DECISION

Date of adoption: 11 April 2008

Case No. 01/07

Radovan PARLIC

against

UNMIK

The Human Rights Advisory Panel sitting on 11 April 2008
with the following members present:
Mr. Marek NOWICKI, Presiding member
Mr. Paul LEMMENS

Mr. John RYAN, 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. THE FACTS

1. The complainant was employed by a socially owned enterprise, "Tefik Canga" from Ferizaj/Urosevac from 1991. He was forced to leave Kosovo in 1999 and since then, has been living as an internally displaced person (IDP). He claims that his employment workbook shows no end date to his employment with the company. When the company was privatized on 5 November 2005, he was excluded from the list that was published by the Kosovo Trust Agency (KTA) on 19, 20, 22 and 23 October 2005 naming the employees who were deemed eligible to receive a share of the proceeds from the privatisation of the company.

2. The complainant appealed the decision of the KTA to the Special Chamber of the Supreme Court of Kosovo (Special Chamber) submitting only his contract of employment and a copy of his health booklet as evidence of his employment. He claims that the Special Chamber gave him an unrealistic time limit to produce the workbook and the original of his health booklet, given he was summoned on 26 April 2006 to attend a hearing on 2 May 2006. He claims that he was unable to

come back to Kosovo to retrieve the workbook, due to the lack of security and freedom of movement for Serbian IDPs in Kosovo at that time.

3. In a judgment dated 15 June 2006, the Special Chamber rejected his complaint against the KTA as ungrounded on the basis that he did not submit evidence regarding the date of his employment, he failed to submit a statement regarding the discrimination that he complains of, and did not respond to the summons of the court.

II. COMPLAINTS

4. The complainant claims that the unfavourable decisions of the KTA and Special Chamber in his case did not take into account all the evidence and the circumstances of the complainant as an IDP without freedom of movement and were therefore discriminatory.

5. According to the complainant, this constitutes a violation of his right to peaceful enjoyment of possessions under Article 1 Protocol 1 of the European Convention on Human Rights (ECHR), and his right to be free of discrimination in the enjoyment of that right under Article 14 of the ECHR. He also alleges a violation of his right to a fair trial under Article 6 paragraph 1 of the ECHR.

III. PROCEEDINGS BEFORE THE PANEL

6. The complaint was introduced on 22 February 2007 and registered on the same date.

7. The Panel communicated the case to the SRSG on 19 March 2008 giving him the opportunity to provide comments on behalf of UNMIK on the admissibility and merits pursuant to Section 11.3 of UNMIK Regulation No. 2006/12 and Rule 30 of the Panel's Rules of Procedure. The SRSG did not avail himself of this opportunity.

IV. THE LAW

8. 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.

9. The Panel considers that the complaints under Article 1 Protocol 1, Article 14 in conjunction with Article 1 Protocol 1, and Article 6, raise issues of law and of fact the determination of which should depend on an examination of the merits of the complaint. The Panel concludes therefore that the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12. The Panel does not see any other grounds for declaring it inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

John RYAN   Marek NOWICKI
Executive Officer   Presiding member