DECISION

Date of adoption: 17 April 2009

Case No. 33/08

Rodoljub TODOROVIĆ

against

UNMIK

The Human Rights Advisory Panel sitting on 17 April 2009
with the following members present:

Mr. Marek NOWICKI, Presiding Member
Mr. Paul LEMMENS
Ms. Snezhana BOTUSHAROVA

Mr. John J RYAN, 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. THE FACTS

1. The complainant is one of the heirs of Andreja Sinadinović, who was the owner of a piece of land (no. 8628/4) in Prizren. That piece of land originally was part of a larger plot of land (no. 8628), which was co-owned by Andreja, Simka, Damjan and Ruza Sinadinović. As a result of the division of the property among the co-owners, Andreja Sinadinović received the above mentioned piece of land (no. 8628/4).

2. On 6 March 1965, the Provincial Secretariat of Finances in Pristina decided to expropriate Andreja Sinadinović's property (no. 8628/4) for the purpose of the needs

of the socially owned enterprise (SOE) Progres in Prizren. Progres, which had a winery, had in fact been using the land since 1949. The expropriation was not challenged by the owner. On 6 January 1966, the Compensation Commission adopted a decision ordering the SOE Progres to pay an amount of 1.007.244 dinars to Andreja Sinadinović, as compensation for the expropriation. Upon a complaint filed in 1970, the District Court of Prizren ordered the SOE Progres on 10 June 1971 to pay an additional amount of 3.945.000 dinars, as compensation for the illegal use of the land between 1949 and 1967.

3. In 1991 the land in question was transferred in 1991 from the SOE Progres to the SOE Sillosi or Zhitpromet, which produced bread.

4. On 12 September 1995, the four heirs of Andreja Sinadinović, including the complainant, filed with the Municipal Council of Prizren a request for the annulment of the expropriation decision of 6 March 1965. On 3 September 1998 the Municipal Council granted the request. It annulled the expropriation decision of 6 March 1965. It ordered the return of the land to the applicants, except for the part on which the SOE Zhitpromet/Sillosi had built a construction. According to the Municipal Council, the expropriated land had not been used within the tree years of the expropriation for the purpose for which the expropriation was ordered, namely the extension of the winery of the SOE Progres. The issue of compensation was left for decision to the courts.

5. The Public Legal Defence Attorney of the Republic of Serbia filed a complaint against this decision with the Ministry of Finance of the Republic of Serbia. On 11 November 1998 the Ministry annulled the decision of the Municipal Council. The grounds upon which the annulment is based are not clear to the Panel. In any event, it seems to result from the reasons of the decision that the Ministry considered, like the Municipal Council, that the expropriation decision of 6 March 1965 was no longer valid, since the expropriated land had not been used for the purposes of the expropriation.

6. According to the complainant, because of the conflict in 1999, the Sinadinović heirs were never able to recover their land, notwithstanding the favourable decision of the Ministry.

7. In 2004 they brought a claim before the Municipal Court of Prizren against the SOE Progres and the SOE Zhitpromet/Sillosi, but these claims have never been heard.

8. On 10 January 2005 the four heirs of Andreja Sinadinović, including the complainant, filed with the Special Chamber of the Supreme Court on Kosovo Trust Agency Related Matters a claim against the Kosovo Trust Agency (KTA) and the two above mentioned SOE's, both represented by the KTA. They requested the Special Chamber to confirm their ownership right over the whole piece of land that had belonged to Andreja Sinadinović (no. 8628/4), and to order the SOE Zhitpromet/Sillosi to hand over to them that property, including the part on which a so-called building had been constructed.

9. On 23 October 2007 the Special Chamber handed down its judgment. In examining the evidence of the case, the Special Chamber explicitly considered that both the decision of the Municipal Council of 3 September 1998 and the decision of the Ministry of Finance of 11 November 1998 were not "valid evidence", as both

decisions were for various reasons not in conformity with the law. The Special Chamber thus noted that the land in question had been the object of an expropriation decided in 1965, for which the owner had at the time received compensation. It noted that this expropriation had not been challenged until 12 September 1995, that is thirty years after the expropriation, far beyond the expiration of the relevant deadlines (according to the laws on expropriation of the Republic of Serbia and of the Autonomous Province of Kosovo). The former owner had moreover received compensation for the illegal use of the land before the expropriation and for the expropriation itself. Finally, the Special Chamber considered that the land had been used for the purpose for which the expropriation had been decided, namely the needs of the SOE Progres.

10. The complainant was notified of the judgment on 2 July 2008.

II. COMPLAINT

11. The complainant makes the following complaints:
- the Special Chamber of the Supreme Court has disregarded the fact that the expropriation decision of 1965 has been annulled by a final decision of the Ministry of Finance of 1998, thus deciding the same matter a second time and violating the principle of legal certainty;
- the judgment of the Special Chamber of the Supreme Court has been served almost nine months after its adoption, while under the relevant rules service had to take place within thirty days;
- the judgment of the Special Chamber of the Supreme Court states that no appeal against it is possible, while the relevant regulation provides for an appeal; in this respect, the complainant's right to appeal has been violated.

III. PROCEEDINGS BEFORE THE PANEL

12. The complaint was introduced on 25 July 2008 and registered on the same date.

13. The Panel communicated the complaint to the SRSG on 23 October 2008 giving him the opportunity to provide comments on behalf of UNMIK on the admissibility and the merits pursuant to Section 11.3. of UNMIK Regulation No. 2006/12 and Rule 30 of the Panel's Rules of procedure.

14. The SRSG commented on 13 November 2008 on the admissibility of the complaint. According to the SRSG the complaint did not set forth all relevant facts. He invited the Panel to request from the complainant additional information.

15. On 15 December 2008 the Panel recommunicated the complaint to the SRSG, this time together with the documents submitted by the complainant.

16. The SRSG commented on 29 January 2009 on the admissibility and the merits of the complaint.

IV. THE LAW

17. Before considering the complaint on its merits the Panel has to decide whether to accept the complaint, taking into account the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.

A. Exclusion of the decision of the Ministry of Finance of 11 November 1998 as valid evidence

18. The complainant alleges that the Special Chamber of the Supreme Court has disregarded the "final decision of the Ministry of Finance of 1998", which had annulled the expropriation decision of 1965. According to the complainant, the Special Chamber thus not only incorrectly applied the substantive law, but also decided the same matter a second time, thereby violating the principle of legal certainty.

19. The SRSG replies that the Special Chamber has not "disregarded" the decision of the Ministry of Finance, but rather carefully has considered that decision and has rejected it for legally valid reasons. The SRSG observes, moreover, that the Panel is not an appellate court over the Special Chamber, and that it cannot question the motivated setting aside of administrative decisions and evidence by the Special Chamber.

20. The Panel observes that it results from the reasons of the judgment of the Special Chamber of 23 October 2007 that the question of the validity of the decision of the Ministry of Finance of the Republic of Serbia of 11 November 1998 has been discussed by the parties and examined by the Special Chamber. The Special Chamber found, in particular, that according to the enacting clause of the decision the Ministry annulled the decision of the Municipality of Prizren of 3 September 1998, but that in its reasoning the Ministry also found that the expropriation decision of 6 March 1965 was no longer valid. In the opinion of the Special Chamber, the Ministry's arguments for the latter conclusion were "contradictory". While the Ministry considered that the expropriated land had not been used for the expressed purpose of the expropriation, it failed to see that the SOE Progres had used the expropriated land after the expropriation decision of 1965 for its own needs, which use was the real purpose of the expropriation. The Special Chamber held, moreover, that "the Ministry did not observe a very important point of law, which is the failure of the claimant to challenge the expropriation within the legal time limit". For these reasons, the Special Chamber concluded that the decision of the Ministry was "in contradiction with the law on expropriation", and was therefore "not ... considered as valid evidence before the Court".

21. The Panel finds that the complainant argues in substance that the Special Chamber did wrongly apply the law, in particular the law on expropriations. However, as the SRSG rightly observes, it is not the task of the Panel to act as an appellate court over the Special Chamber of the Supreme Court. It is the role of the latter to interpret and apply the relevant rules of substantive law. For its part, the Panel finds no element to conclude that the Special Chamber acted in an arbitrary or unreasonable manner in interpreting the relevant law. There is, in particular, nothing arbitrary or unreasonable in holding that the decision of the Ministry of 11 November 1998 was not in conformity with the legislation existing at that time, and that the complainant could therefore not successfully rely on that decision in the proceedings before the Special Chamber.

22. Since the decision of the Ministry was an administrative decision, not a judicial one, it was not "*res judicata*", and there is therefore nothing questionable about the setting aside of that decision, once it was determined that it was not legally valid.

23. The Panel concludes that this complaint does not disclose any appearance of a violation of the rights and freedoms guaranteed by the international human rights instruments listed in Section 1.2 of UNMIK Regulation No. 2006/12. It follows that this complaint must be rejected as being manifestly ill-founded within the meaning of Section 3.3 of the said Regulation.

B. Delay in service of the judgment of the Special Chamber of the Supreme Court

24. The complainant states that the judgment was adopted by the Special Chamber of the Supreme Court on 23 October 2007, but was served only on 2 July 2008, despite numerous requests by him to obtain a copy of the judgment. He draws the attention to Section 45.4 of Administrative Direction No. 2003/13 of 11 June 2003 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 (read: 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), which provides that each party shall be served with a copy of the judgment within thirty days of its adoption. In the present case it took almost nine months before service actually took place. The complainant's procedural rights have thus been violated.

25. The SRSG admits that it is difficult to fully justify the entire delay between the adoption of the judgment on 23 October 2007 and the service of the judgment on 2 July 2008. He refers, however, to the fact that the rapporteur judge had to assume a number of administrative duties at the time, which made him unavailable to attend to the complainant's case as diligently as would have been preferred. Several judges also took vacations during this time, causing additional delays. After the deliberation, a draft judgment was written by the rapporteur judge, which then was circulated to all the judges, who could propose amendments to the text. After having received amendments, the rapporteur judge made new drafts. The draft versions, the amendments and the final version had to be translated into three languages. The SRSG admits that, once the judgment was available in written form, there was an additional delay in service, for reasons that could not fully explain it.

26. The SRSG argues that, whatever the reasons for the delay, it is difficult to understand what legal rights are affected by the delay in legal service, since the claim was rejected and the judgment is final, legally binding and not appealable. Even if the complainant would have been served within the prescribed timeframe, he would have been able neither to enjoy the claimed property, nor to appeal the Special Chamber's decision.

27. The complaint is about the delay in drafting the written version of the judgment of the Special Chamber and in serving that judgment on the complainant. The Panel considers that this complaint must be examined in the light of the right to a judicial decision within a reasonable time. This right is guaranteed in, among other

provisions, Article 6 § 1 of the European Convention on Human Rights (hereafter: ECHR).

28. The Panel notes that the proceedings before the Special Chamber of the Supreme Court started on 10 January 2005, when the complainant filed his claim, and ended on 2 July 2008, when the written version of the judgment was served on him. Therefore the overall duration of the proceedings was almost 3,5 years, for one level of jurisdiction. The complainant limits his complaint, however, to the duration of the proceedings between the end of the deliberation, on 23 October 2007, and the service of the judgment, on 2 July 2008. That period covers 8,5 months.

29. Section 45.4 - 45.6 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, in force in the relevant period, reads as follows:

> 45.4 An original of the judgment, signed by the Presiding Judge, or by the International judge or the judge presiding over the panel, to which the conduct of the hearing was delegated, and the Registrar, shall be stamped and deposited at the Registry. Each party shall be served with a copy of the judgment within thirty days of its adoption.
> 45.5 The judgment shall be in English and in the other language or languages used by the parties.
> 45.6 The judgment shall be binding from the day of its service on the parties, and shall be enforceable as a final judgment of the Supreme Court of Kosovo according to the provisions of the applicable law.

30. There is no dispute between the parties that the judgment of the Special Chamber was served outside the time limit set by Section 45.4 of Administrative Direction No. 2006/17.

31. The Panel considers that this aspect of the complaint raises complex issues of fact and law which cannot be resolved at this stage in the examination of the complaint, but require examination of the merits. It follows that this aspect of the complaint cannot be declared manifestly ill-founded within the meaning of Section 3.3 of Regulation No. 2006/12. No other ground for declaring it inadmissible has been raised.

C. Appeal against the judgment of the Special Chamber of the Supreme Court

32. The complainant refers to one of the enacting clauses of the judgment of the Special Chamber of the Supreme Court, which states that "this judgment is final, legally binding and not appealable". According to the complainant, excluding the possibility to appeal against the judgment is not in conformity with UNMIK Regulation No. 2002/13 of 13 June 2002 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters, as amended. The complainant considers that the right to appeal is, moreover, a basic human right.

33. At the date of adoption of the judgment of the Special Chamber, on 23 October 2007, UNMIK Regulation No. 2002/13 did not provide for any possibility of appeal against a judgment of the Special Chamber.

34. It is true that Regulation No. 2002/13 has meanwhile been replaced, namely by Regulation No. 2008/4 of 5 February 2008. According to that regulation, on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters, the Special Chamber is composed of five panels of three judges, which can hear claims in the first instance (Section 3.2). There is also an appellate panel, presided by the President of the Special Chamber and composed of five judges, competent to hear appeals (Section 3.3). Section 9.5 provides as follows:

> 9.5 A Judgement or Decision of a trial panel shall be served on the parties within thirty (30) days of adoption. Within thirty days from the receipt thereof, a party may appeal to the appellate panel for a review of such Judgement or Decision. Where a Decision, including a Judgement issued pursuant to section 4.3, is appealed the appellate panel shall first determine whether the Decision or Judgement so appealed merits a review. If the appellate panel decides not to review the Decision or Judgement issued pursuant to section 4.3 of the trial panel such Judgement or Decision becomes final. Where the appellate panel reviews a Judgement or Decision it may decide to confirm, revoke or alter the Judgement or Decision made by a trial panel.

35. Section 14 of Regulation No. 2008/4 initially provided that the regulation would enter into force on 31 March 2008, "by which time the procedural rules promulgated under section 7 shall have been duly adjusted". However, this date was modified by Regulation No. 2008/19 of 31 March 2008, "for the purpose of providing for additional time that is required for duly adjusting the procedural rules of the Special Chamber promulgated under section 7 of UNMIK Regulation No. 2002/13". The entry into force of Regulation No. 2008/4 was thus postponed until 31 May 2008. Section 14 was later modified by Regulation No. 2008/29 of 31 May 2008, Regulation No. 2008/35 of 30 June 2005 and Regulation No. 2008/36 of 1 November 2008, each time "for the purpose of providing for additional time that is required to establish specialized first instance panels and an appeals panel at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters". As a result, the entry into force of Regulation No. 2008/4 was postponed successively until 30 June 2008, 31 October 2008 and finally 31 December 2008.

36. Whether one considers that laws relating to appeals against judgments are "*ratione temporis*" applicable only to judgments adopted after the entry into force of these laws, or that these laws are also applicable to judgments adopted before the entry into force of such laws, but served after that date, it is clear from the foregoing that under neither interpretation is Regulation No. 2008/4 applicable to the judgment of the Special Chamber handed down in the complainant's case. The complainant therefore did not, and does not, enjoy a right to appeal against that judgment. By delaying the service of the judgment, the Special Chamber thus has not deprived the complainant of any right of appeal.

37. Moreover, as the European Court of Human Rights has held, neither Article 6 nor Article 13 of the ECHR guarantees, as such, a right of appeal or a right to a second level of jurisdiction (see, e.g., ECtHR, *Guérin v. France*, judgment of 29 July 1998, Reports of Judgments and Decisions 1998-V, § 44; ECtHR, *Marpa Zeeland b.v. and Metal Welding b.v. v. Netherlands*, no. 46300/99, judgment of 9 November 2004, § 48). The Panel does not see a provision in any of the other international human

rights instruments mentioned in Section 1.2 of Regulation No. 2006/12 which could be understood as guaranteeing such a right in cases other than criminal ones. By deferring the entry into force of Regulation No. 2008/4, the SRSG cannot be said to have violated any fundamental right of the complainant.

38. The Panel concludes that this complaint is incompatible with the human rights set forth in the international human rights instruments referred to in Section 1.2 of Regulation No. 2006/12, or at least does not disclose any appearance of a violation of the rights and freedoms guaranteed by these instruments. It follows that this complaint must be rejected as being manifestly ill-founded within the meaning of Section 3.3 of the said Regulation.

FOR THESE REASONS,

The Panel, unanimously,

- DECLARES ADMISSIBLE THE COMPLAINT RELATING TO THE DELAY IN THE SERVICE OF THE JUDGMENT OF THE SPECIAL CHAMBER OF THE SUPREME COURT,

- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.

John J. RYAN
Executive Officer

Marek NOWICKI
Presiding member

SECRETARIAT HUMAN RIGHTS
ADVISORY PANEL
CERTIFIED
18-04-2009
JOHN RYAN
EXECUTIVE OFFICER