



# *The Human Rights Advisory Panel*

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## **DECISION**

**Date of adoption: 16 December 2011**

**Case No. 63/10**

**Stjepan GAJDOŠ**

**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 employee of the company “A.D. Ishrana” in Smederevo, Serbia. He was an active member of the trade union “Nezavisnost”. In March 2001 the union organised a strike within the company.
3. The complainant states that on 4 April 2001 the company’s director filed a criminal complaint against him with the Public Prosecutor’s Office of the Municipal Court of Smederevo, Serbia. The complainant states that he was accused of theft at the workplace in retaliation for his activities as a trade-unionist. According to the complainant’s submissions, in the course of the criminal proceedings, he was sentenced to seven months imprisonment by the Municipal Court of Smederevo, reduced on appeal to three months imprisonment by the District Court of Smederevo.
4. On 19 April 2001, as a consequence of the criminal charge, the complainant’s employment with the company was terminated pending finalisation of disciplinary proceedings initiated against him. On 27 June 2001, the disciplinary sanction of dismissal was effectively imposed, and the complainant’s objection to it was rejected by the management board of “A.D. Ishrana” on 20 August 2001.
5. The complainant states that following a lawsuit lodged with the Municipal Court of Smederevo, on 24 February 2005 the aforementioned Court issued a decision in his favour ordering his reinstatement at the workplace. The Court’s decision ordering the reinstatement reportedly became executable on 26 May 2005. However, according to the complainant, on 1 November 2005 the Municipal Court of Smederevo suspended the execution of its abovementioned decision.
6. The complainant also states that he filed criminal charges against the director of “A.D. Ishrana” with the Municipal Court of Smederevo and that the related criminal proceedings have been unduly postponed by the Court.

## **III. THE COMPLAINT**

7. The complainant claims that due to the termination of his employment with the company “A.D. Ishrana”, he was left without an income and the basic means of living. He further complains about the alleged failure of the Municipal Court to execute its decision ordering the reinstatement of the complainant in the workplace as well as about the alleged failure of the Court to prosecute the director of the company “A.D. Ishrana”. He invokes a violation of the International Covenant on Economic, Social and Cultural Rights.

## **IV. THE LAW**

8. 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.

9. According to Section 1.2 of the Regulation, the Panel has jurisdiction over complaints relating to alleged violations of human rights by UNMIK.
10. In the present case the complainant complains about the fact that the Municipal Court of Smederevo, Serbia, did not properly address the claim he filed against his former employer and the complaint he filed against the director of “A.D. Ishrana”.
11. The Panel finds that the object of the present complaint concerns decisions or actions exclusively imputable to judicial authorities of the Republic of Serbia. The matter complained of in no way engages the responsibility of UNMIK.
12. It follows that the complaint lies outside the jurisdiction *ratione personae* of the Panel.

**FOR THESE REASONS,**

The Panel, unanimously,

**DECLARES THE COMPLAINT INADMISSIBLE.**

Andrey ANTONOV  
Executive Officer

Marek NOWICKI  
Presiding Member