



DECISION

Date of adoption: 16 July 2008

Case No. 02/07

Ranko VASIC

against

UNMIK

The Human Rights Advisory Panel sitting on 16 July 2008
with the following members present:

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

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 worked in a socially owned enterprise (SOE) "Poljopriveda" in Pec/Peja. In 1999 he was forced to leave Kosovo and has been living as an internally displaced person in Serbia.

When the company was privatized in July 2004 in the third wave of privatizations, he was excluded from the list of persons entitled to obtain shares in the proceeds of the privatization of the company under Section 10 of UNMIK Regulation 2003/13 (as amended by Regulation 2004/45). 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.

2. The complainant, together with a group of other persons who had likewise been excluded, lodged an appeal with the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Matters (Special Chamber).

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 privatization. It was of the view that he did not meet the requirements stipulated in Section 10.4 of UNMIK Regulation 2004/45 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.

No appeal was available in law against that decision.

This decision was apparently served at an unspecified later date on Mr. M.M., one of the employees of the SOE, who had represented the complainant and a group of other employees, acting as their agent during the proceedings held before the Special Chamber. The delivery receipt for the decision that the complainant obtained from Mr. M.M. at the request of this Panel, was not dated or signed and therefore provides no confirmation of the service date. The decision was not served on the complainant.

The complainant submits that he learnt about the decision of the Special Chamber 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.

II. COMPLAINTS

3. The complainant claims that the unfavourable decisions of the KTA and Special Chamber in his case did not take into account all the evidence and the circumstances of the complainant as an IDP without freedom of movement and were therefore discriminatory.
4. 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.

III. PROCEEDINGS BEFORE THE PANEL

5. The complaint was introduced on 4 April 2007 and registered on the same date.
6. The Panel communicated the case to the 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.

IV. THE LAW

7. 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.
8. The Panel notes that pursuant to Section 3.1, it 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 security of the law, to ensure that the cases are dealt with by the Panel within a reasonable time and to protect the authorities and other persons concerned from being under uncertainty for a prolonged period of time (see ECtHR, *P.M. v. the United Kingdom*, no 6638/03, dec. 24 August 2004). The six-month period runs from the final decision in the process of exhaustion of relevant legal remedies (ECtHR, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, dec. 7 June 2001).

Where a complainant is entitled in law to be served ex officio with a written copy of the final decision, the object and purpose of the six-month requirement is best served by counting the six-month period as running from the date of service of the written decision (ECtHR, *Worm v. Austria*, 29 August 1997 § 33, Reports of Judgments and Decisions 1997-V, p. 1547). However, where the applicable procedural rules do not provide for service, it is appropriate to take the date the decision was finalised as the starting point, that being when the parties were definitely able to find out its content (ECtHR, *Papachelas v. Greece [GC]*, no. 31423/96, 25 March 1999 § 30, ECHR 1999-II; ECtHR, *Seher Karataş v. Turkey*, no. 33179/96, 9 July 2002 § 27; ECtHR, *Karatepe v. Turkey*, no. 43924/98, dec. 3 April 2003).

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.

9. As regards the merits of the case, the complainant submits that he was unable to come back to Kosovo to retrieve his workbook and produced his contract of employment and his medical insurance book, which was held only by those who were in employment as proof of his employment.

The complainant argues that the decisions of the KTA and the Special Chamber failed to take into account all the evidence relevant for the outcome of the case and, in particular, the personal circumstances of the complainant, who as an internally displaced person could not travel freely to obtain the required documents.

10. The Panel considers that the complaints under Article 1 of Protocol No. 1, Article 14 in conjunction with Article 1 of Protocol No. 1, raise issues of law and of fact the determination of which should depend on an examination of the merits of the complaint. 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. The Panel does not see any other grounds for declaring it inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

John J RYAN
Executive Officer

Marek NOWICKI
Presiding member