



The Human Rights Advisory Panel

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OPINION

Date of adoption: 9 September 2010

Cases Nos. 62/08, Božidar PORTIĆ; 30/09, Novica ULAMOVIĆ; 31/09, Spasoje MARTINOVIĆ

against

UNMIK

The Human Rights Advisory Panel sitting on 9 September 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 complaints, 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 of Mr Portić (case no. 62/08) was lodged on 15 December 2008 and registered on the same date. The complaints of Mr Ulamović (case no. 30/09) and Mr Martinović (case no. 31/09) were lodged on 20 February 2009 and registered on 27 February 2009. In the proceedings before the Panel, the complainants were initially represented by the Danish Refugee Council (DRC).

However, the DRC withdrew from participation in the proceedings before the Panel in December 2009.

2. By decision of 6 August 2010 the Panel joined the three complaints and declared them admissible in part.
3. On 27 August 2010 the SRSB submitted a response to the Panel's decision of 6 August 2010.

II. THE FACTS

4. All three complainants are residents of Kosovo currently living as displaced persons in Serbia. They were owners of real property in Kosovo, where they lived until 1999 when, fearing hostilities, they left Kosovo. Later on they became aware that their property had been damaged or destroyed during the second half of 1999.
5. The complainants lodged claims in 2004 seeking compensation for the damaged caused to their property with the competent courts against UNMIK, KFOR, the Kosovo Provisional Institutions of Self-Government (PISG) and the relevant municipalities, with the exception of Mr Ulamović who directed his claim only against the Municipality and the PISG.
6. By the end of 2008, the courts had not contacted the complainant, and no hearings had been scheduled.
7. The complainants' claims belong to a group of approximately 17,000 compensation claims, the vast majority of which were 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).
8. 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).
9. On 15 November 2005, the 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 events arising before October 2000 were not affected by this letter.

10. 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.
11. 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.
12. The circumstances of the individual cases at issue are outlined in the annex to this opinion.

III. COMPLAINT

13. Insofar as the complaints have been declared admissible, the complainants in substance allege that the proceedings were stayed concerning their claims for damages for destroyed property before the Municipal Courts of Pejë/Peć and Rahovec/Orahovac, as well as the District Court of Pejë/Peć, thus making it impossible for them to obtain the determination of their claims. They also complain that, as a result of the stay, the proceedings have not been concluded within a reasonable time, in breach of Article 6 § 1 of the European Convention on Human Rights (ECHR). Finally, they allege that for the same reason their right to an effective remedy under Article 13 of the ECHR has been violated as well.

IV. THE LAW

Alleged violations of Article 6 § 1 of the ECHR

14. The Panel notes that the case of the complainants raises an issue the substance of which has already been submitted to the Panel by other complainants. The Panel recalls that in, for instance, 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 too 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.
15. 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).

16. In his response dated 19 August 2010, the SRSG states that he has no comments on the merits of the case. However, he requests the Panel to re-evaluate its previous findings in view of the fact that UNMIK as an interim administration cannot be held to the same standards as an established State with a functioning judiciary.
17. The Panel recalls that it already considered this argument in *Milogorić* and did not concur. It found that it is true that UNMIK's interim character and related difficulties must be duly taken into account with regard to a number of situations, but under no circumstances could these elements be taken as an excuse for diminishing standards of respect for human rights, which were duly incorporated into UNMIK's mandate (same opinion, § 44).
18. The Panel therefore sees no reason to depart from its findings in the joined cases of *Milogorić and Others*.
19. Accordingly, it finds that there has been a violation of Article 6 § 1 of the ECHR in respect of the inability of the complainants to have their claims determined by the courts, and that it is not necessary to examine separately the issue of the length of the proceedings.

Alleged violation of Article 13 of the ECHR

20. The Panel finds that the complaints under Article 13 of the ECHR (right to an effective remedy) concern essentially the same issues as those discussed under Article 6 § 1. In these circumstances, it finds that no separate issues arise under Article 13 of the ECHR (HRAP, *Milogorić and Others*, cited above, § 49).

V. RECOMMENDATIONS

21. In the joined cases of *Milogorić and Others* (cited above, §§ 52-53) 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”,
 - “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”.
22. The Panel considers it appropriate to make the same 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 COMPLAINANTS TO HAVE THEIR CLAIMS DETERMINED BY THE COURTS;
2. FINDS THAT THERE IS NO NEED TO EXAMINE THE COMPLAINTS UNDER ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AS TO THE LENGTH OF THE PROCEEDINGS;
3. FINDS THAT THERE IS NO NEED TO EXAMINE THE COMPLAINTS UNDER ARTICLE 13 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;
4. 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 COMPLAINANTS' CASES WILL BE DECIDED WITHOUT ANY FURTHER DELAY;
 - b. AWARD ADEQUATE COMPENSATION TO EACH OF THE COMPLAINANTS FOR NON-PECUNIARY DAMAGE;
 - c. TAKE IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND INFORM THE COMPLAINANTS AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member

Annex

Case No. 62/08, Božidar Portić

1. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
2. He is the owner of two residential houses located in Pejë/Peć, where he lived until June 1999. He was informed by his neighbours that his property had been devastated and demolished during the second half of 1999.
3. In September 2004 the complainant lodged a compensation lawsuit before the District Court of Pejë/Peć against the Municipality of Pejë/Peć, the PISG, UNMIK and KFOR seeking compensation for the destruction of his property. He claims 130,000 euros in compensation for this damage.
4. By the end of 2008, the District Court had not contacted the complainant, and no hearing had been scheduled.

Case No. 30/09, Novica Ulamović

5. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
6. The complainant is the owner of an apartment located in the Municipality of Rahovec/Orahovac, where he lived until June 1999. He was informed by his neighbours that his apartment had been occupied and his property had been demolished and stolen during the second half of 1999.
7. On 1 July 2004 the complainant lodged a compensation lawsuit before the Municipal Court of Rahovec/Orahovac against the Municipality of Rahovec/Orahovac and the PISG seeking compensation for the destruction of his property. He claims 22,000 euros in compensation for this damage.
8. By the end of 2008, the Municipal Court had not contacted the complainant, and no hearing had been scheduled.

Case No. 31/09, Spasoje Martinović

9. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
10. He is the owner of a residential house located in Pejë/Peć where he lived until June 1999. He was informed by his friends that his property had been destroyed during the second half of 1999.
11. On 5 November 2004 the complainant lodged a compensation lawsuit before the Municipal Court of Pejë/Peć against the Municipality of Pejë/Peć, the PISG, UNMIK and KFOR seeking compensation for the destruction of his property. He claims 352,000 euros in compensation for this damage.

12. By the end of 2008, the Municipal Court had not contacted the complainant, and no hearing had been scheduled.