



The Human Rights Advisory Panel

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OPINION

Date of adoption: 18 June 2010

Case No. 25/08

Mr. V. Z.

against

UNMIK

The Human Rights Advisory Panel on 18 June 2010,
with the following members present:

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

Assisted by

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, makes the following findings and recommendations:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was lodged on 7 July 2008 and registered on the same date.
2. The Panel communicated the complaint to the Special Representative of the Secretary-General (SRSG) on 23 April 2009 requesting his comments on behalf of UNMIK on the

admissibility and the merits of the complaint. The SRSG provided comments by letter dated 27 May 2009.

3. By a decision of 15 July 2009 the Panel declared the complaint admissible in part.
4. On 17 August 2009 and 2 September 2009 the SRSG submitted UNMIK's comments on the merits of the complaint. The complainant submitted his response on 24 September 2009.

II. THE FACTS

5. The complainant, Mr. V.Z., is a resident of Kosovo currently living as a displaced person in Serbia.
6. The complainant submitted that he was the owner of a kiosk in Prizren. In June 1999, fearing hostilities, he left Kosovo. Following his departure, the kiosk was destroyed during the second half of 1999.
7. With respect to the destruction of the kiosk, the complainant lodged a claim with the Municipal Court of Prizren against UNMIK, KFOR, the Kosovo Provisional Institutions of Self-Government (PISG) and the Municipality of Prizren, seeking 24,000 euro in compensation for the damage caused to his property. The claim was dated 14 June 2004 and recorded by the Municipal Court of Prizren on 16 September 2004.
8. By the end of 2008, the Municipal Court had not contacted the complainant, and no hearing had been scheduled.
9. The complainant's claim belongs to a group of approximately 17,000 compensation claims, all filed by ethnic Serbs who because of the hostilities had left their homes in Kosovo in 1999 and whose property was later damaged or destroyed. With a view to meeting the statutory five-year time-limit for submitting civil compensation claims, these claimants lodged their claims around the same time in 2004 before Kosovo courts. The claims were directed against UNMIK, KFOR, the PISG and in most cases also the relevant municipality (see Human Rights Advisory Panel (hereinafter HRAP), *Milogorić and Others*, cases nos. 38/08, 58/08, 61/08, 63/08 and 69/08, opinion of 24 March 2010, § 1; for the legal basis upon which the claimants based their claim, see the same opinion, § 5).
10. With respect to these cases the Director of the UNMIK Department of Justice (DOJ) sent a letter to all municipal and district court presidents and to the President of the Supreme Court of Kosovo on 26 August 2004. In the letter, the Director of DOJ mentioned that "over 14,000" such claims had been lodged. He referred to "the problems that such a huge influx of claims will pose for the courts", and asked that "no [such] case be scheduled until such time as we have jointly determined how best to effect the processing of these cases" (for the full text of the letter, see the *Milogorić and Others* opinion, cited above, § 6).
11. On 15 November 2005, DOJ called on the courts to begin processing claims for damages caused by identified natural persons and for damages caused after October 2000,

considering that the “obstacles to the efficient processing of these cases” did not exist any longer. Claims related to the 1999 armed conflict were not affected by this letter.

12. On 28 September 2008 the Director of DOJ advised the courts that cases which had not been scheduled according to the 26 August 2004 request should now be processed.
13. On 9 December 2008, UNMIK’s responsibility with regard to the judiciary in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX) assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.

III. COMPLAINT

14. Insofar as the complaint has been declared admissible, the complainant in substance alleges that the Municipal Court in Prizren has stayed the proceedings concerning his claim for damages for destroyed property and that as a result this procedure has not been concluded within a reasonable time, in breach of Article 6 § 1 of the European Convention on Human Rights (ECHR).

IV. THE LAW

15. The Panel notes that the case of the complainant raises an issue which has already been submitted to the Panel. The Panel recalls that in the joined cases of *Milogorić and Others* (cited above) it examined complaints by five complainants who were also owners of real property in Kosovo. In 1999, fearing hostilities, they left their homes in Kosovo. Their property was damaged or destroyed during the second half of 1999, after the entry into Kosovo of UNMIK and KFOR. These complainants also filed claims in 2004 before the competent municipal courts against UNMIK, KFOR, the PISG and the relevant municipalities, seeking compensation for the damage caused to their property. They too had not been contacted by the courts and no hearing had been scheduled, due to the above mentioned intervention by the DOJ which halted the judicial proceedings from August 2004 to September 2008.
16. In *Milogorić* the Panel found that “the fact that, for a long period of time, the complainants were prevented from having their compensation claims determined by the courts as a consequence of the interference by the DOJ, constituted a violation of Article 6 § 1 of the ECHR”, more specifically of their right of access to a court (HRAP, *Milogorić and Others*, cited above, § 46). The Panel further found that “it [was] not necessary to examine separately the issue of the length of the proceedings” (same opinion, § 48).
17. The Panel sees no reason to depart from these findings in the present case.

V. RECOMMENDATIONS

18. In the joined cases of *Milogorić and Others* the Panel recommended, in the light of its findings, the following reparation measures:

- “that UNMIK [...] endeavour, with all the diplomatic means available to it *vis-à-vis* the Kosovo authorities, to obtain assurances that the cases filed by the complainants will be duly processed” (HRAP, *Milogorić and Others*, cited above, § 52),

- “that UNMIK [...] award adequate compensation to each of the complainants for non-pecuniary damage suffered as a result of the prolonged stay of the proceedings instituted by them” (same opinion, § 53).

19. The Panel sees no reason to depart from these recommendations in the present case.

FOR THESE REASONS,

The Panel, unanimously,

1. FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN RESPECT OF THE INABILITY OF THE COMPLAINANT TO HAVE HIS CLAIM DETERMINED BY THE COURTS;

2. FINDS THAT THERE IS NO NEED TO EXAMINE THE COMPLAINT UNDER ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AS TO THE LENGTH OF THE PROCEEDINGS;

3. RECOMMENDS THAT UNMIK TAKE THE FOLLOWING MEASURES:

a. URGE THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ASSURE THAT THE COMPLAINANT’S CASE WILL BE DECIDED WITHOUT ANY FURTHER DELAY;

b. AWARD ADEQUATE COMPENSATION TO THE COMPLAINANT FOR NON-PECUNIARY DAMAGE;

c. TAKE IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND INFORM THE COMPLAINANT AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member