



DECISION

Date of adoption: 19 September 2008

Case No. 17/08

Gani EMINI

against

UNMIK

The Human Rights Advisory Panel sitting on 19 September 2008,
with the following members present:

Mr. Marek NOWICKI, Presiding Member
Mr. Paul LEMMENS

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.

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.

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

3. 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

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

IV. THE LAW

5. 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.

6. The Panel finds that insofar as the complainant alleges that his substantive rights have been violated, he in fact argues that the courts have wrongly assessed the facts and wrongly applied the law. He also seems to argue that he had not been informed of the vacancies at the Department, and therefore was a victim of discrimination.

It is, however, not the task of the Panel to act as a court of appeal or court of "fourth instance" from the decisions of the ordinary courts. It is the role of the latter to interpret and apply the relevant rules of procedural and substantive law. For its part, the Panel finds no element to conclude that the courts acted in an arbitrary or unreasonable manner in establishing the facts or interpreting the domestic law. There is, in particular, nothing arbitrary or unreasonable in holding that the Department, set up by UNMIK Regulation No. 2000/24 of 21 April 2000 on the Establishment of the Administrative Department of Labour and Employment, is not the successor of the Federal Employment Agency of the Republic of Yugoslavia.

The Panel concludes that the relevant complaints do not disclose any appearance of a violation of the rights and freedoms guaranteed by the international human rights instruments listed in Section 1.2 of UNMIK Regulation No. 2006/12. It follows that these complaints must be rejected as being manifestly ill-founded within the meaning of Section 3.3 of the said Regulation.

7. Insofar as the complainant invokes a violation of his right to a fair trial, he has not substantiated this complaint. Accordingly, this part of the complaint is also manifestly ill-founded.

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, that is slightly more than five years. During this period, the case was examined by the courts at three levels of jurisdiction.

The Panel further notes 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).

The Panel considers, however, that it cannot, on the basis of the case file, determine the admissibility of this part of the complaint and that it is therefore necessary, in accordance with Rule 30 § 1 (b) of its Rules of Procedure, to give notice of this complaint to the Special Representative of the Secretary General.

FOR THESE REASONS,

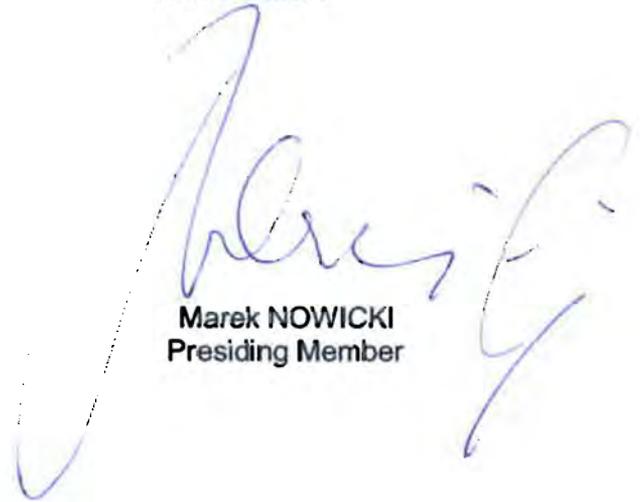
The Panel, unanimously,

- DECIDES TO ADJOURN THE COMPLAINT RELATING TO THE UNDUE DELAY IN THE PROCEEDINGS BEFORE THE COURTS;

- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.



John J. RYAN
Executive Officer



Marek NOWICKI
Presiding Member