



DECISION

Date of adoption: 18 June 2010

Case No. 43/10

Hashim RUSINOVCI

against

UNMIK

The Human Rights Advisory Panel sitting on 18 June 2010,
with the following members present:

Mr. Marek NOWICKI, Presiding Member
Mr. Paul LEMMENS
Ms. Christine CHINKIN

Assisted by

Mr. Rajesh TALWAR, 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 31 March 2010 and registered on the same day.

2. The Panel communicated the complaint to the Special Representative of the Secretary-General (SRSG) on 26 April 2010, with a view to obtaining UNMIK's comments on both the admissibility of the complaint.
3. The SRSG commented on 11 May 2010.
4. The Panel invited the complainant on 28 May 2010 to submit his comments before 14 June 2010. The complainant did not avail himself of this possibility.

II. THE FACTS

5. The complainant is an UNMIK security guard since 2000.
6. Within the framework of further downsizing UNMIK, it was announced on 15 December 2009 that 12 posts of security guard would be abolished on 1 July 2010. The security guards currently employed by UNMIK would be screened by a "comparative review panel" (hereafter: CRP), composed of three local staff members, one appointed by the Local Staff Union, one by the Chief of Staff and one by the Chief of Mission Support/Chief Security Advisor. The CRP would determine the staff members whose contracts would not be renewed after 30 June 2010.
7. According to the complainant, he received notice from the UNMIK Chief of Mission Support on 29 March 2010 that his contract would not be renewed.
8. The complainant discussed the matter with the UNMIK Chief of Staff on 30 March 2010. According to the complainant, the Chief of Staff promised that his case would be reviewed again. The Panel is not aware of any further developments.

III. COMPLAINT

9. The complainant alleges that the decision not to renew his contract has been taken by the CRP, security section, which held two meetings with candidates initially not retained, to which the complainant has not been invited. He also complains about being dismissed without ever having received a negative evaluation of his performance.
10. The Panel considers that the complainant may be deemed to invoke violations relating to his right to work.

IV. THE LAW

11. Before considering the case on its merits the Panel has to decide whether to accept the case, taking into consideration 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.

12. In his comments, the SRSG argues that the complaint should be declared inadmissible for lack of jurisdiction of the Panel. The SRSG argues, alternatively, that the complaint should be declared inadmissible because of lack of exhaustion of all available avenues for review.

A. Jurisdiction of the Panel

13. The SRSG argues that the Panel was established as an advisory body in order to examine alleged violations of human rights attributable to UNMIK in its role of an interim administration in Kosovo under Security Council Resolution 1244 (1999). By contrast, complaints relating to internal employment disputes and contractual issues within UNMIK cannot be subject to an examination by the Panel.
14. The Panel's jurisdiction is described in Section 1.2 of UNMIK Regulation No. 2006/12. According to that provision the Panel "shall examine complaints from any person or group of persons claiming to be the victim of a violation by UNMIK of the human rights ...".
15. UNMIK Regulation No. 2006/12 nowhere makes an express distinction between UNMIK's role as an interim administration and its responsibilities as an employer or a party to a contract. The Panel sees no reason to make such distinction. UNMIK is bound by human rights principles both as an interim administration and as an employer or a party to a contract. Moreover, there is nothing about the Panel's advisory role that would make it unfit to give an opinion on the human rights aspects of an employment or contractual dispute.
16. The Panel therefore dismisses the objection based on its lack of jurisdiction, as that objection is raised by the SRSG.

B. Exhaustion of available remedies

17. The SRSG further argues that not all available avenues for review of the alleged human rights violation have been pursued by the complainant. Under the system of "Administration of Justice" as set out in General Assembly Resolution A/RES/63/253 of 24 December 2008 and the UN rules and procedures regarding complaints submitted by UN staff members in connection with employment-related disputes between UN staff and the Organisation, an aggrieved staff member can contest an administrative decision through a formal mechanism. Before addressing the contested matter through such litigation, he or she can address the issue informally through negotiation and mediation mechanisms and other alternative means. The UN Office of the Ombudsman also provides confidential and impartial assistance. In the present case it appears from the statements made by the complainant in his submission to the Panel that he is currently trying to solve the dispute through informal channels by requesting the UNMIK Department of Mission Support to review the recommendation made by the CRP. He also can bring the matter to the UN formal system of justice.

18. Section 3.1 of UNMIK Regulation No. 2006/12 provides that the Panel may only deal with a matter after it determines that all other available avenues for review of the alleged violations have been pursued.
19. The Panel notes that Resolution 63/253 of the General Assembly of 24 December 2008 on the “Administration of justice at the United Nations” provides for a formal dispute resolution system concerning employment related matters. According to the Statute of the United Nations Dispute Tribunal (annex I to the resolution), an employee can appeal an administrative decision that is alleged to be in non-compliance with any pertinent regulation or rule or any relevant administrative issuance. An appeal against a judgment rendered by the United Nations Dispute Tribunal lies open with the United Nations Appeals Tribunal (annex II to the resolution).
20. The Panel considers that, regardless of any informal system of dispute resolution, the UN formal system constitutes an avenue that is available to the complainant. The complainant has not made use of this system.
21. It follows that the complaint must be rejected for non-exhaustion of available remedies, in accordance with Section 3.1 of UNMIK Regulation No. 2006/12.
22. The Panel finds it useful to note that the question whether it would have jurisdiction after the dispute between an employee and UNMIK has been resolved by the United Nations Dispute Tribunal and, on further appeal, the United Nations Appeals Tribunal, does not arise in the present case.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member