



DECISION

Date of adoption: 11 April 2008

Case No. 03/06

Shkumbin MEHMETI

against

UNMIK

The Human Rights Advisory Panel sitting on 11 April 2008
with the following members present:
Mr. Marek NOWICKI, Presiding member
Mr. Paul LEMMENS

Mr. John 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 indicted on various charges of murder and terrorism. The main trial in his case was scheduled to commence on 10 June 2006 at the premises of the District Court of Pristina. On 13 June 2006 the Presiding Judge issued an annulment of the summons for the trial, attaching an Administrative Instruction issued by the Special Representative of the Secretary General (SRSG) on 9 June 2006, changing the place of the trial from Pristina District Court to the premises of Dubrava Prison. This Administrative Instruction was issued in accordance with UNMIK Regulation 2000/64 on Assignment of International Judges/Prosecutors and/or Change of Venue, taking into consideration recommendations made by the Department of Justice on 5 June 2006.

2. According to the information provided by the complainant's legal representative, the effect of the change of place of trial by the SRSG was that a trial behind closed doors was being prepared, where the media, the public and family members would be prevented from attending.

3. On 9 November 2007, the complainant was found guilty of various offences and sentenced to 30 years imprisonment. The decision of the District Court of Pristina was rendered orally on this date and the written verdict is still awaited. The complainant remains in detention.

II. COMPLAINTS

4. The complainant alleges a violation of his right to a fair trial under Article 6, paragraph 1 of the European Convention on Human Rights, because of the lack of independence and impartiality of the first instance court due to external influence, and lack of public character of the first instance hearings in his case.

III. PROCEEDINGS BEFORE THE PANEL

5. The complaint was introduced on 19 June 2006 and registered on 4 August 2006.

IV. THE LAW

6. Before considering the case on its merits the Panel has to decide whether to accept the case, taking into account the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.

7. According to Section 3 of the Regulation, the Advisory Panel may only deal with a matter after it determines that all other available avenues for review of the alleged violations have been pursued, and within a period of six months from the date on which the final decision was taken.

8. The complaint relates to an aspect of procedure for which there is a first instance judgment where the complainant, together with co-accused persons, was found guilty of various offences. At the present time, the complainant is still waiting for the written verdict setting out the reasons for the judgment, and still has the possibility to appeal this judgment to the Supreme Court of Kosovo.

9. On appeal to the Supreme Court, the complainant is free to raise the questions of the absence of independence and impartiality of the first instance court and the lack of public character of the first instance hearings in his case.

10. The Panel considers the complaint is therefore premature and must be rejected under Section 3 of the Regulation for non-exhaustion of available remedies.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

John RYAN
Executive Officer

Marek NOWICKI
Presiding member