The Human Rights Advisory Panel
Building D, UNMIK HQ Prishtinë/Priština, Kosovo | E-mail: hrap-unmik@un.org | Tel: +381 (0)38 504-604, ext. 5182

OPINION

Date of adoption: 18 June 2010

Case No. 17/08

Gani EMINI

against

UNMIK

The Human Rights Advisory Panel sitting on 18 June 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, makes the following findings and recommendations:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 12 June 2008 and registered on 17 June 2008.

2. 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.

3. By letter dated 19 November 2008 the Special Representative of the Secretary-General (SRSG) was informed of the decision.

4. On 4 March 2009 the SRSG provided observations on the case. *Inter alia*, he invited the Panel to seek information regarding the length of proceedings from the competent court.

5. On 17 April 2009 the Panel adopted an admissibility decision in the case, declaring the complaint with regard to the length of the proceedings admissible.

6. Following the SRSG's invitation, the Panel addressed itself to the District Court. The President of that Court sent on 13 October 2009 an explanation with respect to the duration of the proceedings.

7. The Panel forwarded this letter to the SRSG on 11 January 2010, and invited him to provide comments on the merits of the complaint. On 25 January 2010 the SRSG submitted UNMIK's comments on the merits.

II. THE FACTS

8. The complainant has been working with the Employment Agency of the SFR Yugoslavia, at the Regional Employment Centre in Gjakovë/Đakovica, since 1965. Following the hostilities in 1999, he showed up at the same place, together with the other employees, and continued to work. It seems that the employees were at that time paid by the Gjakovë/Đakovica Municipality. According to the complainant, he received an oral notice on 28 February 2000 that he was dismissed. He in fact continued to work until 1st May 2000.

9. After having tried in vain to obtain redress through administrative bodies, the complainant brought proceedings against the Ministry of Labour and Social Welfare, Department of Labour and Employment in Gjakovë/Đakovica (hereafter: the Department), before the Municipal Court of Gjakovë/Đakovica (hereafter: the Municipal Court). The complainant's claim was registered by the Court on 17 April 2003. 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 latter 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.

10. The complainant appealed against this judgment to the District Court of Peja/Peć (hereinafter the District Court). The file relating to the case was received from the Municipal Court on 21 April 2004. By judgment of 10 January 2007 the District Court

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.

11. On an unspecified date 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.

III. COMPLAINT

12. Insofar as the complaint has been declared admissible, the complainant in substance alleges that the proceedings in his case have not been concluded within a reasonable time, in breach of Article 6 § 1 of the European Convention on Human Rights (ECHR).

IV. THE LAW

13. The complainant in substance alleges that the length of the proceedings in his case were excessively long, in violation of his right to a trial within a reasonable time, as guaranteed by Article 6 § 1 of the ECHR.

14. Article 6 § 1 of the ECHR states, in relevant part,

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair …hearing within a reasonable time by [a] ... tribunal ..."

A. Arguments of the parties

The complainant's submission

15. The complainant limits himself to arguing that his right to a trial within a reasonable time has been violated.

UNMIK's submissions

16. In his first comments on (the admissibility and merits of) the complaint, the SRSG acknowledges the fact that according to the case law of the European Court of Human Rights (ECtHR) employment disputes call by their nature for expeditious decisions. The Court had held so in particular in the *Frydlender* case (ECtHR [Grand Chamber], *Frydlender v. France*, no. 30979/96, judgment of 27 June 2000, § 43, *ECHR*, 2000-V). The SRSG emphasises, however, that important distinctions can be made between the facts in the *Frydlender* case and those in the present case. In the *Frydlender* case the court proceedings lasted nearly nine years and eight months, while in the case of the complainant 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.

17. The SRSG accepts that in the case of the complainant the length of the proceedings before the District Court 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 when 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.

18. 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 therefore does appear to be perfectly justifiable.

19. In his second comments on (the merits of) the complaint, the SRSG refers to the explanation provided by the District Court. According to that explanation, in the relevant period of time, *i.e.* from 2004 to 2008, there were only two judges in the District Court assigned to deal with a huge case-load of civil cases, and it was necessary to engage the President of the Court in order to constitute a panel of three judges. Accordingly, any delay in the case at issue, and in other civil cases dealt with by the District Court as well, may be attributed only to the fact that the judges were overburdened with the case-load.

20. The SRSG argues that this explanation confirms his previous statements that the entire court (administration) system in Kosovo suffered badly from the post-conflict situation and that particularly during that time it had difficulties coping with the large backlog of cases. Article 6 of the ECHR imposes a duty to organize the administration of justice in such a way that the various courts can meet the requirements of that Article. It appears that the courts involved in the instant case did their utmost to avoid an unnecessary delay in the judicial proceedings. The complainant had commenced proceedings in the Kosovo court system in April 2003. These proceedings lasted five years, through three instances. Taking into account the post-conflict situation in Kosovo from 1999 and the state of the Kosovo court system in general, such period of time for proceedings that went through three instances is entirely justified and appropriate.

B. The Panel's assessment

1. General principles

21. The Panel recalls that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the complainant and the relevant authorities, and what was at stake for the complainant in the dispute (see, among many other authorities, the judgment in the *Frydlender* case, referred to above, § 43).

22. Further, the Panel recalls that the ECHR places a duty on the States to organize their legal system so as to allow the courts to comply with the requirements of Article 6 § 1, including that of a trial within a "reasonable time". While a temporary backlog of court

business does not entail liability on the part of the authorities if they take appropriate remedial action with the requisite promptness, a chronic overload cannot justify an excessive length of proceedings (see ECtHR, *Pammel v. Germany* and *Probstmeier v. Germany*, judgments of 1 July 1997, *Reports of judgments and decisions*, 1997-IV, p. 1112, § 69 viz. p. 1138, § 64).

2. Application of the general principles to the present case

a. Period to be taken into account

23. The complainant's claim was registered by the Municipal Court of Gjakovë/Đakovica on 17 April 2003. This date marks the opening of the proceedings. However, the period to be considered starts from the date of the Panel's temporal jurisdiction, which is 23 April 2005. In assessing the reasonableness of the time that elapsed after 23 April 2005, the Panel will nevertheless take into account the state of the proceedings at that moment (ECtHR, *Foti and Others v. Italy*, judgment of 10 December 1982, *Publications of the Court*, Series A, no. 56, p. 15, § 53; ECtHR, *Styranowski v. Poland*, judgment of 30 October 1998, *Reports of judgments and decisions*, 1998-VIII, p. 3376, § 46).

24. The Panel further notes that the proceedings lasted until 15 May 2008, when the Supreme Court handed down its judgment.

25. The proceedings therefore lasted five years and twenty-eight days of which three years and twenty-two days fall to be examined by the Panel. During this last period, the case was examined by the District Court and the Supreme Court, after having been examined also by the Municipal Court. In total, courts at three levels of jurisdiction dealt with the case.

b. Assessment of the reasonableness of the duration of the proceedings

26. As regards the complexity of the case, the Panel notes in particular the grounds on which the relevant courts rejected the complainant's claim, *i.e.* the mere fact that the respondent (Ministry of Labour and Social Welfare) was not a legal successor of the Employment Agency of the Republic of Yugoslavia. The Panel considers that the case was not characterised by any exceptional factual or legal difficulties. On the contrary, it may be said that the case was not complex at all.

27. As to the conduct of the complainant, it does not appear from the information in the case file or from the SRSG's submissions that the complainant was responsible for any delay in the proceedings.

28. Concerning the conduct of the authorities, the Panel notes a lengthy gap in the proceedings before the District Court. About two and half years, including about one and half years after 23 April 2005, passed between the receipt of the case file in the District Court and the handing down of the Court's decision. It does not appear that there were any other procedural steps between the beginning and the end of the proceedings on appeal.

29. It is clear from the explanation given by the District Court that, during the relevant time, there were in reality only two judges of that Court to deal with the heavy workload. The ensuing backlog of cases was the main reason why the complainant's case was not

processed more rapidly. In this respect the Panel acknowledges the difficulties undeniably encountered by the District Court functioning in a post-conflict situation. As indicated above, liability is not incurred by the authorities in such circumstances if they take appropriate remedial action with the requisite promptness (§ 22). However, it does not appear that either the District Court or UNMIK took remedial measures. It certainly does not appear that such measures had any effect during the relevant period.

30. Furthermore, the Panel considers that it is appropriate to attach particular weight to what was at stake for the complainant. An employee who considers that he has been wrongly suspended or dismissed by his employer has an important personal interest in securing a judicial decision on the lawfulness of that measure promptly, since 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, *Obermeier v. Austria*, judgment of 28 June 1990, *Publications of the Court*, Series A, no. 179, pp. 23-24, § 72; ECtHR, *Caleffi v. Italy*, judgment of 24 May 1991, *Publications of the Court*, Series A, no. 206-B, p. 20, § 17; ECtHR (Grand Chamber), *Frydlender v. France*, judgment cited above, § 45). The particular importance of such proceedings to employees is reflected in the relevant legislation: Section 434 of the Code on Civil Procedure of the SFR Yugoslavia (1982 SFRY *Zakon o parničnom postupku*), applicable by virtue of UNMIK Regulation No. 1999/24 of 12 December 1999 on the Law Applicable in Kosovo, orders the courts to pay due regard to the need for an urgent settling of employment disputes.

3. Conclusion

31. Having regard to all these factors, the Panel considers that the District Court did not display the special diligence which was required of them under both the applicable domestic law and Article 6 § 1 of the ECHR (compare ECtHR, *Cravcenco v. Moldova*, no. 13012/02, judgment of 15 April 2008, § 57). The Panel concludes that the length of the proceedings in the present case was excessive and failed to satisfy the reasonable time requirement.

32. There has accordingly been a violation of Article 6 § 1 of the ECHR.

V. RECOMMENDATIONS

33. The Panel considers that the finding of a violation of the complainant's right to a decision within a reasonable time constitutes in itself a sufficient satisfaction for any non-pecuniary damage sustained by the complainant.

34. As a general measure, the Panel recommends that UNMIK draw the attention of the competent authorities to this opinion, so that they can take it into account.

FOR THESE REASONS,

The Panel, unanimously,

1. FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN RESPECT OF THE LENGTH OF THE PROCEEDINGS IN THE COMPLAINANT'S CASE;

2. RECOMMENDS THAT UNMIK DRAW THE ATTENTION OF THE COMPETENT AUTHORITIES TO THIS OPINION.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member