



The Human Rights Advisory Panel

UNMIK HQ, East Wing, 10000 Pristina, Kosovo

DECISION

Date of adoption: 19 September 2008

Case No. 02/06

BOTA SOT

against

UNMIK

The Human Rights Advisory Panel sitting on 19 September 2008,
with the following members present:

Mr. Marek NOWICKI, Presiding Member
Mr. Paul LEMMENS

Mr. John J. 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 a company publishing a national newspaper, "Bota Sot".
2. The newspaper covered the 2004 Kosovo Electoral Campaign between 22 September 2004 and 23 October 2004. After the campaign, the Office of the Temporary Media Commissioner found, among other things, that the complainant had devoted 76.5 % of its election-related coverage to the political party LDK and 8 % to the LDK's ally, PShDK. By contrast, only 2 % was devoted to LDK's closest rival, PDK.

After a formal complaint by the Office of the Temporary Media Commissioner, delivered on 28 February 2005, and a hearing before a panel of the Media Hearing Board on 21 March 2005, the Temporary Media Commissioner on 8 May 2005 determined that the complainant had committed seven violations of the Central Election Commission's Electoral Rule 10/2004 and the Temporary Code of Conduct for the Print Media in Kosovo during the Electoral Campaign. He imposed fines amounting to a total of 130.000 euros.

The complainant appealed against this decision. On 5 August 2005 the Media Appeals Board upheld most of the findings of the decision of the Temporary Media Commissioner, reformed certain decisions relating to aggravating factors, and reduced the total amount of the fines to 65.000 euros. This is the first decision complained of.

A request for reconsideration, submitted by the complainant on 19 August 2005, was dismissed by the Media Appeals Board on 12 October 2005.

3. Meanwhile, the complainant had also applied to the District Court of Prishtinë/Priština for judicial review of the decision of the Temporary Media Commissioner of 8 May 2005. By order of 18 April 2006, the court dismissed the application.

An appeal against this order was rejected by the Supreme Court, by a judgment of 16 May 2007.

4. Meanwhile, on 23 August 2005, the Temporary Media Commissioner had filed an application with the District Court of Prishtinë/Priština in order to enforce the fines imposed by him. By order of 21 December 2005 the Court ordered the enforcement of the fine of 65.000 euros.

On or around 30 December 2005, Bota Sot filed a special appeal with the Supreme Court against the above-mentioned order of 21 December 2005, alleging serious procedural violations, partial and wrong verification of the factual situation and wrong application of substantive law. At the time of filing of the complaint to this Panel, no decision had been taken on this complaint. In a letter of 15 May 2008 to the Panel, the complainant's lawyer explains that he received the decision of the Supreme Court, but sent it to the editorial office of his client, so that he does not have a copy of it. The Panel is unaware of the contents of the decision of the Supreme Court.

5. Meanwhile, in a letter of 24 January 2006, the Temporary Media Commissioner informed the District Court that the complainant did not comply with the Court's order of 21 December 2005. By order of 13 April 2006, the Court thereupon ordered the seizure of the complainant's assets. This latter order is the second decision complained of.

On 27 April 2006 the complainant requested the District Court to revoke its decision. The Panel has not been informed of any decision taken on that request.

6. Upon requests for further information by the Panel, the lawyer for the complainant has indicated that the bank accounts of the complainant have been blocked by the tax authority, apparently for reasons unrelated to the present

complaint. This caused the closing of the newspaper on 24 November 2006. As a result, the decision imposing the fine has not been executed. Meanwhile, a new business entity has taken over the activities of Bota Sot. That new entity has not taken over the present proceedings.

II. COMPLAINTS

6. The complainant raises numerous complaints, addressed against the various decisions taken in this case.

A first set of complaints is directed against the decision of the Temporary Media Commissioner of 8 May 2005:

- The Temporary Media Commissioner has shown open hostility towards Bota Sot.
- None of the seven counts upon which the complainant's conviction is based, is proven.
- The Temporary Media Commissioner has taken earlier violations into account (as aggravating circumstances), but he has exhausted his jurisdiction on these points.
- In determining the amount of the fine the Temporary Media Commissioner has taken into account the fact that the complainant had an edition in Zürich and business addresses in Germany and the United States, but the Temporary Media Commissioner has no jurisdiction in Switzerland, Germany or the United States.

Other complaints are directed against the decision of the Media Appeals Board of 5 August 2005:

- Pages 1-11 of that decision are printed in original, whereas page 12, containing the signature of the President, was sent by fax on 4 August and dated 5 August.
- The decision was reviewed on 30 July 2005, while the date of the signed decision is different (5 August 2005).

Another complaint concerns the role of both the Temporary Media Commissioner and the Media Appeals Board. According to the complainant, the Temporary Media Commissioner establishes the rules, controls their application and sanctions non-compliance, thus making it impossible for the Temporary Media Commissioner and the Media Appeals Board to act in a fair way.

A further complaint is directed against the decision of the Media Appeals Board, rejecting the request for reconsideration, of 12 October 2005. According to the complainant, the Media Appeals Board did not take into account all the arguments presented in the request for reconsideration, dated 19 August 2005.

Finally, a number of complaints are directed against the order of the District Court of 13 April 2006:

- The order does not identify the details of the confiscation.
- The court based the time limit for the performance of an act ordered by a court on a provision of the Code of Civil Procedure (published in 1977), while this provision has been amended since its original enactment.
- There is no legal provision that enables the courts to decide issues with "orders".
- The court failed to indicate how the complainant could appeal against its order, thus making the trial unfair; in this respect the complainant invokes a violation of Article 6 of the European Convention on Human Rights.

- The nature of the decision (criminal, civil or executive) is unclear. The court is moreover without competence to order the execution of a decision of a non-judicial body.
- The order has been given by an international judge, while these judges have no competence to deal with other matters than serious crimes.
- The court has applied a provision (the complainant is probably referring to section 1.10 of Administrative Direction No. 2003/8) in an analogous way, while this is prohibited when the text is clear and unambiguous.
- There is no legal ground for applying an interest to the unpaid amount.
- The court did not await the decision of the Supreme Court on the special appeal filed by the complainant.
- The court applied UNMIK Administrative Direction No. 2003/8 (relating to the enforcement of fines imposed by the Temporary Media Commissioner), while this text is not a normative act and, moreover, has been abolished.

III. PROCEEDINGS BEFORE THE PANEL

7. The complaint was introduced on 25 May 2006 and registered on the same date.
8. On 13 March 2008 the Panel requested specific information from the complainant regarding the article that was published by Bota Sot, the decisions of the Temporary Media Commissioner, the Media Appeals Board and the District Court, and the application to the Supreme Court, and reiterated this request on 11 April 2008 when it did not receive any response to its original request.

The complainant's lawyer replied on 15 May 2008, providing the application to the Supreme Court and explaining that he had received the decision of the Supreme Court, but sent it to the editorial office of his client, so that he does not have a copy of it. The Panel is not aware of the contents of the decision of the Supreme Court. The complainant also provided the application to the District Court, but did not provide the Panel with any further requested documents.

On 9 June 2008 the Panel drew the attention of the complainant to the fact that it was not able to continue with the examination of the complaint if it was not provided with a number of documents and did not receive answers to a number of questions for clarification. Most of the documents had already been asked for in the Panel's earlier requests, and the same is true for most of the questions raised by the Panel. The Panel also invited the complainant to provide it with a power of attorney to the lawyer acting on its behalf.

On 30 June 2008 counsel for the complainant replied by explaining the situation resulting from the blocking of his client's assets and the closure of its business. Since the work premises of his client had been closed, it was impossible to find the documents requested by the Panel. Counsel invited the Panel to address itself to the Press Council. On 1 July 2008 counsel asked the Panel to seek for more documents with the Peja/ Peć District Court.

IV. THE LAW

9. Before considering the complaint on its merits the Panel has to decide whether to accept the complaint, taking into account the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.
10. According to Section 3 of the Regulation, the Advisory Panel may only deal with a matter within a period of six months from the date on which the final decision was taken.

The Panel notes that in relation to the imposition of the fine, the Media Appeals Board handed down its decision on 5 August 2005. It is true that the complainant subsequently filed a request for reconsideration of that decision. This request was denied on 12 October 2005, on the ground that there was no new evidence in the case. In these circumstances, such review cannot be considered to be an ordinary remedy, which should normally be exhausted before a complaint can be brought before the Panel.

Likewise, as far as the application for judicial review of the decision of the Temporary Media Commissioner of 8 May 2005 is concerned, this cannot be considered a remedy to be exhausted, if only for the simple reason that it was not directed against the final decision in the proceedings before the media boards.

It follows that the final decision for the purpose of the six month rule is the aforementioned decision of the Media Appeals Board of 5 August 2005.

The complainant was certainly notified of the latter decision prior to 19 August 2005, which is the date that the complainant filed his request for revision.

As the period between 19 August 2005 and the date on which the complainant submitted the complaint to the Panel, 25 May 2006, is longer than six months, the complaint in respect of the decision of the Media Appeals Board on the imposition of the fine falls outside the time limit set by Section 3 of the Regulation.

11. In relation to the enforcement of the fine, the Panel has examined the various complaints directed against the judgment of the District Court of Prishtinë/Priština of 13 April 2006.

The Panel finds that the complainant is primarily complaining of the misinterpretation of the applicable law by the District Court. It is, however, not the task of the Panel to act as a court of appeal from the decisions of the ordinary courts. It is the role of the latter to interpret and apply the relevant rules of procedural and substantive law. For its part, the Panel finds no element to conclude that the District Court acted in an arbitrary or unreasonable manner in ordering the enforcement of the fine. The Panel concludes that the relevant complaints do not disclose any appearance of a violation of the rights and freedoms guaranteed by the international human rights instruments listed in Section 1.2 of UNMIK Regulation No. 2006/12. It follows that these complaints must be rejected as being manifestly ill-founded within the meaning of Section 3.3 of the said Regulation.

Insofar as the complainant invokes Article 6 of the European Convention on Human Rights and alleges that his right to a fair trial has been violated because of the failure of the District Court to indicate the possible avenues against its

judgment, it is not necessary to decide whether or not Article 6 is applicable to enforcement proceedings such as those before the District Court. Even assuming that Article 6 is applicable, the Panel is of the opinion that the right to a fair trial cannot be interpreted as generally imposing an obligation on States to make sure that parties to a lawsuit are informed by the court of first instance of any possibility to appeal against its judgment. The Panel would not exclude the possibility that such notice may be required in particular circumstances. However, the Panel does not see such circumstances in the present case. In this respect, some importance is to be attached to the fact that the complainant was represented by counsel. It follows that this complaint must also be rejected as being manifestly ill-founded within the meaning of Section 3.3 of the said Regulation.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

John J. RYAN
Executive Officer

Marek NOWICKI
Presiding Member