



The Human Rights Advisory Panel

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DECISION

Date of adoption: 22 August 2012

Case No. 85/10

B. K.

against

UNMIK

The Human Rights Advisory Panel, sitting on 22 August 2012,
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 30 March 2010 and registered on 22 April 2010.
2. On 29 December 2010, the complainant submitted further information to the Panel.
3. On 16 March 2012, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the complaint. The SRSG submitted UNMIK's response on 21 May 2012.

4. On 14 May 2012, the Panel communicated additional documentation to the SRSG and invited UNMIK to provide additional comments on admissibility in light of the documentation received. On 21 May 2012, the Panel received UNMIK's response.

II. THE FACTS

5. The complainant was born in Kosovo in 1954. In 1985 he went to the United States of America (USA). He resided and worked there for the following twenty-three years.
6. The complainant states that in 1990, following political developments in the region of the former Yugoslavia, he submitted an application for asylum to the USA authorities. However, he never received any feedback on the outcome of this application.
7. In 2004, the USA immigration authorities initiated removal proceedings against the complainant for allegedly overstaying in the country in 1985, thus violating the USA laws on immigration. The complainant states that he was unlawfully detained for nearly four years in the course of the removal proceedings and that at the end of proceedings and his subsequent appeal, he became subject to removal from the USA.
8. On 6 May 2008, pursuant to the issuance of a travel document by UNMIK, the complainant was deported from the USA to Kosovo. The complainant states that, upon being deported, he was not provided with any assistance by UNMIK or any other authority towards meeting his basic subsistence needs and his reintegration into Kosovo society. The complainant, who is affected by a medical condition from birth, states that the lack of access to decent food, accommodation and medical care aggravated his condition. He further states that from 30 May 2008, he wrote letters and tried to address his requests for assistance to senior officials in UNMIK, without receiving any acknowledgement or response.
9. In his submissions to the Panel, the complainant also states that on 13 October 2010, after a doctor had ascertained his inability to work, he filed a request for disability benefits with the relevant Kosovo Ministry. He was later informed orally that his request was denied.

III. THE COMPLAINT

10. The complainant complains that UNMIK facilitated his deportation to Kosovo after twenty-three years of continuous stay in the USA without providing him with any assistance upon his arrival in Kosovo. He claims that upon being deported, he was left without proper housing and food, access to basic social and medical care, work or the financial means to sustain himself.
11. In this regard, the Panel considers that the complainant may be deemed to invoke a violation of his right to be free from inhuman and degrading treatment as guaranteed by Article 3 of the European Convention on Human Rights (ECHR) as well as a

violation of his right to work, to social security and to an adequate standard of living as guaranteed by Articles 6, 9 and 11 respectively of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

12. The complainant also complains that, notwithstanding his health condition and inability to work as determined by a doctor, he was not granted a disability pension from the Government of Kosovo.

IV. THE LAW

13. 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.

A. Whether the complaint has been submitted on time

14. At the outset, the SRSG states that the complaint is inadmissible as it was submitted after the cut-off date of 31 March 2010, established by UNMIK Administrative Direction No. 2009/01 of 17 October 2009 Implementing UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel. The SRSG argues that, pursuant to Section 5 of the Administrative Direction, no complaint shall be admissible if received by the Secretariat of the Panel later than 31 March 2010, whereas the present complaint bears a registration stamp of 22 April 2010.
15. The Panel notes that it has been its consistent practice, in accordance with the practice of the European Court of Human Rights, to consider as decisive the date on which a complaint has been introduced or mailed to the Panel and not the date on which a complaint is registered or received (see, *mutatis mutandis*, European Court of Human Rights (ECtHR), *Kipritci v. Turkey*, no. 14294/04, decision of 3 June 2008, § 18).
16. The Panel notes that in the present case, the date of introduction of the complaint is 30 March 2010, one day before the cut-off date established by UNMIK Administrative Direction No. 2009/01. For this reason, the Panel rejects the objection raised by the SRSG.

B. Complaint concerning alleged lack of assistance upon deportation

17. As indicated above, the complainant states that, upon being deported to Kosovo, he did not receive any assistance from UNMIK to satisfy his basic needs in terms of proper accommodation, food, social assistance and medical care. He states that he is affected by a medical condition from birth, and that his health has deteriorated because of his poor living conditions after his return to Kosovo. He also complains that UNMIK did not provide him with assistance in order to reintegrate into the community and enjoy a decent standard of living.
18. In his comments on admissibility, the SRSG states that UNMIK facilitated the deportation of the complainant, a resident of Kosovo, by providing a travel document

“issued solely with a view to providing the bearer with a travel document to be used *in lieu* of a national passport”. The SRSG also states that the complainant arrived in Kosovo on 6 May 2008 and contacted UNMIK authorities for assistance for the first time on 30 May 2008. In the SRSG’s view, UNMIK did not have sufficient time to make available to him work, social security and an adequate standard of living, considering that UNMIK stopped exercising executive powers in Kosovo on 15 June 2008, with the entry into force of the Kosovo Constitution. The SRSG argues that, for this reason, this part of the complaint is inadmissible *ratione personae*.

19. The Panel refers to the case law of the European Court of Human Rights on the obligations of States under Article 3 of the ECHR with regard to vulnerable persons and members of a particularly underprivileged and vulnerable population group – those in need of a special protection. The Court has not excluded “the possibility that the responsibility of the State may be engaged [under Article 3] in respect of treatment where an applicant, who was wholly dependent on State support, found herself faced with official indifference in a situation of serious deprivation or want incompatible with human dignity” (see ECtHR, *Budina v. Russia*, no. 45603/05, decision of 18 June 2009; ECtHR (Grand Chamber), *M.S.S. v. Belgium and Greece*, no. 30696/09, judgment of 21 January 2011, §§ 251-253).
20. Concerning the SRSG’s objection that UNMIK was not competent *ratione personae* to provide assistance to him upon deportation, the Panel has already held that, following the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK has no longer been able to perform effectively the vast majority of its tasks as an interim administration, and the SRSG has been unable to enforce the executive authority that is still formally vested upon him under United Nations Security Council resolution 1244 (1999) (see, e.g., Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 12 June 2008, S/2008/354, §§ 7 and 17; Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 15 July 2008, S/2008/458, §§ 3-4 and 29; Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 24 November 2008, S/2008/692, § 21).
21. The Panel has already considered that, as a result, from 15 June 2008 at the latest, UNMIK can in principle no longer be held responsible for acts or omissions imputable to the Kosovo authorities (see Human Rights Advisory Panel (HRAP), *Ibrahimi*, no. 86/10, decision of 16 March 2012, § 11).
22. However, the Panel notes that in the instant case the complainant was deported from the USA to Kosovo on 6 May 2008 and that the deportation was facilitated by UNMIK. The Panel considers that this must also incur responsibility for providing at least an initial minimum core level of assistance and advice to individuals subject to deportation to Kosovo. On these grounds, the Panel rejects the objection raised by the SRSG.
23. The Panel considers that this part of the complaint raises issues of fact and law, the determination of which shall depend on an examination of the merits. The Panel

therefore concludes that this part of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.

24. No other ground for declaring this part of the complaint inadmissible has been established.

C. Complaint concerning the request for a disability pension

25. The complainant also complains that, on an unspecified date after 13 October 2010, he was informed orally that the Ministry had denied his request for a disability pension.

26. The Panel recalls that according to Section 1.2 of UNMIK Regulation No. 2006/12, the Panel has jurisdiction over complaints relating to alleged violations of human rights by UNMIK.

27. With regard to this part of the complaint, the Panel recalls its reasoning (§§ 20-21) that from 15 June 2008 at the latest, UNMIK can in principle no longer be held responsible for acts or omissions imputable to the Kosovo authorities.

28. The Panel notes that the object of this part of the complaint is a decision that is exclusively imputable to the Kosovo authorities. There is no indication of any concrete involvement of UNMIK in the adoption of that position. There are also no special circumstances that would warrant derogation from the principle set out above. The conclusion therefore is that this specific matter complained of does not engage the responsibility of UNMIK (HRAP, *Ibrahimi*, cited in § 21 above, at § 12).

29. It follows that this part of the complaint falls outside the jurisdiction *ratione personae* of the Panel.

FOR THESE REASONS,

The Panel, unanimously,

- **DECLARES ADMISSIBLE THE COMPLAINT CONCERNING ALLEGED LACK OF ASSISTANCE UPON DEPORTATION;**
- **DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.**

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member