



The Human Rights Advisory Panel

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DECISION

Date of adoption: 13 March 2010

Case No. 48/08

Kolë KRASNIQI

against

UNMIK

The Human Rights Advisory Panel sitting on 13 March 2010 with the following members present:

Mr. Marek NOWICKI, Presiding Member
Mr. Paul LEMMENS
Ms. Christine CHINKIN

Mr. Rajesh TALWAR, 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 alleges that during the period of the Socialist Federal Republic of Yugoslavia, he and his predecessors were owners of property, situated in Gjakovë/Djakovica, which was expropriated by the State.
2. In 1991 the Act on Recognition of Rights to and Restitution of Land Transformed into Socially Owned Property by Inclusion in the Farmland Fund or by Confiscation due to the Non-fulfilment of Obligations Arising from the Obligatory Sale of Farm Produce (hereafter: Act on Restitution of Land Transformed into Socially Owned Property), was enacted by the Republic of Serbia (Official Gazette, no. 18/91). Shortly thereafter the complainant filed a claim for restitution with the municipal directorate for property and legal affairs of Gjakovë/Djakovica. He alleges that no action had been taken by the time the war in Kosovo erupted in 1999.
3. The complainant states that since the war he has tried unsuccessfully to obtain an examination of his claim by the municipal directorate. According to the complainant,

the municipal authorities have for many years obstructed the proceedings, because his claim is based on Serbian law.

4. The complainant submitted a letter from the municipal directorate, dated 11 September 2008, by which the directorate finally requested the Ministry of Agriculture, Forestry and Rural Development of the Republic of Kosovo to establish a municipal commission for land restitution, in accordance with the above mentioned Act on Restitution of Land Transformed into Socially Owned Property. On 19 September 2008 the Ministry replied that the act, which provides for an examination of claims by certain authorities of the Republic of Serbia, could not be applied in Kosovo. Since, moreover, there was no Kosovo legislation on the restitution of land, the Ministry did not have a legal basis to set up commissions for land restitution.

II. COMPLAINT

5. The complainant alleges that by holding that the Serbian Act on Restitution of Land Transformed into Socially Owned Property is not applicable in Kosovo, while other former owners in Gjakovë/Djakovica and elsewhere in Kosovo have obtained the restitution of their land, the Ministry has acted in a discriminatory way.

III. PROCEEDINGS BEFORE THE PANEL

6. The complaint was introduced on 23 October 2008 and registered on 4 November 2008.
7. The Panel communicated the case to the Special Representative of the Secretary-General (SRSG) on 3 June 2009 requesting his comments on behalf of UNMIK on the admissibility of the complaint. The SRSG provided comments by letter dated 23 June 2009.

IV. THE LAW

8. 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.
9. The SRSG raises two objections to the admissibility of the complaint. He notes in the first place that the complainant takes issue with a decision of the Ministry of Agriculture, Forestry and Rural Development dated 19 September 2008. The SRSG argues that, as is explained in the report of the Secretary-General of the United Nations of 12 June 2008 to the Security Council, after the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK was no longer in a position to perform effectively the vast majority of its tasks as an interim administration. In these circumstances the said decision of the Ministry is an administrative decision for which UNMIK is not responsible. The SRSG further argues that the complainant did not institute legal remedies against the Ministry's decision, e.g. an appeal before the competent authorities. He thus has not pursued all other available avenues.
10. With respect to the first objection, the Panel notes that, according to Section 1.2 of Regulation No. 2006/12, it "shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK" of their human rights.

11. In the present case, the complainant complains about the refusal by the Ministry of Agriculture, Forestry and Rural Development of the Republic of Kosovo to set up a municipal commission for land restitution, expressed in a letter of 19 September 2008.
12. As is argued by the SRSG, following the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK is no longer able to perform effectively the vast majority of its tasks as an interim administration, and the SRSG is unable to enforce the executive authority that is still formally vested upon him under Security Council resolution 1244 (1999) (see Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 12 June 2008, S/2008/354, §§ 7 and 17; Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 15 July 2008, S/2008/458, §§ 3-4 and 29; Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 24 November 2008, S/2008/692, § 21).
13. The Panel must take into account the political reality on the ground (compare the case law of the European Court of Human Rights (ECtHR), which, in order to assess whether a State is prevented from normally exercising its authority, examines “on the one hand all the objective facts capable of limiting the effective exercise of (the) State's authority over its territory, and on the other the State's own conduct”: ECtHR (Grand Chamber), *Ilaşcu and others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, §§ 312-313, *ECHR*, 2004-VII). The Panel therefore considers 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, merely on the basis of the continuing existence of Security Council resolution 1244 (1999). The Panel does not exclude, however, that there may be special circumstances that could lead to a different conclusion in a particular case.
14. The object of the present 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 a derogation from the principle set out above. The conclusion therefore is that the matter complained of does not engage the responsibility of UNMIK.
15. It follows that the complaint falls outside the jurisdiction *ratione personae* of the Panel.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member