

25 July 2011

Claim for Compensation on behalf of Roma, Ashkali and Egyptian residents of Internally Displaced Person ("IDP") camps in Mitrovica, Kosovo

Dear Madam,

I refer to previous correspondence to this Office and to the Special Representative of the Secretary-General, UNMIK, in respect of the above-mentioned claim. I regret the delay in responding to you.

In your letters, you assert certain claims against the United Nations for damage to health suffered by your clients as a result of lead contamination in certain Internally Displaced Person (IDP) camps in Mitrovica, Kosovo. With respect to these claims, it is asserted that your clients are entitled to compensation and other remedies pursuant to General Assembly resolution A/RES/52/247.

The existing legal framework for the Organization to receive claims is set forth in Section 29 of the 1946 Convention on the Privileges and Immunities of the United Nations (the "General Convention"). Section 29 of the General Convention provides that the Organization shall make provisions for appropriate modes of settlement in disputes either arising out of contract or disputes of a private law character to which the United Nations is a party. General Assembly Resolution A/RES/52/247 sets forth parameters regarding third-party liability and compensation in disputes of a private law character.

As you are aware, the IDP camps came into existence as a result of a major population displacement during the Kosovo conflict in 1999 and are located in the proximity of long-established residential areas in Northern Mitrovica. As noted in your previous communications, the Mitrovica region has a long history of major industrial pollution, including lead contamination from the Trepca mine.

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While the UN acknowledges the concerns raised by your clients, after having carefully reviewed and considered the claims advanced in your letters, we note that the claims asserted involve alleged widespread health and environmental risks arising in the context of the precarious security situation in Kosovo. The claims do not constitute claims of a private law character and, in essence, amount to a review of the performance of UNMIK's mandate as the interim administration in Kosovo. Based on the framework established by the Member States, therefore, the claims are not receivable under Section 29 of the General Convention or General Assembly Resolution A/RES/52/247. Accordingly, we are not in a position to accede to your request to receive these claims.

Notwithstanding the above, we would note that, while having no legal obligation to do so, UNMIK has taken substantial steps to improve the condition of the IDP population. Notably, in 2000, when the Trepca mine unilaterally resumed operation, UNMIK closed the smelter down. Moreover, since 2000, UNMIK and the international community, in consultation with IDP representatives, as well as representatives of the local structures in Kosovo have expended considerable resources in the protection and assistance of the IDP population, including the relocation of camp residents to Osterode camp and to newly constructed housing in the Roma Mahalla.

Nothing in this communication shall be deemed a waiver, express or implied, of the privileges and immunities of the United Nations, including its subsidiary organs, which are hereby expressly reserved.

Sincerely,

  
Patricia O'Brien  
Under-Secretary-General for Legal Affairs  
The Legal Counsel