



DECISION

Date of adoption: 6 June 2008

Case No. 12/07

Teki BOKSHI and Zeqir BUJUPI

against

UNMIK

The Human Right Advisory Panel sitting on 4 June 2008

With the following members present:

Mr. Marek NOWICKI, Presiding member

Mr. Paul LEMMENS

Ms. Snezhana BOTUSHAROVA-DOICHEVA

Mr. John RYAN, Executive Officer

Lodged on: 12 November 2007

I. THE FACTS

1. The complainants are lawyers, practising, respectively, in Gjakova and Istoq. Mr Bokshi was assigned to act as a legal-aid lawyer in a criminal case against S.M. and thirteen other defendants, concerning charges of, inter alia, murder and acts of terrorism resulting in death, pending before the Prishtina District Court. Mr Bujupi acted as a legal-aid lawyer in the same proceedings. They attended sessions of the pre-trial and main trial proceedings in this case from 12 May 2006. 9 June 2006. Starting from the session of 28 July 2006, all sessions were held in the Dubrava Prison Centre in Istoq. According to the complainants, they attended 22 sessions between 12 May and 14 December 2006.

2. By a letter of 29 August 2006 Mr K.R., a legal-aid lawyer assigned to represent one of the defendants in the same case, drew the attention of the President of the Prishtina District Court's panel examining the case that the legal aid fee to which he was entitled under applicable regulations, in the monthly amount of EUR 250, was insufficient to cover his costs and to ensure an adequate representation of his client. By a letter of 28 September 2006 the President of the panel relayed Mr K.R.'s request

to the Office of Judicial Administration and requested that his request be considered. By a letter of 12 October the Office informed the President that the amount of legal aid has been determined on the basis of binding permanent instructions issued by the UNMIK Department of Justice.

3. On 9 November 2006 Mr K.R., the complainants and three other lawyers assigned to the case reiterated this complaint and threatened to withdraw from the case if their fees were not increased.

4. During a hearing on the merits of the case, held on 25 January 2007 in Dubrova prison by the panel composed of three international judges, where the defendants were detained at that time, the complainants, Mr K.R. and three other lawyers failed to comply with the court summonses to attend the hearing. In the absence of the defence counsel, the hearing was adjourned.

5. On 29 January 2007 the presiding judge of that panel complained about the conduct of the complainants and other lawyers. He submitted that it represented a serious breach of lawyers' obligations, both towards their clients and toward the court. The lawyers' conduct justified that disciplinary measures be taken against them.

6. By a decision of 8 February 2007 the Prishtina District Court imposed on the complainants and on each of the lawyers absent during the court session of 29 January 2006 a fine in the amount of EUR 250. The court first summarised the facts concerning the lawyers' conduct in connection with the hearing and went on to state:

“Defence counsel who misuse their detained clients as hostages in order to compel the authorities to grant a higher payment violate the rights of their clients in such a serious manner that they have to be dismissed in order to protect the rights of the defendants to a fair trial. (...) To sum up, the absence of defence counsel has caused a prolonging of the proceedings of at least three weeks. (...) Given the delay of at least three weeks caused by the unjustified absence of defence counsel (...) and the efforts which are required to keep the delay as short as possible, the maximum possible fine of 250 EUR has to be imposed upon each of these defence counsel.”

7. The complainants appealed. By a decision of 17 October 2007 the Supreme Court of Kosovo, having examined the complainants' appeal and taking into consideration a legal opinion submitted by the Office of the Public Prosecutor of Kosovo, upheld the contested decision. The court accepted the finding of the District Court that “the prolonging of proceedings [had been] their goal in order to force the authorities to grant a higher payment”. It noted that under the applicable law, i.e. Article 342 of the Provisional Criminal Procedure Code of Kosovo, the failure of the defence counsel or other parties, to notify the court of their unavailability for a hearing or to provide for a substitute lawyer when this is the case, left the court with no option but to postpone the court sessions planned for January and February 2008, thereby jeopardising the clients' rights to a speedy and fair hearing.

II. COMPLAINTS

8. The complainants complain that the decisions given by the authorities and concerning legal representation under the legal aid scheme breached their human rights and their rights as professionals. In the course of the proceedings they repeatedly drew attention of the Prishtina District Court to the insufficient amount of

legal aid fee and to the fact that nothing was paid to them. However, no steps were taken to address their concerns.

9. The complainants further complain, invoking Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, that as a result of the fact that they were not paid for their legal aid services, and also because of the fine imposed on them, their clients' right to a fair hearing was breached.

III. RELEVANT LAWS

10. Article 6 § 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention", insofar as relevant, reads:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

11. Article 1 of Protocol No. 1 to the Convention provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

IV. THE LAW

12. The complainants complain that the decisions concerning legal representation under the legal aid scheme breached their human rights.

The Panel first notes that the complainants have failed to specify which of their rights guaranteed by the international human rights instruments listed in Section 1.2 of the UNMIK Regulation No. 2006/12 of 23 March 2006 on the establishment of the Human Rights Advisory Panel were breached by the decisions complained of.

However, even assuming that the complainants' complaint can be qualified as having been made under Article 1 of Protocol No. 1 to the European Convention on the Protection of Human Rights which guarantees the right to the peaceful enjoyment of one's possessions, the Panel observes that the complainants were acting as legal-aid lawyers in the criminal case against their clients. Under applicable legislation they have a right to obtain fees for their services. There is no indication in the case-file that their entitlement to obtain such fees has ever been challenged or otherwise questioned by the UNMIK authorities.

13. Insofar as the complainants seem to challenge the amount of the fees which they are entitled to obtain, the Panel notes that Article 1 of Protocol No. 1 to the ECHR applies only to a person's existing possessions (ECtHR, *Marckx v. Belgium*, judgment

of 13 June 1979, Series A no. 31, p. 23, § 50; *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 64, ECHR 2007-...). It does not guarantee the right to acquire property (*Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II; *Kopecký v. Slovakia* [GC], no. 44912/98, § 35(b), ECHR 2004-IX). Consequently, a person who complains of a violation of his or her right to property must first show that such a right existed (*Pištorová v. the Czech Republic*, no. 73578/01, § 38, 26 October 2004; *Des Fours Walderode v. the Czech Republic* (dec), no. 40057/98, 4 March 2003, ECHR 2004-V; *Zhigalev v. Russia*, no. 54891/00, § 131, 6 July 2006). In the present case the Panel considers that the complainants have not shown that under the applicable regulations they had any legitimate expectation that their fees would be increased. Nor have the complainants established that the relevant legislation guaranteed to them a right to obtain legal aid fees in a higher amount which could be qualified as “possession” within the meaning of Article 1 of Protocol No. 1 to the Convention.

Taking all these circumstances together, the Panel concludes that the complaint about the alleged breach of the right to the peaceful enjoyment of the complainants’ possessions must be rejected as being manifestly ill-founded within the meaning of Section 3.3 of the UNMIK Regulation No. 2006/12 of 23 March 2006, referred to above.

14. The complainants further complain, invoking Article 6 of the European Convention on Protection of Human Rights, that as a result of the fact that they were not paid for their legal aid services, and also because of the fine imposed on them, their clients’ right to a fair hearing was breached.

The Panel notes that this provision of the Convention guarantees a right to a fair hearing to persons involved in the proceedings concerning “the determination of [...] criminal charge[s] against him.” In the present case the complainants were not parties to the criminal proceedings; they only represented their clients, who were defendants in a criminal case. The complainants cannot therefore claim to be victims of a breach of their right to a fair hearing.

It follows that this part of the application is incompatible *ratione personae* with the rights set forth in the Convention.

It must therefore be rejected, pursuant to Section 3.3 of the UNMIK Regulation No. 2006/12 of 23 March 2006.

FOR THIS REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.


John J. RYAN
Executive Officer


Marek NOWICKI
Presiding member