The Human Rights Advisory Panel
Building D, UNMIK HQ Prishtinë/Priština, Kosovo | E-mail: hrap-unmik@un.org | Tel: +381 (0)38 504-604, ext. 5182

DECISION

Date of adoption: 26 November 2010

Case No. 29/08

Milka ŽIVKOVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 26 November 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, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was lodged on 18 July 2008 and registered on the same date.

2. On 21 October 2008, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the case.

3. The SRSG provided comments by letter dated 3 November 2008, stating that the complaint was *prima facie* inadmissible, and that the relevant facts upon which the alleged violation was based were not set forth in the complaint.

4. On 19 January 2009, the Panel re-communicated the case to the SRSG and provided a copy of the full complaint. The SRSG responded with comments by letter dated 5 March 2009.

5. On 19 January 2009, the Panel requested additional information from the complainant. It received her response on 29 May 2009.

6. On 19 November 2009, the Panel sent a letter to the KPA in relation to the complaint. On 25 November 2009, it received a response. On 25 January 2010 the response was forwarded to the complainant for comments.

7. On 23 November 2009, another request for additional information was sent to the complainant. A response was received on 13 April 2010.

II. THE FACTS

8. The complainant is a resident of Kosovo currently living as a displaced person in Serbia. She was the owner of movable property and a flat located in Prishtinë/Priština. She lived there until 17 August 1999 when, fearing hostilities, she left Kosovo. Later on, in April 2002, she became aware that her flat and its contents had been severely damaged.

A. Compensation claim before the Municipal Court

9. On 14 September 2004, the complainant lodged a claim seeking compensation for the damage caused to her property with the Municipal Court of Prishtinë/Priština against UNMIK, KFOR, the Kosovo Provisional Institutions of Self-Government (PISG) and the Municipality of Prishtinë/Priština.

10. The complainant alleged that she suffered property damage in the amount of 22,000 euros which included 1,000 euros to cover construction repair, 15,000 euros to cover damage to movable property, and 6,000 euros on account of accommodation expenses.

11. By the end of 2008, the court had not contacted the complainant, and no hearing had been scheduled.

12. The complainant's claim belongs 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).

13. 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 in § 12 above, § 6).

14. On 15 November 2005, the DOJ called on the courts to begin processing claims for damage caused by identified natural persons and for damage 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.

15. 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.

16. 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.

B. Adminstration of the flat under the HPD/KPA rental scheme

17. On 19 January 2009, the Panel sent a letter to the complainant asking her to provide any documents from the Municipal Court, and to advise if she had filed a claim with the Housing and Property Directorate (HPD) or its successor agency, the Kosovo Property Agency (KPA).

18. In her response dated 29 May 2009, the complainant explained that her flat had been put under the administration of the HPD, and that the person who had moved in through the HPD rental scheme, Mr S.R., looted and then "demolished the flat and did not pay utility bills (electricity)." She also claimed that she had not received the entire amount due to her from the rental of her flat. There was no indication however whether any claim had been filed with the HPD or the KPA.

19. In relation to the above, the KPA in a letter to the Panel dated 23 November 2009 stated that the property in question had been taken under HPD administration on 3 January 2006. It was administered by the HPD and subsequently by the KPA, until 23 March 2009, at which time the claimant advised that she had sold the flat. During that entire period, the flat was only rented from November 2007 to March 2008. The amounts of rent received for each of these months, and the respective dates of their transfer to the complainant, were also specified. The KPA further explained that the inclusion of the complainant's property in the voluntary rental scheme did not imply that the property was automatically rented. The complainant would only receive rent if the property was rented, and provided such rent was paid to the KPA. Therefore, the KPA stated that the allegations made by the complainant were not correct.

20. The complainant also confirmed that she had sold her flat to M.V. for 45,000 euros, on 25 November 2008, and that the sale contract was certified in the Municipal Court of Prishtinë/Priština on 1 December 2008.

III. COMPLAINT

21. The complainant in her original complaint in substance alleges that the Municipal Court of Prishtinë/Priština has stayed the proceedings concerning her claims for damages for

destroyed property and that as a result these proceedings have not been concluded within a reasonable time, in breach of Article 6 § 1 of the European Convention on Human Rights (ECHR). She also complains that by the damage to her flat and by the refusal of the Municipal Court of Prishtinë/Priština to decide her claim for damages, her right to property (Article 1 of Protocol No. 1 to the ECHR) has been violated.

22. In her additional complaint the complainant alleges that she has not received the entire amount due to her as a result of the rental of her flat under the HPD rental scheme. She also complains that by the damage to her flat during this period and by the non-payment of utility bills by the tenant, her right to property (Article 1 of Protocol No. 1 to the ECHR) has been violated.

IV. THE LAW

23. Before considering the case on its merits the Panel has to decide whether to accept the case, taking into consideration the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel.

A. Complaints related to damage to the flat between August 1999 and April 2002

Alleged violation of Article 6 § 1 of the ECHR

24. The Panel considers that, insofar as the complainant invokes a violation of Article 6 § 1 of the ECHR, she in fact raises two complaints (see the approach adopted in HRAP, *Milogorić*, no. 38/08, decision of 22 May 2009; compare European Court of Human Rights (ECtHR), *Aćimović v. Croatia*, no. 48776/99, decision of 30 May 2000; ECtHR, *Kutić v. Croatia*, no. 48778/99, decision of 11 July 2000). On the one hand, she complains about the fact that due to the stay of the proceedings in the competent courts, she has been unable to obtain the determination of her claims for damages for destroyed property. The Panel considers that this complaint may raise an issue of her right of access to a court under Article 6 § 1 of the ECHR. On the other hand, she complains about the length of the proceedings before the competent courts, due to the fact that the proceedings were instituted in 2004 and that her claim has not been examined since then. This complaint may raise an issue of her right to a judicial decision within a reasonable time, in the sense of Article 6 § 1 of the ECHR.

25. The Panel considers that the complaints under Article 6 § 1 of the ECHR raise serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that these complaints are not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12 (HRAP, *Milogorić,* cited in § 24 above, at § 18).

26. No other ground for declaring these complaints inadmissible has been established.

Alleged violation of Article 1 of Protocol No. 1 to the ECHR

27. The complainant complains about a violation of her right to property (Article 1 of Protocol No. 1). She complains about the fact that her property has been damaged or destroyed and about the lack of action by the Municipal Court of Prishtinë/Priština with respect to her claim for damages.

28. The Panel recalls that, according to Section 2 of UNMIK Regulation No. 2006/12, it has jurisdiction only over "complaints relating to alleged violations of human rights that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights". The damaging or the destruction of property are instantaneous acts, which do not give rise to a continuing violation (see HRAP, *Lajović*, no. 09/08, decision of 16 July 2008, § 7). It follows that this part of the complaint lies outside the Panel's jurisdiction *ratione temporis*.

29. With respect to the complaint that, due to the stay of the proceedings instituted by the complainants, they have been unable thus far to obtain compensation for the damage, the Panel notes that, insofar as the court proceedings are referred to from the point of view of the right of property, these proceedings cannot be detached from the acts upon which the claims before the courts are based. Or, to state it positively, as the European Court of Human Rights has done with respect to its jurisdiction under the ECHR:

> "… the Court's temporal jurisdiction is to be determined in relation to the facts constitutive of the alleged interference. The subsequent failure of remedies aimed at redressing this interference cannot bring it within the Court's temporal jurisdiction" (ECtHR (Grand Chamber), *Blečič v. Croatia*, no. 59532/00, judgment of 8 March 2006, § 77, *ECHR*, 2006-III).

30. It follows that this part of the complaint also lies outside the Panel's jurisdiction *ratione temporis* (see HRAP, *Gojković*, no. 63/08, decision of 4 June 2009, §§ 24-25).

B. Complaints related to unpaid rent by HPD/KPA as well as to damage to the flat caused between September 2003 and March 2008

31. On 29 May 2009, the complainant raised two new complaints. First, she alleged that she had not received from the HPD/KPA the entire amount due to her as a result of the rental of her flat to Mr S.R., under the HPD rental scheme. Second, she complained about the damage to her flat and about the non-payment of utility bills for that period.

32. As regards the issue whether the new complaints were submitted within six months from the date on which the final decision was taken, as required by Section 3.1 of UNMIK Regulation No. 2006/12, the Panel notes that the KPA, in its letter to the Panel dated 23 November 2009, stated that the complainant's flat was administered by the HPD and subsequently by the KPA, from 3 January 2006 until 23 March 2009, at which time the claimant had advised that she had sold the property. The complainant had actually sold her flat on 25 November 2008, and the sale contract was certified in the Municipal Court of Prishtinë/Priština on 1 December 2008, the later being the date when the contract of sale became effective. The Panel leaves open the question whether the 6 months requirement was complied with in relation to the additional complaints, because these complaints are in any event inadmissible for the reasons set out below.

I. As to the rent payment for the flat

33. With respect to the first complaint, the KPA explained in its letter to the Panel that during the entire period, from 3 January 2006 until 23 March 2009, when the flat was under HPD/KPA administration, it was only rented from November 2007 to March 2008. The

rent payments received for each of these months were transferred to the complainant**.** Therefore, the KPA states that the allegations made by her are not correct.

34. In her response dated 13 April 2010, the complainant denied the KPA's allegations that the flat was only rented during the period between November 2007 and March 2008, and submitted a document issued by the HPD, dated 5 September 2003, authorising Mr S.R. to remain in the property "on a humanitarian basis to prevent homelessness".

35. It has to be noted that the KPA does not guarantee that any income from the property will be realised, nor does it guarantee that a rent-paying tenant will be found to reside at the property. A payment can be disbursed to the owner only if the tenant pays rent to the KPA (see HRAP, *Ilija Trajković*, no. 35/08, decision of 17 April 2009, § 20). The HPD document submitted by the complainant, only authorises Mr S.R. to remain temporarily in the flat "solely on humanitarian grounds to prevent homelessness". Also no evidence has been submitted indicating that Mr S.R. had been paying rent for any periods other than those confirmed by the KPA.

36. Thus, the complaint and subsequent information obtained contain no evidence that might support the conclusion that the complainant's right to protection of property was violated because of the failure of the KPA to rent the property, or to pay the full rental amounts due to the complainant.

37. Therefore, the Panel is of the view that this complaint must be rejected as being manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.

II. As to other damage to the flat and non-payment of utility bills

38. With respect to the second complaint, the complainant alleges that the HPD/KPA, by keeping the flat under their administration, allowed the situation in which Mr S.R. damaged the flat and did not pay for any utilities. Therefore, the HPD/KPA should be held directly responsible for all the damage caused to her by Mr S.R.

39. The Panel recalls that UNMIK Regulation No. 2000/60 of 31 October 2000, On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission reads as follows:

> "12.4 The Directorate may grant temporary permits to occupy property under its administration, subject to such terms and conditions as it sees fit. Temporary permits shall be granted for a limited period of time, but may be renewed upon application. 12.5 The Directorate shall establish criteria for the allocation of properties under administration on a temporary humanitarian basis."

40. In addition, the Panel finds that the standard agreement between an owner and the HPD/KPA to include a flat in the voluntary rental scheme, also limits the liability of the HPD/KPA, including in case of damage to the property. The standard agreement expressly refers to Section 12.8 of UNMIK Regulation No. 2000/60, which states:

> "The Directorate shall make reasonable efforts to minimise the risk of damage to any property under its administration. The Directorate shall bear no responsibility for any damage to property under administration or loss of or damage to its contents."

41. In accordance with the above regulation, the KPA is not liable for any damage attributable to former occupants. Accordingly, there is no basis for finding that the complainant's right

to protection of property has been violated as a result of the failure of UNMIK to compensate her for damages inflicted to her property in this case, or for non-payment of utility bills.

42. Therefore, the Panel is of the view that this complaint must also be rejected as being manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.

FOR THESE REASONS,

The Panel, unanimously,

- DECLARES ADMISSIBLE THE COMPLAINTS RELATING TO THE RIGHT OF ACCESS TO A COURT AND THE RIGHT TO A JUDICIAL DECISION WITHIN A REASONABLE TIME (ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS)

- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.

Rajesh TALWAR	Marek NOWICKI
Executive Officer	Presiding Member