



The Human Rights Advisory Panel

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DECISION

Date of adoption: 16 December 2011

Case No. 64/10

Branko ANDRIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 16 December 2011,
with the following members present:

Mr Marek NOWICKI, Presiding Member
Mr Paul LEMMENS
Ms Christine CHINKIN

Assisted by
Mr Andrey ANTONOV, 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. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 31 March 2010 and registered on 8 April 2010.

II. THE FACTS

2. The complainant is a former resident of Kosovo, currently living in Serbia. He states that he worked for the factory “Ferronikel” in Glogovc/Glogovac from 30 July 1992 until 28 July 1999, when he left Kosovo for security reasons. Since then he has not received any salary.
3. In 2006 the complainant learned that the factory was being privatised, but that his name was not included in the list of workers considered to be eligible for receiving 20% of the privatisation proceeds, published by the Kosovo Trust Agency (KTA). On 18 September 2006 he submitted to the KTA a claim for his share of the privatisation proceeds, but he allegedly never received any response.
4. In addition, on a number of occasions the complainant claims to have requested from the administration of the factory a confirmation of his employment for the period 1992 – 1999, but the administration has never responded.
5. The complainant also informs the Panel that the administration of “Ferronikel” allocated him an apartment in Prishtinë/Priština, but because he left Kosovo in July 1999 he was not able to take possession of that flat.
6. On 9 December 2008, UNMIK’s responsibility with regard to police and justice in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX) assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.
7. On 31 March 2011 the Privatisation Agency of Kosovo (PAK), the successor of the KTA, published the final list of workers eligible for receiving 20% of the privatisation proceeds of the “Ferronikel” factory. The complainant’s name is on that list.

III. THE COMPLAINT

8. The complainant complains that since July 1999, he has not received any salary, that the KTA did not to include him in the list of eligible workers, that the “Ferronikel” administration never responded to his requests, and that he was not able to take possession of the apartment allocated to him by the factory.

IV. THE LAW

9. 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.

10. With regard to the loss of salary, the Panel recalls that, according to Section 2 of UNMIK Regulation No. 2006/12, it has jurisdiction only over “complaints relating to alleged violations of human rights that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights.”
11. The Panel has previously considered that dismissal from work is an instantaneous act, which does not give rise to any possible continuous situation (see Human Rights Advisory Panel, *Novokmet*, no. 51/10, decision of 13 April 2011, § 6). The Panel notes that the complainant stopped receiving any salary after his departure from Kosovo in July 1999. It follows that this part of the complaint lies outside the Panel’s jurisdiction *ratione temporis*.
12. With regard to the shares of the privatisation, the Panel notes that the complainant is found to be included in the list of workers eligible to receive shares of privatisation, published by the PAK on 31 March 2011, that is about a year after the complainant filed his complaint with the Panel. Thus, the complainant’s right to shares of the privatisation is confirmed by the PAK. The Panel considers that this part of the complaint does not disclose any appearance of a violation of the complainant’s rights, and therefore is manifestly ill-founded.
13. In relation to the complaint concerning the failure of the management of “Ferronikel” to provide the documents which he requested, the Panel considers that this matter can not be attributed to UNMIK. As Section 1.2 of UNMIK Regulation No. 2006/12 allows the Panel to examine only the complaints of violations of human rights by UNMIK, this part of the complaint is outside the Panel’s jurisdiction *ratione personae*.
14. Regarding the complaint about his right to the apartment allegedly allocated to him by the factory, the complainant fails to show to the Panel that he has previously addressed the matter to the Housing and Property Directorate, or to its successor, the Kosovo Property, Agency, which are the bodies having competence over such a matter. The Panel considers that the complainant did not exhaust the available avenues for review of the alleged violation, as is required by Section 3.1 of UNMIK Regulation No. 2006/12.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member