



The Human Rights Advisory Panel

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OPINION

Date of adoption: 24 January 2014

Case No. 47/08

Fillim GUGA

against

UNMIK

The Human Rights Advisory Panel, sitting on 24 January 2014
with the following members present:

Marek Nowicki, Presiding Member
Christine Chinkin
Françoise Tulkens

Assisted by
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, makes the following findings and recommendations:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 3 November 2008 and registered on 13 November 2008. On 19 March 2009, the complainant submitted additional information. The complainant was represented before the Panel by Mr Teki Bokshi, a lawyer from Gjakovë/Đakovica.
2. On 8 April 2009, the Panel requested information from the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (the Special Chamber).
3. On 27 July 2009, the Panel sent an additional request to the Special Chamber. On 30 July 2009, the Special Chamber provided its response.

4. On 17 September 2009, the Panel requested from the Special Representative of the Secretary-General (SRSG), in his capacity as representative of the Kosovo Trust Agency (KTA), access to the KTA documents relevant to the complaint.
5. On 25 November 2009, the Panel repeated its request to the SRSG for access to the KTA files. On 4 December 2009, the SRSG provided UNMIK's response.
6. On 13 January 2010, the Panel requested further information from the complainant. On 24 January 2010, the complainant provided an interim response and on 5 February 2010, he provided his full response.
7. On 29 April 2010, the Panel communicated the complaint to the SRSG for UNMIK's comments on the admissibility of the complaint. On 26 May 2010, the SRSG submitted UNMIK's response.
8. On 9 June 2010, UNMIK's comments were forwarded to the complainant for his response. The complainant provided his response on 19 July 2010.
9. On 9 June 2011, the Panel declared the complaint admissible in part. On 14 June 2011, the Panel communicated the admissibility decision to the SRSG, inviting UNMIK's observations on the merits of the case.
10. On 16 August 2011, the SRSG submitted UNMIK's response.
11. By letters dated 18 August 2011, the Panel requested the Special Chamber and the Privatisation Agency of Kosovo (PAK), the latter in its capacity of successor-in-interest to the KTA, to provide copies of the complete files relating to the complaint. No response was received at this time.
12. On 21 September 2011, the Panel forwarded UNMIK's comments on the merits of the complaint to the complainant, inviting him to submit further comments if he so wished. The complainant submitted his response on 12 October 2011.
13. On 18 November 2011, the Panel received from the Special Chamber copies of its file concerning the complaint.
14. On 29 March 2012, the Panel reiterated its request for information and copies of its file to the PAK. The PAK's response, along with some documents from the KTA file, was received on 4 May 2012.
15. On 24 July 2012, the Panel requested the SRSG to provide further information in light of the complainant's response. On 6 August 2012, the SRSG provided UNMIK's response.

II. THE FACTS

16. The socially owned enterprise (SOE) "KNI Dukagjini OTHPB-BP IMN Tjegulltorja" (IMN) initially hired the complainant as a casual labourer on 16 April 1979, a job he held until 31 August 1979. IMN re-hired the complainant as a labourer on a permanent basis on 20 June 1980. He worked for IMN for approximately 20 years. His workbook states 23 March 1999 as the last day of his employment at IMN. However, according to IMN's decision No. 185 of 24 August 2000 terminating his employment (see below, § 18), his last day of employment was 17 June 1999.

17. On or about 1 July 1999, the complainant's father went missing. Together with members of his family, the complainant then fled to Montenegro fearing for his safety. Later, the complainant's home was burned down and his father was found shot dead.
18. By its decision No. 185 of 24 August 2000, IMN terminated the complainant's employment for his failure to appear at work for a prolonged period without justification. The decision terminated the employment of 27 IMN employees, including the complainant. While some of the affected employees had provided justifications for their absence from work (which were rejected for various reasons), the complainant was among a group of employees who were presumed to be abroad and thus could not be contacted by IMN in relation to the termination proceedings. The decision also stated: "Taking into account the circumstances that prevailed in Kosovo, the IMN did not undertake any disciplinary hearings until one year after the war, but since the aforementioned employees did not show up at all, [they] basically did not declare themselves that they want to continue working, and the enterprise has to continue to function regularly, and thus they have to be replaced with new employees." The decision was posted on the notice board at the factory.
19. Upon the complainant's return to Kosovo in 2001, he visited IMN and requested that he be allowed to resume working. This request was rejected. The complainant formally requested to return to work in writing on 8 April 2002 and again on 12 March 2003. Both requests were rejected.
20. Thereafter, the complainant filed a claim before the Municipal Court of Gjakovë/Đakovica seeking reinstatement to his previous job with IMN. On 16 February 2004, the Municipal Court rejected his request, holding that the procedure leading to the complainant's termination was carried out in accordance with the law. According to the Court, the complainant had been absent from work as of 17 June 1999 through 24 August 2000 and had not justified his absence. Therefore, a disciplinary measure, the termination of his employment with the company, was imposed on him pursuant to Article 105 of the "Kosovo Law on Labor Relations". The complainant appealed this judgment but on 28 June 2006 the District Court of Pejë/Peć rejected his appeal, concurred with the reasoning of the first instance court and certified the lower court's judgment. The complainant then appealed to the Supreme Court of Kosovo. On 11 October 2007, the Supreme Court of Kosovo rejected his appeal and upheld the judgment of the District Court. The Supreme Court held that according to the law in force at the time, formal termination proceedings were not required for unauthorised lengthy absences from work.
21. In the meantime, IMN was privatised on 31 July 2006. On 10 April 2007, the KTA published the provisional list of IMN employees qualified for a share of the proceeds of the privatisation. The complainant was not included in that list.
22. On 19 April 2007, the complainant submitted a claim to the KTA, arguing that he should have been included in the provisional list based on Section 10.4 of UNMIK Regulation No. 2003/13 of 9 May 2003 on the Transformation of the Right of Use to Socially-Owned Immovable Property (hereafter UNMIK Regulation No. 2003/13), which lists the requirements for inclusion in the list. According to this provision:

“... an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-owned Enterprise at the time of the privatisation and is established to be in the payroll for not less than three years. This requirement shall not preclude employees, who claim that they would have been so registered and

employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6 [of the Regulation]”

23. In his complaint to the KTA, the complainant stated that his employment with IMN was terminated due to discrimination. He stated that in 1999 he was afraid to remain in Gjakovë/Đakovica. He noted that his house had been burned down and that after he returned to Kosovo in 2001, his house was rebuilt by an NGO. The complainant also stated: “I was a refugee in Montenegro and stayed in Kotor wherefrom I could not report to work after which the employer had expelled me from work.” He stated that he reported to work upon his return, but that IMN refused to reinstate him. He specifically stated: “I had tried to realise my rights through court procedure but without any success since they said that I had shown up at work too late. I feel like I am discriminated against since I belong to [the] Egyptian minority¹. My case is pending with the Supreme Court of Kosova”. The complainant attached to this complaint a copy of his workbook, a copy of the decision No. 185 of 24 August 2000, documents issued by the United Nations High Commissioner for Refugees proving his status as returnee from Montenegro and copies of the decisions thus far issued by the Municipal Court of Gjakovë/Đakovica and the District Court in Pejë/Peć concerning his case.
24. The Special Chamber’s file on the privatisation of “IMN” contains a document titled “Notes of Observation”, submitted by the KTA to the Special Chamber in July 2007 with respect to the complaint filed by the complainant against the KTA provisional list. Under the field “KTA Response” the document states “the KTA notes that according to his WB [workbook] the employment of the claimant was terminated on 23.03.1999 and his WB was closed on this date. After the war, the complainant did not return to his previous position, therefore his employment contract with the SOE was terminated as of 24.08.2000. No statement given in which the complainant sets out his claim in accordance with section 10.4 of the Regulation or from which the KTA can presume that the complainant suffered discrimination. The KTA considers that the complainant’s allegation does not correspond with requirements prescribed in the Article 10.4 of UNMIK Regulation no. 2003/13.”
25. On 25 September 2007, the KTA issued its response to the complainant that his claim to be included in the list should be dismissed. The letter stated that “based on the documentation that you have attached to the complaint, it was argued that you have worked and carried out your duties up until 23.03.1999. This was certified through the copy of your work booklet no. 28361 and through Decision No. 185, dated 24.08.2000. According to the testimony of the management, you have not shown up at work since 17.06.1999”. The letter further stated that the complainant did not provide any evidence that he had undertaken “any legal action against Decision No. 185” and that, for this reason, his name was not included in the list of eligible employees.
26. On 2 November 2007, the KTA published a final list of employees entitled to a share of the proceeds from IMN. The complainant was not on the list. Eight complaints, including one from the complainant, were filed with the Special Chamber against this list. On 22 January 2008, the Special Chamber issued its judgment SCEL-07-002, which found that all the complaints, including that of the complainant, were well grounded. According to the Special Chamber, the list had not been issued by a decision of the KTA Board of Directors, as required by Section 64.5 of UNMIK Administrative Direction No. 2006/17, and was therefore invalid.

¹ “Egyptian” in the context of this case refers to members of the Egyptian minority community in Kosovo.

27. On 26 March 2008, the KTA published another final list of employees entitled to a share of the proceeds from IMN. The complainant was not on the published list.
28. On 11 April 2008, the complainant again filed a petition with the Special Chamber of the Supreme Court of Kosovo against the final decision of KTA's Board of Directors. As in his previous submissions to the KTA, the complainant alleged that he had worked for the enterprise until the beginning of the NATO bombing and that, after the withdrawal of the Yugoslav forces, he left Kosovo due to security reasons. He also stated that he was a member of the Egyptian minority. Again, he submitted documents proving his status as a refugee in Montenegro. He stated that after a while he returned to Kosovo, but the management of the enterprise did not allow him to recommence working. The complainant also stated that ethnic Serbs who had failed to appear at work after 10 June 1999 for security reasons were still included in the final list of eligible employees. He complained that he was discriminated against in comparison to his ethnic Serbian colleagues and asked the Special Chamber to reverse the KTA's decision excluding him from the final list of eligible employees.
29. On 29 April 2008, the KTA filed with the Special Chamber its response to the complainant's claim. In that response the KTA stated that the employment of the complainant had been terminated "by 24.08.2000 that means long before the privatisation" and that, according to the KTA, there was no indication that the complainant had challenged the decision to terminate his employment or attempted to return to his previous position. The KTA also stated that there was no evidence that the complainant had suffered any discrimination within the meaning of Section 10.4 of UNMIK Regulation No. 2003/13 of 9 May 2003.
30. In his response to the KTA, dated 12 May 2008, the complainant identified himself as a refugee who had fled to Montenegro to escape persecution by some groups in Kosovo. In particular, he stated that his father, who had remained in Kosovo, was killed by unknown persons and that this could have happened to him if he had not left Kosovo. The complainant also stated that he was not invited to the disciplinary proceedings and that, when he returned from Montenegro and went to the enterprise, they did not allow him to resume work. He claimed that he was refused because he was a member of the Egyptian minority. The complainant did not indicate that he had filed a claim in the regular courts to be reinstated at work.
31. On 4 June 2008, the Special Chamber issued an order to the KTA to provide the decision of its Board of Directors "adjusting the list of eligible employees, who are entitled to receive 20% of incomes from the privatisation of the SOE IMN in Gjakova/Djakovica. The mentioned decision, in conformity with Section 10.2 of UNMIK Regulation No. 2003/13, shall contain a reasoned justification for the inclusion or exclusion of employees registered in the list and the acceptance of other challenges to the list".
32. On 5 June 2008, the KTA provided a response to the Special Chamber: "The attached resolution was presented to the Board of the KTA on 26 March 2008 and approved". Attached to the response is a document dated 25 January 2008, two days after the decision annulling the first list (see § 26), which states in its heading "AGENDA ITEM 5.F.1.B. – Employee 20% distribution – SOE "IMN" Gjakove". The document states that 34 complaints had been received against the provisional list, including 30 from Albanian employees and 4 from Serbian employees. Four complainants (3 Serbs and 1 Albanian) had been accepted to be included in the final list. No name of complainants is provided in the document, which also states: "the following documents are available for the Special Chamber's inspection: listing of names in provisional list and regional office review, copy

of provisional list, detailed analysis of claims re provisional list, draft final list”. There is no indication in the Special Chamber’s file that these documents were requested or inspected by the Special Chamber. Nor is there any indication of the discussion and decision-making of the KTA board with respect to this agenda item.

33. In a further submission to the Special Chamber, dated 10 June 2008, the KTA noted that many of the workers at IMN were of non-Albanian ethnicity, which included members of the Roma/Ashkali/Egyptian communities. Further, it stated that, “as evidence that there were no ethnic tensions after June 1999, a number of non-Albanians returned to work and are also published in the list of 227 names”. It therefore argued that although the complainant may have fled to Montenegro for a time, there did not appear to be reasonable grounds to presume discrimination [“based on facts so far known”]. The KTA also stated that the decision of the disciplinary committee, dated 24 August 2000, which terminated the working relationship of 27 persons, including the complainant and other persons, some of Albanian ethnicity, due to their absence from the workplace, appeared to be based on facts and was non-discriminatory. According to the KTA, this fact was contested only by the complainant and another former worker, at the time of the publication of the Provisional List.
34. On 17 June 2008, the Special Chamber issued its judgment SCEL-08-001, rejecting as ungrounded the complainant’s claim and declaring that the complainant did not qualify to be on the compensation list. The judgment states in relevant parts:

[The Special] Chamber complies with the legal standards provided in the Anti-Discrimination Law [Assembly of Kosovo Law No. 2004/3 promulgated by UNMIK Regulation No. 2004/32 of 20 August 2004]. The principle set out in Section 8 of the Anti-Discrimination Law is different from the requirements of documentary evidence as provided by Section 10.6(b) of [UNMIK] Regulation 2003/13.

The complainants claiming discrimination are required to submit facts from which it may be presumed that there has been direct or indirect discrimination, pursuant to Section 8.1 of the Anti-Discrimination Law. In addition, once the complainant presents a *prima facie* case of direct or indirect discrimination, the respondent is obliged to disprove discrimination.

All the complainants ... failed to submit facts from which it can be presumed that there has been direct or indirect discrimination. ...

...

[The complainant] worked with the SOE [IMN] from 1979 until June 1999. He confirmed that after June 1999 he stayed in Montenegro for a long time due to security concerns and after his return to Kosovo he tried to get employed but he was rejected on discrimination grounds.

The respondent objects to the complaint of the complainant reasoning that the employment of the complainant was [terminated by] decision no 185/00 dated 24.08.2000. He initiated no legal action against this decision to be reinstated to work.

...

The Special Chamber has reviewed all the evidence and agrees with the analysis of the Respondent [the KTA]. Thus, the Special Chamber rejects the complainant's request to be included in the list of eligible employees.

35. On 21 June 2008, the complainant filed an appeal against this judgment, relying on 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, which included the possibility to appeal Special Chamber judgments to a different panel of the Special Chamber. On 10 September 2008, the Special Chamber issued a second decision, rejecting the complainant's appeal. It found that UNMIK Regulation No. 2008/4 was subsequently amended by regulations postponing its coming into force until 31 October 2008. Therefore no appeal was possible against the judgment of 17 June 2008.

III. THE COMPLAINT

36. Insofar as the complaint has been declared admissible, the complainant complains that he was unduly excluded from the employees' list during the privatisation of IMN. He claims that during the KTA and Special Chamber proceedings he has been discriminated against due to his Egyptian ethnicity.

37. The complainant complains that, in accordance with relevant provisions of Section 10.4 of UNMIK Regulation No. 2003/13 and the Anti-Discrimination Law, he submitted a *prima facie* case of discrimination before the Special Chamber which, however, failed to properly address his claim in this respect. He also complains that the Special Chamber treated differently the discrimination claims presented by ethnic Serbs in similar factual circumstances to his own. He states that he was unable to continue to work in the company because of his Egyptian origin, which as a consequence eliminated him *de facto* from the privatisation process. Further, the complainant in essence claims that the Special Chamber ignored the indirect discrimination against persons belonging to ethnic minorities within the privatisation process.

38. The complainant finally states that, because of this situation, his property rights have also been violated.

39. The complainant, in substance, invokes a violation of Article 14 (prohibition of discrimination), read in conjunction with Article 6 (right to a fair trial) of the ECHR, Article 1 (right to peaceful enjoyment of possessions) of Protocol No. 1 to the ECHR, and Article 1 (general prohibition of discrimination) of Protocol No. 12 to the ECHR.

IV. THE LAW

A. Alleged violation of Article 14 in conjunction with Article 6 § 1 of the ECHR

1. The parties' submissions

40. The complainant complains that he has been discriminated in the proceedings before the KTA and the Special Chamber on two grounds.

41. First, the complainant states that he did establish facts to make a *prima facie* case of discrimination before the Special Chamber, as required by the law. He also submitted

relevant evidence to this effect, including a certificate proving his refugee status in Montenegro. Nonetheless, the Special Chamber stated in its judgment that the complainant had failed to submit facts from which it could be presumed that he had been a victim of direct or indirect discrimination. The complainant argues that in his case the Special Chamber failed to adhere to the provisions of the Anti-Discrimination Law concerning the burden of proof and, further, that it failed to address his claim that he would qualify to be included in the list of eligible employees had he not been a victim of discrimination in the meaning of Section 10.4 of UNMIK Regulation No. 2003/13. The complainant specifically states that in other cases of privatisation of socially-owned enterprises involving employees in the same factual situation as his own, the Special Chamber had recognised the right to the proceeds of privatisation of former employees belonging to the Serbian ethnic minority on account of the fact that they had left Kosovo in 1999 due to security concerns. With respect to the Special Chamber's finding that the complainant "had initiated no legal action" against the decision terminating his employment, the complainant states that this fact is not relevant and that in fact, in other privatisation cases, as mentioned above, the KTA and Special Chamber have recognised the rights of ethnic Serbs to a share of the proceeds of privatisation even though such persons did not contest the termination of their employment through court proceedings, having in mind the general security situation in Kosovo in the aftermath of the conflict. The complainant submits that the Special Chamber has held that "the payment of 20% share is not necessarily connected with the continuation of work after the end of the war in Kosovo".

42. The complainant argues that in the judgment concerning his case, the Special Chamber failed to clarify how his situation differed from that of Serbs and members of other minorities whose employment was terminated in the same circumstances as his and whose right to a share of the privatisation proceeds was nevertheless recognised. With regard to the privatisation of IMN, the complainant submits to the Panel the names of four former employees of Serbian ethnicity who, according to him, were in the same situation as himself and had not availed themselves of court proceedings but who, nonetheless, had been included by the KTA in the list. In this respect, he claims that his situation has been treated differently because of his Egyptian ethnic minority status.
43. Secondly, he submits that, when rejecting his claim to be included in the list of eligible employees, the Special Chamber failed to take into account his situation as a member of the Egyptian ethnic minority that had to leave Kosovo in June 1999 fearing for his security. The complainant states that, had he not been discriminated against due to his ethnicity, he would have been registered with the enterprise and thus eligible for a share of the proceeds.
44. In his comments on the merits of the complaint, the SRSG states that, as far as an alleged violation of Article 6 of the ECHR is concerned, the complainant "had, at all time, access to and made use of the legal remedies provided for him in the various stages of his claim" to receive a share of the proceeds of privatisation. He submitted his claim first to the KTA and then to the Special Chamber and was never denied access to these remedies. Further, the institutions dealing with his claims "always rendered a speedy response".
45. With respect to the complainant's allegations under Article 14, the SRSG argues that this provision of the Convention does not apply to the case. According to the SRSG, "only those equality issues that are related to a substantive provision in the Convention or one of its Protocols can be addressed in the context of Article 14. Due to its accessory nature, Article 14 specifically cannot be invoked in employment related matters. With regard to its application in connection with Article 6 of the ECHR, since there was no violation of

Article 6 in the instant matter, Article 14 is not applicable and therefore cannot be invoked by the complainant”.

46. As concerns the alleged violation of Article 1 of Protocol No. 12 to the ECHR, the SRSG states that this provision of the ECHR contains a general prohibition of discrimination. According to the SRSG, in his complaint under Protocol No. 12 the complainant alleges “discrimination stemming from the publication of the final list of eligible employees by the KTA and discrimination stemming from the judgment rendered by the SC and the other civil courts”. The SRSG states that all the judicial authorities involved in the matter have come to the conclusion that there was no discrimination; therefore, “and unless the assessment of the evidence relating to the alleged discrimination by such authorities is manifestly inaccurate, the judicial process is to be presumed as fair and accurate”.
47. The SRSG concludes that there was no violation of the provisions invoked by the complainants.

2. The Panel’s assessment

a) Submission of files

48. The Panel notes that UNMIK did not present to the Panel the KTA file concerning the privatisation of IMN, making available only documents in their possession. The Panel acquired the Special Chamber’s file on the case. The Panel will therefore assess the merits of the complaint on the basis of the documents that it has available to it.

b) Applicable domestic law

49. At the outset, the Panel notes that the complainant’s claim to be included in the list of employees eligible to receive a share of the proceedings from the privatisation of IMN was examined by the Special Chamber in the light of Section 10 of UNMIK Regulation No. 2003/13, as amended by UNMIK Regulation No. 2004/45 of 19 November 2004, which sets out the legal procedures for challenge to the employee lists as issued by the KTA.
50. Section 10.1 of the Regulation recognises the “special status” of employees of socially-owned enterprises and the impact that privatisation has on their status. According to this provision, 20% of the proceeds from the sale of shares of a privatised socially-owned enterprise are reserved for the employees of the company who meet certain conditions. An employee is considered eligible to a share if he/she is registered as an employee with the socially-owned enterprise at the time of the privatisation and is established to have been in the payroll of the enterprise for not less than three years (Section 10.4).
51. Section 10.2 and 10.3 of Regulation No. 2003/13 set out the procedure to be followed by the KTA when establishing a list of eligible employees. Taking into account the particular context in which privatisation is taking place in Kosovo, Section 10.2 of the Regulation provides that, initially, the employees list shall be formulated on a non-discriminatory basis by the representative body of employees in the enterprise concerned, in cooperation with the Federation of Independent Trade Unions of Kosovo and then transmitted to the KTA. The Board of the KTA shall review the list and make adjustments as necessary to ensure equitable access by all eligible employees to the funds to be distributed. The official list is then made public by the KTA, together with a notice informing any aggrieved party of their right to file a complaint against the list (Section 10.3).

52. While setting up the criteria which an employee must meet in order to be eligible for inclusion in the list, Section 10.4 of the Regulation states that failure to meet such criteria is not a bar to be included in the list once it can be proved that the employee would have been eligible for inclusion if she/he had not been subject to discrimination. Such employees can submit a complaint to the Special Chamber pursuant to Section 10.6.
53. Section 10.6 (b) of the Regulation concerns the evidence to be presented to the Special Chamber by former employees seeking to be included in the list: “Any complaint filed with the Special Chamber on the grounds of discrimination as reason for being excluded from the list of eligible employees has to be accompanied by documentary evidence of the alleged discrimination.”
54. In its judgment of 15 June 2006 the Special Chamber held that Section 10.6 (b) of Regulation 2003/13 had been superseded by Article 8.1 of the Anti-Discrimination Law (Law No. 2004/3), adopted by the Assembly of Kosovo on 19 February 2004 and promulgated by the SRSG on 20 August 2004 (UNMIK Regulation No. 2004/32 on the Promulgation of the Anti-Discrimination Law adopted by the Assembly of Kosovo).
55. The Anti-Discrimination Law was adopted in order to prevent discrimination and to promote and put into effect the principle of equal treatment of the citizens of Kosovo. Its relevant provisions read as follows:

Article 8

Burden of proof

“8.1. When persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

8.2. Paragraph 8.1 shall not prevent the introduction of rules of evidence, which are more favourable to plaintiffs. Further, a complainant may establish or defend their case of discrimination by any means, including on the basis of statistical evidence.”

Article 11

“11.1. When this law comes into effect it supersedes all previous applicable laws of this scope.

11.2. The provisions of the legislation introduced or into force for the protection of the principle of equal treatment are still valid and should be applied if they are more favourable than provisions in this Law.”

c) On the applicability of Article 14 in conjunction with Article 6 of the ECHR

56. The complainant alleges that proceedings before the Special Chamber have violated Article 14, taken in conjunction with Article 6 of the ECHR. Relevant parts of these provisions read:

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... national or social origin, association with a national minority ... or other status.”

Article 6

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

57. At the outset, the Panel rejects the SRSG’s objections that Article 14 would not apply to the present case based on the arguments that: Article 14, in his view, applies only in the case that a violation of a substantive provision of the Convention (in this case of Article 6) has been found; that Article 14 does not apply to employment-related cases.
58. In this regard, the Panel recalls that as early as 1968, in the *Belgian Linguistics Case*, the European Court of Human Rights constantly stated that while it is true that the guarantee of non-discrimination under Article 14 has no independent existence as it relates solely to rights and freedoms set forth in the Convention, there can still be a breach of Article 14 even when the substantive right referred to has not been violated, provided that the facts in issue fall within the ambit of one or more of the Convention’s provisions (see ECtHR, *Case “Relating to Certain Aspects of the Laws on the Use of Languages in Belgium” v. Belgium*, no. 1474/62 and others, judgment of 23 July 1968, § 9; see also ECtHR, *Van Raalte v. the Netherlands*, no. 20060/92, judgment of 21 February 1997, § 33; ECtHR, *Petrovic v. Austria*, no. 156/1996/775/976, judgment of March 1998, § 22; ECtHR, Grand Chamber [GC], *Stec and Others v. the United Kingdom*, no. 65731/01 and 65900/01, judgment of 12 April 2006, § 51; ECtHR, *Zarb Adami v. Malta*, no. 17209/02, judgment of 20 June 2006, § 42; ECtHR [GC], *Konstantin Markin v. Russia*, no. 30078/06, judgment of 22 March 2012, § 124; ECtHR [GC], *Fabris v. France*, no. 16574/08, judgment of 7 February 2013, § 47).
59. Further, the European Court has affirmed the applicability of Article 14 to employment cases (see, for example, ECtHR, *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, judgment of 27 July 2004) including in instances of indirect discrimination, where there is no requirement to prove a discriminatory intent (see ECtHR [GC], *D.H. and Others v. Czech Republic*, no. 57325/00, judgment of 13 November 2007, § 194; and ECtHR, *Horváth and Kiss v. Hungary*, no. 11146/11, judgment of 29 January 2013 § 106).
60. The Panel notes that in the present case the complainant alleges that he was discriminated against during the privatisation proceedings before the KTA and the Special Chamber. Such proceedings constitute a determination of the complainant’s civil rights and obligations and thus bring the subject matter of the complaint within the scope of Article 6 of the ECHR. In the Panel’s view, this is sufficient to make Article 14 applicable.

d) Merits of the complaint

General principles

61. In response to the complainant’s allegations relating to discrimination on the basis of ethnic origin, the Panel will examine the compatibility of the Special Chamber proceedings with Article 14 of the ECHR in conjunction with Article 6.

62. At the outset, the Panel recalls the case-law of the European Court of Human Rights on Article 6 stating that, generally, “its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention” (see ECtHR, *Garcia-Ruiz v. Spain*, no. 30544/96, judgment of 21 January 1999, § 28). The Panel notes that in this case the allegation is that the decision of the Special Chamber did infringe the complainant’s right not to be discriminated against on the ground of his ethnic origin.
63. On Article 14 of the ECHR, the Panel refers to the case-law of the European Court that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see ECtHR, *Willis v. the United Kingdom*, no. 36042/97, judgment of 11 June 2002, § 48, and *Okpiz v. Germany*, no. 59140/00, judgment of 25 October 2005, § 33). However, the Court has also stated that Article 14 does not prohibit a member State from treating groups differently in order to correct “factual inequalities” between them; indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article (see ECtHR [GC], *Thlimmenos v. Greece*, no. 34369/97, § 44, ECHR 2000-IV).
64. The Court has further explained the concept of indirect discrimination “that a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory notwithstanding that it is not specifically aimed at that group and that “discrimination potentially contrary to the Convention may result from a *de facto* situation” (see, ECtHR [GC], *D.H. and Others v. Czech Republic*, cited in § 59 above, § 175 and cases cited therein).
65. Specifically on discrimination on the account of a person’s ethnic origin, the Court has stated that this is a form of racial discrimination, which is a “particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction” and “that no difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures” (see ECtHR, *Horváth and Kiss v. Hungary*, cited in § 59 above, § 101).
66. As to the burden of proof in cases where discrimination has been alleged, the Court has established that “once the applicant has shown a difference in treatment it is for the Government to show that it was justified” (see ECtHR [GC], *D.H. and Others v. Czech Republic*, cited above, §§ 176-177; see also ECtHR [GC], *Oršuš and Others v. Croatia*, no. 15766/03, judgment of 16 March 2010, § 150).

Alleged discrimination

67. In the present case, the complainant claims that his right to be free from discrimination was violated because in other instances the Special Chamber decided in favour of claimants, Serbs and members of other minorities, who, like the complainant, had had their labour relations terminated because they left Kosovo in 1999-2000 due to the security situation. The complainant states that in those cases, the Special Chamber accepted their claims to be included in the list of eligible employees and that it so decided even when they (unlike himself) had not initiated any court proceedings. The complainant

also expressly states that the Special Chamber has not clarified the reasons for his complaint being adjudicated differently. He claims that he has been discriminated due to his Egyptian ethnicity.

68. As regards the complainant's claim that he did establish facts before the Special Chamber to make a *prima facie* case of discrimination, the Panel first notes that the subject matter of the complainant's claim before the Special Chamber was that he was entitled to a share of the proceedings of the privatisation of IMN in accordance with Section 10.4 of UNMIK Regulation No. 2003/13: as a former employee, he could not be registered with the enterprise when the privatisation process began because his employment had been terminated in a discriminatory manner in 1999-2000. The Panel notes that, in support of his allegation the complainant submitted facts as well as documentary evidence to the KTA and the Special Chamber that – he had worked at IMN for approximately 20 years until March-June 1999; that, when hostilities broke out in Kosovo in 1999, fearing persecution due to his Egyptian ethnicity, he fled as a refugee to Montenegro and thus could no longer work for the enterprise; that, for this reason his employment with IMN was terminated; that, after a certain time, he had attempted to resume working at IMN, without success. The Panel also notes that, during the privatisation proceedings, the complainant had also informed the KTA that he had challenged in court the termination of his employment and that he forwarded the decisions adopted by the Court thus far in that respect. The Panel further notes that the complainant's complete file had been made available by the KTA for inspection by the Special Chamber.
69. In its judgment SCEL-08-001, the Special Chamber rejected the complainant's claim stating that, in general, he had "failed to submit facts from which it can be presumed that there has been direct or indirect discrimination". The Panel notes that notwithstanding the weight of the complainant's submissions, the Special Chamber judgment did not specify the reasons why the facts indicated by the complainants were considered insufficient to make a *prima facie* case of discrimination or how the evidence presented by the complainant had been evaluated. The judgment further states succinctly that the Special Chamber agreed with the "analysis of the KTA" that the complainant's employment was terminated "on decision no. 185/00 date 24.08.2000" and that "he initiated no legal proceedings against this decision to be reinstated at work"; however it does not clarify how this information on the judicial proceedings challenging the termination of the complainant's employment was considered relevant in the context of the discrimination claim put forward by the complainant.
70. As concerns the complainant's claim that he was discriminated against, when considering the Special Chamber's case-law granting inclusion in the list of eligible employees to Serbian employees in similar situation as his, the complainant does not provide the Panel with concrete examples in support of his allegation that the Special Chamber adopted conflicting judgments in other privatisation cases. However, the Panel observes the different stand adopted by the Special Chamber in other privatisation cases, from June 2004 onwards, with respect to the claim of former employees that they would have been eligible for inclusion in the list had they not been subject to discrimination. The Panel notes, for instance, the Special Chamber judgment on the privatisation of "*Termosistem*" dated 9 June 2004, in which a group of 25 Serbian former employees, whose names had been struck from the register of employees due to their failure to report for duty in early 2000, claimed nonetheless their right to a share in the proceeds of privatisation. In that case, the Special Chamber, having considered the applicant's allegations that the security situation in Kosovo had prevented them from presenting for work "from early 2000 onwards" and that they had been de-registered in a "in an arbitrary and discriminatory manner", held that it was a "matter of common knowledge", as such not requiring further

proof, that after the NATO bombings in 1999 Serbs and members of other ethnic minorities had to leave their homes and workplaces due to fears of reprisals. The Special Chamber further held that in such situation, the complainants' failure to report for work "from early 2000 onwards was not in any way attributable to a desire on their part to be voluntarily absent from work, but was due to the security concerns in which they found themselves" and that they could not "have been expected to comply with the warning notice of the enterprises informing them that their absence from work for more than five days would result in their being struck off the register of employees". The Special Chamber therefore rejected the respondent's submission that the applicants had been dismissed as a result of disciplinary proceedings and found instead that their dismissal had been "irregular" and "conducted in a manner that was inherently unfair and discriminatory". The Special Chamber eventually recognised the right of those employees to a share of the proceeds.

71. Similarly, in its judgment SCEL-05-0002 dated 17 January 2006, concerning the privatisation of the enterprise "*Progres*", the Special Chamber held that those employees living north of the river Ibar who, due to security concerns, could not cross to the other side of the river where the enterprise was located, had been "discriminated against regarding their opportunity to continue their employment" with the enterprise. Among many other decisions, the Special Chamber judgment SCEL-09-0012, issued on 8 September 2010, shows that the same approach was also adopted by the Special Chamber after its decision in the complainant's case.
72. While agreeing with the complainant that the rejection of his claim to be included in the list of eligible employees was contrary to the consistent case-law of the Special Chamber in analogous cases, the Panel will assess whether this situation amounts to a violation of Article 14 of the ECHR in conjunction with Article 6. In this regard, the Panel recalls the jurisprudence of the European Court of Human Rights that, as a general principle, "the requirement of judicial certainty and the protection of legitimate expectations do not involve the right to an established jurisprudence" (see ECtHR, *Unédic v. France*, no. 20153/04, judgment of 18 December 2008, § 74; and ECtHR, *Atanasovski v. the Former Yugoslav Republic of Macedonia*, no. 36815/03, judgment of 14 January 2010, § 38).
73. The Court has also held that the existence of divergences, even within the same court cannot be considered of itself contrary to the Convention (see, ECtHR, *Santos Pinto v. Portugal*, no. 39005/04, judgment of 20 May 2008, § 41); nevertheless, there may be cases where divergences in case-law lead to finding a violation of Article 6. In particular, the Court has stated that when – as in the instant case – the divergent decisions are pronounced by a single domestic Supreme Court, or by various courts in the same branch of the legal system ruling in the last instance, the persistence of conflicting judgments can create a state of legal uncertainty likely to reduce the public confidence in the justice system (see ECtHR, *Beian v. Romania (No. 1)*, no. 30658/05, judgment of 6 December 2007, §§ 38-39). In order to determine whether such uncertainty exists case by case, the Court has considered whether "profound and long-standing differences" exist in the case-law of a supreme court, whether the domestic law provides for machinery for overcoming these inconsistencies, whether that machinery has been applied and, if appropriate, to what effect" (see, ECtHR [GC], *Nejdet Şahin and Perihan Şahin v. Turkey*, no. 13279/05, judgment of 20 October 2011, § 53). Additionally, the Court has taken into account whether the inconsistency is an isolated case or affects large numbers of people (see ECtHR, *Albu and Others v. Romania*, nos. 34796/09 and others, judgment of 10 May 2012; and ECtHR, *Tudor Tudor v. Bulgaria*, no. 21911/03, judgment of 24 March 2009). Further, with respect to jurisprudential inconsistencies within the Supreme Court, the European Court has stated it is the duty of courts ruling in last instance to provide a more

substantial reasoning when deciding contrary to an established judicial practice (see ECtHR, *Atanasovski v. the Former Yugoslav Republic of Macedonia*, cited above, § 38).

74. Turning to the circumstances of the present case, the Panel notes that the Special Chamber was established within the Supreme Court of Kosovo as the only body mandated to decide on the claims of employees in first and last instance, as no appeal was possible from its decisions, at least until the end of 2008 (see Human Rights Advisory Panel (HRAP), *Todorović*, no. 33/08, decision of 17 April 2009, §§ 34-36). The Panel also notes that the divergences in the Special Chamber's case-law were profound and long-standing as described above, while no other mechanism or procedure had been envisaged in the legal framework in order to overcome such divergences. These divergences were such as to potentially affect a large number of people in the context of privatisation of socially-owned enterprises in Kosovo and therefore compromise the principle of legal certainty with respect to this process. The Panel considers that this lack of certainty with regard to the case-law had the effect of depriving the complainant of the possibility of obtaining a share of the privatisation proceeds of IMN, while other persons in a similar situation were awarded this right (compare with ECtHR, *Beian v. Romania (No. 1)*, cited above, § 40). The Panel further notes that the Special Chamber did not provide a satisfactory explanation as to why his case had been decided differently to the case of other members of national minorities in his same factual situation.
75. With respect to the complainant's claim that he has been discriminated against *vis-à-vis* his former Serbian colleagues at IMN, the Panel notes that this submission was presented only to the Panel and not to the Special Chamber, which therefore did not consider it. Further, due to lack of access to the relevant KTA documents, the Panel was not able to verify whether within the process of privatisation of IMN, former employees in the same situation as the complainant were treated more favourably than him, as alleged by the complainant.
76. The Panel notes that a distinct issue under Article 14 of the ECHR, taken in conjunction with Article 6 of the ECHR, arises from the complainant's allegation that, in his specific case, the Special Chamber completely ignored the existence of an indirect discrimination towards him as a member of the Egyptian minority. As noted by the Special Chamber in the cases mentioned above, this was a "matter of common knowledge" as such not requiring further proof (see § 70 above). The complainant also argues that he had to leave Kosovo and was unable to return to the enterprise and to continue to perform his working activities because of his ethnicity. Had the security situation allowed persons of minority ethnic communities to stay in the territory, he would have remained on the payroll of the enterprise, and thus would be fully entitled to a share of the proceeds deriving from its privatisation. As a result of his inability to return to work, he was eliminated from the privatisation process. Therefore, in the Panel's view, to require a more detailed showing of discrimination, based on concrete circumstances, would place an unjustified burden on a great number of members of minority communities.
77. As indicated above, the SRSG submits that in the proceedings before the Special Chamber, the complainant failed to substantiate with relevant evidence that he was discriminated against. The SRSG therefore concludes that the Special Chamber rendered a judgment based on a proper examination of the evidence before it and that the complainant's failure to provide relevant evidence in his possession cannot result in a violation of Article 14 of the ECHR read in combination with Article 6 of the ECHR or Article 1 of Protocol No. 12 to the ECHR. Based on the above, UNMIK argues that also this part of the complaint is manifestly ill-founded.

78. The Panel considers that the complainant in substance complains about the failure by the Special Chamber to correct an existing inequality of which the complainant and other employees in his same situation were the victims.
79. While referring to the relevant case-law of the European Court on Article 14, the Panel has already held that “a generally applicable rule, although apparently neutral, may have the effect of treating people differently, *e.g.* on the ground of their ethnic origin. Where a group of persons is, because of its ethnic origin, in a vulnerable position compared to persons of another origin, the competent authorities are obliged to give special consideration to the specific needs of that particular group. This special consideration is required both in the relevant regulatory framework and in the decisions in particular cases” (see, with respect to the situation of the Roma in a number of Central and Eastern European countries, ECtHR [GC], *D.H. and Others v. Czech Republic*, cited in § 59 above, § 181; ECtHR [GC], *Oršuš v. Croatia*, cited in § 64 above, § 148; see also HRAP, *Parlić*, no. 01/07, opinion of 18 June 2010, § 57).
80. The Panel notes the situation of vulnerability in which displaced minorities found themselves in Kosovo in the aftermath of the conflict, and in particular, the further vulnerability of those individuals, like the complainant, belonging to the non-Serbian minorities. In accordance with the Panel’s earlier expressed view in *Parlić*, their situation required the adoption of positive protection measures by the authorities to give special consideration to ensure their fundamental rights, including within the process of privatisation of the Kosovo socially-owned enterprises (see HRAP, *Parlić*, cited above, § 55).
81. The Panel notes that at the legal framework level, Section 10.4 of UNMIK Regulation No. 2003/13 as complemented by the provisions of the Anti-Discrimination Law on the burden of proof provided adequate protection insofar as it provided the right of former employees who had been victim of direct or indirect discrimination to a share of the privatisation proceeds. However, the Panel considers that the Special Chamber applied those provisions in the present case without taking into consideration the particular situation of the complainant as a member of an ethnic minority, whose persecution in the aftermath of the conflict was a matter of common knowledge.

Burden of proof

82. The Panel notes with appreciation that UNMIK Regulation No. 2003/13 and the Kosovo Anti-Discrimination Law were adopted not only to prevent discrimination but also to ensure that court proceedings would make legal guarantees of non-discrimination effective. Accordingly, Article 8.1 of the Law states that when the person alleging discrimination establishes facts from which discrimination may be presumed, it is for the respondent to disprove discrimination.
83. The Panel notes that, in support of his allegation, the complainant submitted facts as well as documentary evidence to the KTA and the Special Chamber that he had worked at IMN for approximately 20 years until March-June 1999; that, when hostilities broke out in Kosovo in 1999, fearing persecution due to his ethnicity, he fled as a refugee to Montenegro and thus could no longer work for the enterprise; that, for this reason his employment with IMN was terminated; that, after a certain time, he had attempted to resume working at IMN, without success.
84. In light of these submissions, the Panel considers that the complainant had stated sufficient facts to make a *prima facie* case of indirect discrimination before the Special

Chamber which, according to the law, triggered the obligation for the KTA as the respondent to prove that the complainant had not, in fact, been the victim of a discriminatory treatment. Nevertheless, the Special Chamber failed to give effect to this provision; it asserted that no such facts had been submitted and thus did not require the KTA to rebut the complainant's allegations of discrimination. Nor did the Special Chamber give any reason for this.

85. In summary, the Panel considers that the Special Chamber acted in a discriminatory fashion through diverging from its previous case-law; through its failure to take into account the indirect discrimination experienced by the complainant; and its failure to reverse the burden of proof as required by Article 8 of the Anti-Discrimination Law.
86. Having considered all the above, the Panel notes that the complainant has presented to it sufficient facts to establish that the Special Chamber treated him differently from others in an analogous situation. The Panel considers that this constitute a *prima facie* case of discrimination which the SRSB has not rebutted.
87. The Panel therefore concludes that there has been a violation of Article 14, taken in conjunction with Article 6 of the ECHR.

B. Alleged Violation of Article 1 of Protocol No. 1 to the ECHR

88. The complainant also complains that, as a consequence of the fact that proceedings before the Special Chamber were not fair and not conducted in a non-discriminatory way, he was deprived of material entitlements deriving from the privatisation process. In this respect he invokes a violation of his property rights guaranteed by Article 1 of Protocol No. 1 to the ECHR.
89. The Panel, without answering the question whether in this case the complainant's claim to share the proceeds of the privatisation of IMN constitutes "possessions" within the meaning of Article 1 of Protocol No. 1, considers that this part of the complaint would to a large extent coincide with its examination under Article 14 of the ECHR in conjunction with Article 6 § 1.
90. Consequently, the Panel does not consider it necessary to examine the complaint also from the point of view of Article 1 of Protocol No. 1 to the ECHR (compare with HRAP, *Parlić*, cited in 79 above, §§ 47-49).

C. Alleged Violation of Article 1 of Protocol No. 12 to the ECHR

91. In its admissibility decision, the Panel noted that the complaint may also raise issues under Article 1 of Protocol No. 12 to the ECHR. The Panel recognises the importance of this Protocol in addressing inequalities, however, it considers that no separate issues, in addition to those addressed above, arise under this provision and that it is not therefore necessary to further consider the complaint under this provision.

V. CONCLUDING COMMENTS AND RECOMMENDATIONS

92. The Panel recalls that it has found that the complainant was discriminated against on the basis of his ethnicity in the proceedings before the Special Chamber.

93. The Panel also recalls that racial discrimination and discrimination on the basis of ethnic origin constitute a particularly invidious kind of discrimination which, in view of its consequences, requires from the authorities a “vigorous reaction” whenever an instance of discrimination has been identified (see § 65 above).
94. The Panel notes that in the present case, it would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, the Panel has already noted in other cases brought before it (see, among many others, HRAP, *S.C.*, no. 02/09, opinion of 6 December 2012; and *Lalić*, no. 31/08, opinion of 14 March 2013) that, following the declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, these facts limiting its ability to provide full and effective reparation of the violation committed. The Panel has also noted that 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 operational control in the rule of law area.
95. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.

With respect to the complainant and the case the Panel considers it appropriate that UNMIK:

- In line with the case law of the European Court of Human Rights on situations of reduced State jurisdiction, the Panel is of the opinion that UNMIK must endeavour, with all the diplomatic means available to it *vis-à-vis* EULEX and other competent authorities in Kosovo to ensure that the complainant’s claim to a share of the proceeds of the privatisation of IMN is made subject to review by the Special Chamber, if the complainant so wishes (see ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, § 333, ECHR 2004-VII; ECtHR, *Al-Saadoon and Mufdhi v. the United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171, ECHR 2010 (extracts); ECtHR [GC], *Catan and Others v. Republic of Moldova and Russia*, nos. 43370/04 and others, judgment of 19 October 2012, § 109; see also HRAP, *Milogorić and Others* cited in § 34 above, at § 49).
- Publicly acknowledges, within a reasonable time, responsibility with respect to the Special Chamber’s failure to adjudicate the complainant’s claim on a non-discriminatory basis, and makes a public apology to the complainant in this regard;
- Takes appropriate steps towards payment of adequate compensation to the complainant for the non-pecuniary damage suffered as a result of his being discriminated against in the proceedings before the Special Chamber.

The Panel also considers it appropriate that UNMIK:

- Takes appropriate steps with respect to the competent authorities in Kosovo to ensure the full implementation of the Kosovo Anti-Discrimination Law as a guarantee of non-repetition.

FOR THESE REASONS,

The Panel, unanimously,

- 1. FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLE 14 OF THE ECHR IN CONJUNCTION WITH ARTICLE 6 OF THE ECHR;**
- 2. FINDS NO NEED TO EXAMINE THE COMPLAINT UNDER ARTICLE 1 OF PROTOCOL NO. 1 TO THE ECHR;**
- 3. FINDS NO NEED TO EXAMINE THE COMPLAINT UNDER ARTICLE 1 OF PROTOCOL NO. 12 TO THE ECHR;**
- 4. RECOMMENDS THAT UNMIK:**
 - a. URGES EULEX AND OTHER COMPETENT AUTHORITIES IN KOSOVO TOWARDS A REVIEW BY THE SPECIAL CHAMBER OF THE COMPLAINANT'S CLAIM TO A SHARE OF THE PROCEEDS OF THE PRIVATISATION OF IMN, IF THE COMPLAINANT SO WISHES;**
 - b. MAKES A PUBLIC APOLOGY TO THE COMPLAINANT FOR THE SPECIAL CHAMBER'S FAILURE TO ADJUDICATE HIS CLAIM ON A NON-DISCRIMINATORY BASIS;**
 - c. TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION TO THE COMPLAINANT FOR THE NON-PECUNIARY DAMAGE SUFFERED AS A RESULT OF DISCRIMINATION;**
 - d. LIAISE WITH COMPETENT AUTHORITIES IN KOSOVO TO ENSURE THE FULL IMPLEMENTATION OF THE KOSOVO ANTI-DISCRIMINATION LAW AS A GUARANTEE OF NON-REPETITION;**
 - e. TAKES IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATION OF THE PANEL AND INFORM THE COMPLAINANT AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

Andrey Antonov
Executive Officer

Marek Nowicki
Presiding Member