



The Human Rights Advisory Panel

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DECISION

Date of adoption: 17 August 2012

Case No. 295/09

H. H.

against

UNMIK

The Human Rights Advisory Panel, sitting on 17 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 26 May 2009 and registered on the same date.
2. On 23 December 2009 and 8 July 2011, the Panel requested the complainant to submit additional information. No responses were received.

II. THE FACTS

3. The complainant is a former member of the Kosovo Protection Corps (KPC).
4. On 21 April 2008 the Deputy Commander of the KPC ordered the suspension of payment of the complainant's salary, pending the conclusion of a disciplinary process to be initiated against him. The reason given was that the complainant had been absent from work for more than seven consecutive days.

5. The complainant states that this period of absence was due to him being ill and that he was able to support this with medical certificates from his physician. He also states that he has in fact been expelled from the KPC.
6. On 30 June 2008, the complainant filed a complaint with the Ombudsperson for Kosovo. On 7 May 2009, the Ombudsperson declared the complaint inadmissible for non-exhaustion of available remedies.

III. THE COMPLAINT

7. The complainant does not invoke any specific violation of human 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 3.1 of UNMIK Regulation No. 2006/12, the Panel may only deal with a matter “after it determines that all other available avenues for review of the alleged violations have been pursued”.
10. The measure complained of is a temporary disciplinary measure. It is upon completion of the disciplinary proceedings that either the measure can become permanent (where the disciplinary body finds that the KPC member has committed an act of major non-compliance by unauthorised absence) or the salary shall be reimbursed (where the member is acquitted of the disciplinary charges) (paragraphs 5.3.3.1 to 5.3.3.6 of the KPC Disciplinary Code).
11. It follows that there is no final decision on the issue until the disciplinary proceedings, including possibly appeal proceedings, have come to an end.
12. The complainant has not given any indication as to the institution of the disciplinary proceedings, and even less as to the outcome thereof. During such proceedings he would be able to present his point of view and submit evidence that might justify his absence from work.
13. It follows that the complainant has not exhausted all available avenues, within the meaning of Section 3.1 of UNMIK Regulation No, 2006/12, before filing his complaint with the Panel.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member