



The Human Rights Advisory Panel

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DECISION

Date of adoption: 26 September 2012

Case No. 319/09

Nevenka RISTIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 26 September 2012,
with the following members present:

Mr Marek NOWICKI, Presiding Member
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 2 November 2009 and registered on 12 November 2009.
2. On 5 October 2011, the Panel requested the complainant to submit additional information. On 8 December 2011, the Panel received additional documentation from the complainant.

II. THE FACTS

3. The complainant is a former resident of Kosovo currently residing in Montenegro. She states that she was employed by the socially-owned enterprise "Eximkos", Prishtinë/Priština from December 1975 until 1999, when she left for security reasons.
4. On 31 May 2007, the complainant filed a request with the Kosovo Trust Agency (KTA) seeking the right to her share of the proceeds from the privatisation of the enterprise.
5. On 21 October 2007, the KTA published the list of eligible employees entitled to a share of the proceeds, which included the name of the complainant.
6. In December 2008, after learning that the enterprise had been privatised and knowing that she had been included in the KTA list of eligible employees, the complainant went to the bank along with her colleagues to collect her share of the proceeds, only to find out that she had not in fact a right to receive any money from the privatisation of the enterprise. At that time, she contacted the Special Chamber of the Supreme Court of Kosovo on Trust Agency Related Matters (the Special Chamber), which informed her that on 23 October 2008 it had issued a decision removing her name from the list of eligible employees. In its judgment, the Special Chamber stated that its judgment was final, legally binding and not appealable.

III. THE COMPLAINT

7. The complainant complains in substance about the fairness of the proceedings before the Special Chamber relating to her eligibility of a share of the proceeds of the privatisation of "Eximkos". She claims that she was on the payroll of "Eximkos" for 24 years and was therefore entitled to an appropriate share of the proceeds from its privatisation, and that her right to a fair trial to determine her share of the proceeds as guaranteed by Article 6 § 1 of the European Convention on Human Rights (ECHR) was violated because the Special Chamber did not properly notify her of the proceedings before it seeking reconsideration of her inclusion on the KTA list. She also complains that the Special Chamber's failure to inform her about its decision to remove her from the KTA list violated her right to a decision within a reasonable time, guaranteed by Article 6 § 1 of the ECHR.

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.

A. Non-Exhaustion

9. In his comments on the admissibility of the complaint, the SRSG argues that the complaint is inadmissible because of lack of exhaustion of available avenues. He argues that the complainant did not use all appellate avenues that were available to her, in particular she did not appeal against the decision of the Special Chamber. Section 3.1 of UNMIK Regulation No. 2006/12 states that the Panel may only deal with a matter after all other available avenues have been pursued.
10. The SRSG quotes Section 67.12 of UNMIK Regulation No. 2008/6 of 5 February 2008 on the Establishment of the Special Chamber of the Supreme Court on Kosovo Trust Agency Related Matters which states:

“The decision of the Trial Panel, which may be appealed, shall be served on the complainant and the Agency as soon as possible after the decision is finalised, but in any event not later than 90 days of the date on which the complaint was filed with the Registry.”

11. The SRSG asserts that the complainant was never denied access to these remedies and that therefore a possible violation of Article 6 of the ECHR cannot be invoked on this basis.
12. The Panel disagrees with the SRSG’s argument that the complainant had a right to appeal the judgment of the Special Chamber. In fact, the complainant did not enjoy a right to an appeal at the time she was informed of the Special Chamber’s judgment. At the time of the issuance of the Special Chamber judgment on 25 October 2008, there were no possible appeals from the judgments of the Special Chamber. The Special Chamber judgment in question stated clearly that “The Judgment is final, legally binding and not appealable.”
13. UNMIK Regulation No. 2008/4 of 5 February 2008 amending UNMIK Regulation No. 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters, which included a possibility to appeal Special Chamber judgments to a different panel of the Special Chamber, and which was originally set to enter into force on 31 March 2008, was subsequently amended by regulations postponing its coming into force until 31 December 2008 (see Human Rights Advisory Panel (HRAP), *Todorović*, no. 33/08, decision of 17 April 2009, § 35). The Panel sees no reason to depart from the findings in the case of *Todorović* and therefore rejects the argument of the SRSG.

B. Fairness of the Special Chamber Proceedings

14. The complainant states that she did not have the opportunity to participate in the Special Chamber proceedings against her, thus violating her right to a fair trial.
15. The SRSG argues that that the complainant chose not to participate in proceedings before the Special Chamber to substantiate the allegations that her disqualification from eligibility for inclusion on the list was the result of discrimination as required by law. Accordingly, the SRSG asserts that there was no violation of Article 6 § 1 of the ECHR in regard to the fairness of the Special Chamber proceedings and subsequent judgment removing the complainant from the KTA list of employees eligible for a share of the privatisation proceeds.
16. The Panel notes that the complainant states that she was not privy to any information that her status as an eligible employee had even been challenged. According to her, the last information she had received about this matter was that her name had been included in the KTA’s final published list of eligible employees on 21 October 2007. As such, it seems that she had no reason to make submissions to the Special Chamber with respect to a process about which she had no knowledge.
17. The Panel considers that this part of the complaint raises serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that this part of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12, and rejects the objection raised by the SRSG.
18. No other ground for declaring this part of the complaint inadmissible has been established.

C. Delay in service of the judgment of the Special Chamber

19. The SRSG does not respond explicitly to the complainant's allegation that she was not informed about the Special Chamber judgment issued against her.
20. According to the complainant, she was never served a copy of the judgment of the Special Chamber dated 25 October 2008, nor was she even made aware of the court proceedings in which her status as an employee eligible to be included in the workers' list for the enterprise in which she worked was being challenged. According to her complaint, she was last made aware of this matter by way of the KTA's publication of its final list on 21 October 2007. She states that she did not find out that she had been removed from the list of eligible employees until after she had initiated contact with the Special Chamber in December 2008.
21. Section 45.4 of Administrative Direction No. 2006/17 of 6 December 2006 Amending and Replacing UNMIK Administrative Direction No. 2003/13, Implementing UNMIK Regulation No. 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters provides that "each party shall be served with a copy of the judgment within thirty days of its adoption". In the present case it appears that service was not effectuated on the complainant until she queried the Special Chamber in December 2008.
22. The Panel considers that this part of the complaint under Article 6 § 1 of the ECHR raises serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that this part of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
23. No other ground for declaring this part of the complaint inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member