



The Human Rights Advisory Panel

UNMIK Administrative HQ, Building D, 10000 Pristina, Kosovo

DECISION

Date of adoption: 17 April 2009

Case No. 17/08

Gani EMINI

against

UNMIK

The Human Rights Advisory Panel sitting on 17 April 2009,
with the following members present:

Mr. Marek NOWICKI, Presiding Member
Mr. Paul LEMMENS
Ms. Snezhana BOTUSHAROVA

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 has been working with the Employment Agency of the Republic of Yugoslavia, at the Regional Employment Centre in Gjakovë/Đakovica, since 1965. Following the war of 1999, he showed up at the same place, together with the other employees. It seems that the employees were at that time paid by the Gjakovë/Đakovica Municipality. According to the complainant, he continued to work until 28 February 2000. He then received an oral notice that he was dismissed. He continued to work until 1st May 2000. At that time, the applicant was 59 years old.

2. After having tried in vain to obtain redress through administrative bodies, the complainant brought proceedings in April 2003 against the Department of Labour and Employment (hereafter: the Department), before the Municipal Court of Gjakovë/Đakovica. The complainant argued that his appointment had never been ended by a written decision, so that he continued to be employed by the Department. He asked the court to declare that he still was an employee of the Department and to order the Department to reinstate him. By judgment of 21 January 2004 the Municipal Court dismissed the claim. It held that the Department was not a successor of the body for which the complainant has worked, so that the complainant was not an employee of the Department, but was in fact an unemployed person.
3. The complainant appealed against this judgment. On 10 January 2007 the District Court of Peja/Peć dismissed the appeal. It confirmed the Municipal Court's reasoning and added that the Department had publicly announced vacancies, that a number of former employees of the Employment Agency had applied for these positions and had been appointed, but that the complainant had not applied for any of the positions.
4. The complainant filed a request for revision of this judgment. On 15 May 2008 this request was denied by the Supreme Court. According to the Supreme Court, the lower courts had correctly assessed the facts and applied the law to the facts.

II. COMPLAINTS

5. The complainant claims that the following of his rights have been violated: the right to work, the right to life, the right to a salary, the right to a fair trial and to a trial within a reasonable time, the right to equal treatment and to non-discrimination.

III. PROCEEDINGS BEFORE THE PANEL

6. The complaint was introduced on 12 June 2008 and registered on 17 June 2008.
7. On 19 September 2008 the Panel declared the complaint inadmissible insofar as the complainant alleged that his substantive rights had been violated, that he was a victim of discrimination, and that his right to a fair trial had been violated. The Panel decided to adjourn the examination of the complaint relating to the undue delay in the proceedings before the courts.
8. By letter dated 19 November 2008 the Special Representative of the Secretary-General (SRSG) was informed of the decision. The Panel requested the SRSG, pursuant to Section 11.3 of Regulation No. 2006/12 of 23 March 2006 on the establishment of the Human Rights Advisory Panel, to comment on the admissibility and merits of the complaint relating to the length of the proceedings.
9. On 18 December 2008 the SRSG replied that, as he had only received a copy of the decision, and not the whole file, he was not in a position to assess the admissibility of the complaint.
10. By letter of 22 January 2009 the Panel sent the complaint, together with all the supporting documents, to the SRSG.

11. On 4 March 2009 the SRSG provided observations on the merits of the complaint.

IV. THE LAW

12. 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.

13. Insofar as the complaint has not been declared inadmissible, i.e. insofar as the complainant invokes a violation of his right to a trial within a reasonable time, the Panel notes that the proceedings before the courts have lasted from April 2003 to 15 May 2008, which is slightly more than five years. During this period, the case was examined by the courts at three levels of jurisdiction.

14. In its decision on admissibility the Panel noted that, according to the case law of the European Court of Human Rights, employment disputes by their nature call for expeditious decision, in view of what is at stake for the person concerned, who through dismissal loses his means of subsistence (see ECtHR, *Frydlender v. France* [GC], no. 30979/96, 27 June 2000, § 45, ECHR 2000-VII).

15. In his submissions the SRSG argues that important distinctions can be made between the facts in the *Frydlender* case and those of the present case. In the *Frydlender* case the court proceedings lasted nearly nine years and eight months, while in the case of the complainant in the present case they lasted only a "little less" than five years. Moreover, in the *Frydlender* case the applicant had recourse to only two instances of his employment dismissal, while the complainant in the present case had recourse to three instances. Finally, in the *Frydlender* case the applicant's case was examined by administrative courts, specialized in administrative matters, while the courts before which the complainant in the present case brought his claim were courts of general jurisdiction.

16. The SRSG accepts that in the case of the complainant the length of the proceedings before the district court, which lasted two years and ten months, may appear unreasonable, but the reasonableness has to be assessed in the light of the circumstances of the case. The SRSG refers in particular to the fact that, at the time at which the courts were dealing with the complainant's case, the entire court system in Kosovo was operating in a post-conflict situation. This system was at that time in the process of being rebuilt, which resulted in a backlog of cases and prevented the courts to proceed more rapidly in the complainant's case.

17. The SRSG finally argues that even in normal circumstances the time taken by the court system to adjudicate the case of the complainant through three instances cannot be considered as excessive. The length of the proceedings does appear to be perfectly justifiable.

18. The Panel considers that the complaint relating to the length of the proceedings raises issues of law and of fact the determination of which should depend on an examination of the merits of the complaints.

19. The Panel therefore concludes that the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.

20. The Panel does not see any other ground for declaring the complaint inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES ADMISSIBLE THE REMAINDER OF THE COMPLAINT.

John J. RYAN
Executive Officer

Marek NOWICKI
Presiding member