



The Human Rights Advisory Panel

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DECISION

Date of adoption: 6 August 2010

Case No. 02/07

Ranko VASIĆ

against

UNMIK

The Human Rights Advisory Panel sitting on 6 August 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 4 April 2007 and registered on the same date.
2. The Panel communicated the complaint to the Special Representative of the Secretary-General (SRSG) on 7 February 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.
3. By a decision of 16 July 2008 the Panel declared the complaint admissible. On 27 August 2008 the SRSG submitted UNMIK's comments on the admissibility and merits of the complaint.
4. On 30 January 2009 the Panel submitted a copy of the complainant's case-file before the Supreme Court to the SRSG. Accordingly, on 20 February 2009 the SRSG submitted UNMIK's additional comments on the admissibility and merits of the complaint.
5. On 23 April 2009 the Panel forwarded the SRSG's comments of 20 February 2009 and invited him to submit comments, if any, in reply. The complainant has not responded.

II. THE FACTS

6. The complainant worked in a socially owned enterprise (SOE) "Poljopriveda" in Peć/Peja. In 1999 he left Kosovo and has been living as a displaced person in Serbia.
7. When the company was privatised in July 2004 in the third wave of privatisations, he was not included in the list of persons entitled to obtain shares in the proceeds of the privatisation of the company under Section 10 of UNMIK Regulation No. 2003/13 of 9 May 2003 on the Transformation of the Right of Use to Socially-Owned Immovable Property. He appealed to the Kosovo Trust Agency (KTA). He was given a time-limit within which he was required to produce his workbook as proof of his employment with the SOE. As he failed to do so, the KTA dismissed his request.
8. The complainant, together with a group of other persons who had likewise not been included, lodged an appeal with the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (Special Chamber). In the proceedings held before the Special Chamber the complainant was represented by Mr M.M., one of the employees of the SOE, who also had represented a group of other employees.
9. By a decision of 14 June 2006, the Special Chamber held that the complainant was not to be included in the list of employees entitled to participate in the proceeds of the privatisation. It was of the view that he did not meet the requirements stipulated in Section 10.4 of UNMIK Regulation No. 2003/13, as amended by UNMIK Regulation

No. 2004/45 of 19 November 2004, since he had submitted only a copy of a decision on employment, dated 1992, but had failed to submit his workbook showing that he had been an employee of the company at the material time.

10. No appeal was available in law against that decision.
11. This decision was served on 12 July 2006 on the complainant's representative, Mr M.M. The decision was not served on the complainant.
12. The complainant submits that he learned of the decision of the Special Chamber only from one of his former colleagues, who had also been a claimant in the proceedings concerned, on an unspecified date in January 2007. This colleague permitted the complainant to make a photocopy of his copy of the decision.

III. COMPLAINT

13. The complainant claims that the unfavourable decisions of the KTA and the Special Chamber in his case did not take into account all the evidence and the circumstances of the complainant as an internally displaced person without freedom of movement, and were therefore discriminatory. According to the complainant, this constitutes a violation of his right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to 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.

IV. THE LAW

14. In his submission dated 20 February 2009, the SRSG points that the Special Chamber's "acknowledgment of receipt" indicates the delivery of the decision to the complainant's representative occurred on 6 July 2006. The SRSG further states that it has not been established that the complainant's legal representative was not duly authorised to act for the complainant in all matters including to be served with the Special Chamber's decision. This has also not been alleged by the complainant. The complainant filed his complaint with the Panel on 4 April 2007, which was not within the 6-month period.
15. The complainant did not provide any comments in reply to this submission.
16. The Panel notes that while the present complaint was pending before the Panel, the SRSG issued on 17 October 2009 Administrative Direction No. 2009/1 Implementing UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel. Sections 2.1 and 2.3 of that Administrative Direction reads as follows:

"2.1. At any stage of the proceedings of a human rights complaint before it, the Advisory Panel shall examine all issues of admissibility of the complaint before examining the merits.

...

2.3 Comments on the merits of an alleged human rights violation shall only be submitted after the Advisory Panel has completed its deliberation on and determined the admissibility of such complaint. If issues of admissibility of a complaint are addressed at any time after the Advisory Panel has made a determination on admissibility of a complaint and commenced its considerations of the merits, the Advisory Panel shall suspend its deliberations on the merits until such time as the admissibility of the complaint is fully re-assessed and determined anew.”

17. Section 6 provides that Administrative Direction No. 2009/1 shall enter into force on 17 October 2009, that is the date of its issuance, and that it “shall be applicable [to] all complaints submitted to the Advisory Panel including such that are currently pending before the Advisory Panel”.
18. Before continuing with the consideration of the merits of the complaint, the Panel must therefore consider UNMIK’s objection to admissibility, pursuant to Section 2.3 of UNMIK Administrative Direction No. 2009/1.
19. The Panel notes that its decision on admissibility (16 July 2008) in the present case dealt with the admissibility criteria at issue, *i.e.* the six-month rule. In this respect, the Panel stated (§ 8 of the decision):

“The complainant submitted that he was never served with a copy of the decision of the Special Chamber. He only became aware of it after his colleague, another claimant in the case, informed him of its content.

The Panel notes that the complainant was not entitled in law to be served with a copy of the decision concerned. It further observes that in cases in which groups of former employees of the SOE are represented before the Special Chamber by one of them, who is usually not a lawyer, the Chamber applies Article 138 of the Law on Contested Procedure. According to this provision where an agent acts on behalf of a group of persons, such a decision can be served on him or her. However, there is no obligation on the part of the Special Chamber to do so. Under the applicable law the complainant himself was not entitled to be served with the decision. Furthermore, it was also unclear whether the complainant’s representative was entitled to be so served or not. In these circumstances, and having regard to the uncertainty regarding the service, the Panel is of the view that it cannot be held against the complainant that he did not undertake further steps, other than discussing the issue with the colleague who ultimately informed him of the decision, to be informed about the outcome of the proceedings.

It follows that the application cannot be declared inadmissible for failure to comply with the six-month time-limit.”

20. However, the Panel notes that, at the time of adopting its decision on admissibility, it was not aware of the fact that the complainant's representative in the proceedings before the Special Chamber actually received the 14 June 2006 decision of the Special Chamber on 12 July 2006. The Panel was only provided with the complete case-file of the complainant's case before the Special Chamber after adoption of the decision on admissibility. Moreover, as outlined above, the SRSG did not provide comments to the Panel before the latter had already adopted its decision on admissibility.
21. The Panel notes that the SRSG's objection as to the serving of the Special Chamber's decision on the complainant's representative holds true. Indeed, the case-file of the complainant before the Special Chamber contains a "confirmation of receipt" signed by the complainant's representative on 12 July 2006 (though not 6 July 2006 as stated by the SRSG). The Panel further recalls that the complaint was introduced on 4 April 2007, *i.e.* more than eight and a half months afterwards.
22. Pursuant to Section 3.1 of UNMIK Regulation No. 2006/12, the Panel may only deal with a matter within six months from the date on which the final decision was taken. The purpose of the six-month rule is to promote legal certainty and to ensure that cases raising issues under UNMIK Regulation No. 2006/12 are dealt with within a reasonable time (see, for example, European Court of Human Rights (ECtHR), *Opuz v. Turkey*, no. 33401/02, judgment of 9 June 2009, § 110).
23. Where a complainant or his representative has been served with a written copy of the final decision, the object and purpose of the six-month requirement is best achieved by counting the six-month period as running from the date of service of that written decision (ECtHR, *Worm v. Austria*, judgment of 29 August 1997, *Reports of Judgments and Decisions*, 1997-V, p. 1547, § 33).
24. Accordingly, given that the present complaint was submitted to the Panel more than six months following receipt by the complainant's representative of the written decision complained of, the present complaint falls outside the time limit set by Section 3 of the UNMIK Regulation No. 2006/12.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member