspension to the Strategic Board of the KPC. According to the complainant, no decision has been taken on that appeal.
8. In October 2001 the complainant was provided with the copy of a notification by the UNMIK Coordinator for KPC, addressed to the Commander of the KPC, dated 10 August 2001, stating that the latter should dismiss a number of KPC members, including the complainant, “further to JSEC advice on 8 August 2001”. It was later explained that the JSEC had in fact taken the decision to dismiss the KPC members. It seems that the complainant has never received a copy of such a decision. Moreover, the decision was never approved by the SRSG, the only authority competent to dismiss members of the KPC (see Section 2.3 of UNMIK Regulation No. 1999/8 of 20 September 1999 on the Establishment of the Kosovo Protection Corps).

9. It seems that, although suspended, the complainant continued to receive a payment equal to the monthly salary of a KPC corporal.
10. On 8 February 2005 the KFOR Inspectorate for KPC Issues informed the KPC Commander (Lieutenant General Çeku) that the UNMIK Coordinator for KPC (Major General Freer) had determined that the dismissal of the complainant in 2001 did not comply with the procedure as set out in the KPC Disciplinary Code of 2001, then in force, and that the disciplinary case should be reviewed. On 10 February 2005 the KPC Legal Office sent a memo containing the charges against the complainant to Colonel Cikaçi, at that time the Deputy Commander of the KPC Second Protection Zone. The complainant received this information on 16 February 2005. On 17 February 2005 he submitted a statement to the KPC Second Protection Zone, containing his comments on the charges made against him. This statement was to be sent to the JSEC, the highest body for security coordination between UNMIK and KFOR, and the competent disciplinary body in cases of criminal acts and major acts of non-compliance with the KPC Disciplinary Code. It is unclear whether this statement actually reached its destination.
11. In April 2005 the JSEC recommended to dismiss the complainant (report No. 685/05). The documents submitted by the complainant do not allow the Panel to determine when and how the complainant was informed of this recommendation.
12. The SRSG agreed with this recommendation, allegedly on 5 July 2005. The Panel has not been furnished with a copy of that decision, but the SRSG does not contest the fact that such a decision has been taken. Pursuant to this decision, the complainant was effectively dismissed from the KPC.
13. According to the complainant, he filed an “appeal” against this decision on 15 July 2005. The appeal was sent to Colonel Cikaçi, in his capacity of Deputy Commander of the KPC Second Protection Zone, with a request to forward the appeal, through the KPC General Headquarters, to the JSEC.
14. There was no reaction to this appeal. Upon a request by the complainant for information about the state of the proceedings, the then UNMIK Coordinator for KPC (Major General Steirn) declared on 14 March 2006 that he could not find any appeal lodged by the complainant against JSEC Report No. 685/05, and that the case was closed.
15. On 29 June 2006 the complainant filed an administrative dispute with the Supreme Court against the inaction of the JSEC and the KPC Second Protection Zone. On 14 May 2008 the Supreme Court declared the application inadmissible. It held, on the one hand, that the KPC acted under the authority of the SRSG and was therefore not subject to judicial review by the Court, and on the other hand, that KFOR enjoyed immunity from jurisdiction of the Kosovo courts.
16. On 24 June 2008 the complainant filed a criminal complaint against the judge of the Supreme Court who presided over the chamber that handed down the said judgment

of 14 May 2008. The Panel has not been informed of any further developments with respect to that complaint.

17. In the mean time, on 4 July 2006, the complainant had brought private charges against Colonel Cikaçi with the Municipal Court of Prizren. He complained that Colonel Cikaçi had not forwarded his statement of 17 February 2005 made during the disciplinary proceedings, and later had not forwarded his appeal of 15 July 2005 against the decision of the SRSG of 5 July 2005. It seems that the Municipal Court of Prizren handed down two judgments in this case. In a first judgment, dated 11 September 2006, the Court declared the charges inadmissible, as they had been filed more than three months after the complainant knew about the existence of the criminal acts complained of. It seems that the case has later been reopened. In any event, in a second judgment, handed down on 18 September 2008, after a hearing at which both the complainant and Colonel Cikaçi appeared, the Court considered that there was not sufficient evidence to prove that the defendant had actually received the complainant's statement or his appeal. The Court declared the defendant not guilty of the charges. This latter judgment was sent to the complainant's son on 4 November 2008, the complainant living abroad at that moment. The complainant appealed against the judgment on 12 November 2008. By judgment of 17 December 2008 the District Court of Prizren declared the appeal inadmissible, as it had been filed out of time. The complainant does not seem to have appealed against that judgment of the District Court.
18. Over the years the complainant has contacted various personalities and institutions, both within and outside Kosovo, complaining about his dismissal and about the fact that his appeal against it was not forwarded to the competent body.
19. While the complaint was pending before the Panel, the complainant, who in 2006 had been given use of an apartment in Prizren for humanitarian reasons by UN-Habitat, was confronted with a person who tried to have him expelled from that apartment. According to the complainant, the police came to see the complainant and his family five times, alleging that they were usurpers of the apartment. The complainant made verbal and written complaints to the Prizren Police Commander about these police actions in July and August 2009. After a preliminary investigation the Police Inspectorate of Kosovo decided, however, that the facts did not warrant the opening of a disciplinary investigation. In a letter of 18 August 2009 the Director of the General Police Directorate explained to the complainant that it was normal for the police to act on a criminal complaint about the alleged usurpation of an apartment, and in the course of obtaining information for the public prosecutor to contact the persons living in the apartment.
20. On 17 August 2009 the complainant informed the Prizren Police Commander about damage done to his apartment by the person who tried to obtain his expulsion from it. That person allegedly with heavy machinery had destroyed part of a side wall, as a result of which the bathroom and the water supply system were seriously damaged. The complainant asked for protection by the police. In the weeks after the incident the complainant sent letters concerning the same facts to various other bodies, including the Panel, complaining about the lack of protection by the police and the municipal

authorities. It appears that because of the living conditions in the apartment the family felt obliged to leave it in September 2009.

21. When the complainant, who had gone to live in Croatia, returned on 22 November 2009 to visit his apartment, he found that the doors and windows had been broken and that everything inside the house had been stolen. On that same day the police came to draw up a report. The complainant filed a complaint with the public prosecutor. It is unclear what action has been taken on that complaint. The complainant provided the Panel with the copy of a letter of 23 July 2010 to the mayor of Prizren, in which he complained of the lack of action by the competent authorities.

### **III. COMPLAINTS**

22. In his original complaint, the complainant complains about his demotion, ordered in 2000, his suspension, decided in 2001, and his dismissal, initially decided in 2001. He further complains about the fairness of the fresh disciplinary proceedings brought against him in 2005, and about the decision to dismiss him, taken by the SRSG on 5 July 2005. He also complains about the failure of the competent authorities to deal with his appeal against the latter decision. In later writings to the Panel, the complainant further complains about the judgment of the Supreme Court of 14 May 2008, declaring his complaint against the JSEC and KPC inadmissible.
23. Also in later writings to the Panel, the complainant complains about the failure by the competent authorities, in particular the police and the public prosecutor in Prizren, to protect him against the criminal acts by an individual who tried to obtain his expulsion from the apartment in which he and his family were living and who later damaged that apartment, as well as against the failure of these authorities to react against further acts of destruction and taking of property.

### **IV. THE LAW**

24. 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 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel.

*A. Insofar as the complaint is directed against the demotion of the complainant, ordered in 2000*

25. The complainant complains in the first place about his demotion, decided in 2000.
26. According to Section 2 of Regulation No. 2006/12, the Panel has jurisdiction over complaints relating to alleged violations of human rights that have occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights.

27. Insofar as the complaint is related to instantaneous acts that took place in 2000, the Panel has no jurisdiction.

28. Insofar as the complaint might be interpreted as also relating to the court proceedings concerning his demotion, they cannot be detached from the act upon which the claim before the courts is based. Or, to state it positively, as the European Court of Human Rights has done with respect to its jurisdiction under the European Convention on Human Rights (ECHR):

“... the Court’s temporal jurisdiction is to be determined in relation to the facts constitutive of the alleged interference. The subsequent failure of remedies aimed at redressing this interference cannot bring it within the Court’s temporal jurisdiction” (European Court of Human Rights (ECtHR) (Grand Chamber), *Blečić v. Croatia*, judgment of 8 March 2006, no. 59532/00, § 77, ECHR, 2006-III).

29. This part of the complaint must therefore be declared inadmissible.

*B. Insofar as the complaint is directed against the suspension and the original dismissal of the complainant, decided in 2001*

30. The complainant further complains about his suspension and subsequent dismissal, decided in 2000.

31. Again, these complaints concern instantaneous acts that occurred before 23 April 2005. They therefore fall outside the jurisdiction *ratione temporis* of the Panel. This conclusion also applies to the appeal filed by the complainant against his suspension.

32. This part of the complaint must therefore also be declared inadmissible.

*C. Insofar as the complaint is directed against the disciplinary proceedings initiated against the complainant in 2005 and the subsequent acts and failures to act relating to these proceedings*

33. The complainant complains about the fact that his comments on the disciplinary charges brought against him in 2005 were not effectively examined by the JSEC before it took the decision to recommend his dismissal.

34. The complainant further complains about the fact that his appeal against the decision of the SRSG, approving the recommendation of the JSEC (decision allegedly taken on 5 July 2005), was in fact never examined by the body with which he filed the appeal, *i.e.* the JSEC. He argues that this is due to the fact that Colonel Cikaçi, Deputy Commander of the KPC Second Protection Zone, to whom the complainant had sent his appeal on 15 July 2005, did not forward his appeal to the competent body.

35. He finally complains about the judgment of the Supreme Court of 14 May 2008 declaring inadmissible the administrative dispute filed by him, relating to the failure

by the JSEC and the KPC to act on his appeal against the decision of the SRSG of 5 July 2005.

36. The Panel considers that these complaints can be considered from the point of view of the right of access to public service, guaranteed by Article 25 (c) of the International Covenant on Civil and Political Rights (CCPR), and the right to an effective remedy against alleged violations of a person's human rights (Article 2 (3) of the CCPR, read in combination with Article 25 (c) of the CCPR).
37. Even if the Panel is not in possession of a copy of the decision of the SRSG, allegedly taken on 5 July 2005, it is ready to accept that the decision to dismiss him was in any event taken after 23 March 2005. It therefore falls within the jurisdiction *ratione temporis* of the Panel.
38. According to the complainant, a KPC member could appeal against the decision of the SRSG to the JSEC within 21 days from the time he or she received written notice of the decision. Further, the appeal was to be sent to the JSEC through the KPC Commander.
39. It appears, however, that this view is based on a misinterpretation of the applicable rules. It is true that, according to section 5.8.2 of the KPC Disciplinary Code, "an appeal against any disciplinary action taken in response to a minor or major act of non-compliance shall be submitted to the appeal authority within 21 days from the time the member receives written notice of the decision". The KPC Disciplinary Code, however, did not provide for the possibility to appeal against a decision of the SRSG. The only relevant possibility of appeal was, according to section 5.8.1.2 of the KPC Disciplinary Code, an appeal to the JSEC against the "decision" made by the JSEC itself, to be sent through the KPC Commander, who would provide comments and forward the request for appeal to the JSEC. In other words, there was a possibility of appeal against the decision of the JSEC containing the recommendation to dismiss the complainant. The JSEC could not itself dismiss a member of the KPC, but could recommend to the SRSG to take such decision (Section 2.1 of the KPC Disciplinary Code). Upon examination of an appeal, the JSEC could reform its decision to recommend the dismissal. The complainant, however, did not appeal against the recommendation made in his case.
40. The complainant suggests that the form containing the decision of the SRSG mentioned the possibility to file an appeal. It is true that the form used for decisions of the SRSG in KPC disciplinary matters mentioned the possibility of an appeal within 21 days. However, the form was intended in the first place to contain the decision of the JSEC. In case of a recommendation for dismissal, it further contained an entry for the subsequent decision of the SRSG, approving or disapproving the recommendation made by the JSEC. The mention of the possibility of an appeal clearly referred to any "decision" of the JSEC, including a decision to recommend dismissing the KPC member, not to the approval of such recommendation by the SRSG.

41. The documents submitted to the Panel by the complainant do not allow a determination as to when the complainant received notice of the recommendation by the JSEC, nor as to whether he was at that time informed of the possibility to appeal against that recommendation to the JSEC, nor whether the recommendation was sent to the SRSG only after expiration of the time-limit for filing such an appeal. The Panel does not exclude that the complainant received notice of the recommendation by the JSEC together with the decision of the SRSG, and that he was misled by the form in which that notification was made, giving him the impression that he could still appeal against the decision of the SRSG.
42. A clear insight into the factual situation is needed in order to allow the Panel to decide on the admissibility of this part of the complaint, in particular with respect to the requirements to exhaust all available avenues and to file a complaint within six months from the date on which the “final decision” is taken (section 3.1 of UNMIK Regulation No. 2006/12).
43. It is therefore necessary, in accordance with Rule 30 § 1 (b) of the Panel’s Rules of Procedure, to communicate this part of the complaint to the SRSG.

*D. Insofar as the complaint is directed against the lack of protection and corrective action against various criminal acts relating to the apartment in which the complainant and his family were living*

44. The complainant complains about an alleged failure by the competent authorities, in particular the police in Prizren, to protect him against criminal acts directed against the apartment he was allowed to occupy, and about an alleged failure by the competent authorities, in particular the police and the public prosecutor in Prizren, to take action against the perpetrator of these acts.
45. The Panel notes that, according to Section 1.2 of Regulation No. 2006/12, it “shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK” of their human rights.
46. On 9 December 2008, UNMIK’s responsibility with regard to police and justice in Kosovo ended 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.
47. In the present case the alleged lack of protection and corrective action relates to events that occurred in July and August 2009, that is well after 9 December 2008. There is no indication of any concrete involvement of UNMIK. The conclusion therefore is that the matter complained of does not engage the responsibility of UNMIK.



48. It follows that this part of the complaint falls outside the jurisdiction *ratione personae* of the Panel and must therefore be declared inadmissible.

**FOR THESE REASONS,**

The Panel, unanimously,

**- DECIDES TO ADJOURN THE EXAMINATION OF THE COMPLAINT RELATING TO THE DISCIPLINARY PROCEEDINGS INITIATED AGAINST THE COMPLAINANT IN 2005 AND THE SUBSEQUENT ACTS AND FAILURES TO ACT RELATING TO THESE PROCEEDINGS;**

**- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.**

Rajesh TALWAR  
Executive Officer

Paul LEMMENS  
Presiding Member