The Human Rights Advisory Panel
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OPINION

Date of adoption: 15 April 2011

Case No. 33/08

Rodoljub TODOROVIĆ

against

UNMIK

The Human Rights Advisory Panel sitting on 15 April 2011,
with the following members taking part:

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

Assisted by
Ms Anila PREMTI, Acting 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, including through electronic means, in accordance with Rule 13 § 2 of its Rules of Procedure,

Makes the following findings and recommendations:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 25 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 October 2008 giving him the opportunity to

provide comments on behalf of UNMIK on the admissibility and the merits pursuant to Rule 30 of the Panel's Rules of procedure.

3. 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.

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

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

6. On 17 April 2009 the Panel declared the complaint partly admissible.

7. On 21 April 2009 the Panel invited the SRSG to comment on the merits of the admissible part of the complaint. On 12 May 2009 the SRSG provided UNMIK's comments on the merits of the complaint.

8. On 7 October 2009 the Panel invited the complainant to submit comments on UNMIK's comments. On 28 October 2009 the complainant submitted his comments. On 5 November 2009 he sent further comments.

9. On 28 January 2010 the Panel communicated the complainant's comments to the SRSG.

10. On 4 March 2011 the Panel requested additional information from the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters. The Special Chamber replied on 9 March 2011.

II. THE FACTS

11. The facts, insofar as relevant for the part of the complaint that has been declared admissible by the Panel, can be summarised as follows.

12. The complainant is one of the heirs of Andreja Sinadinović, who was the owner of a piece of land (no. 8628/4) in Prizren, in the Buzagillek area. 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, the late Andreja Sinadinović received the above mentioned piece of land (no. 8628/4).

13. On 6 March 1965 the Provincial Secretariat of Finances in Pristina, as a second-instance body in administrative proceedings, 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. In 1991 the land in question was transferred from the SOE Progres to the SOE Zhitopromet (Žitopromet) (or Zhitopromet Sillosi).

14. 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 1965. On 3 September 1998 the Municipal Council granted the request. It annulled the expropriation decision and ordered the return of the land to the applicants, except for the part on which the SOE Zhitopromet had built a construction. 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, on the ground that the Municipal Council did not have the competence to annul a decision adopted by a second-instance authority. However, acting as the competent authority, the Ministry held, like the Municipal Council, that the expropriation decision of 6 March 1965 was no longer valid.

15. 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.

16. On 10 January 2005 the four heirs of Andreja Sinadinović, including the complainant, filed a claim with the Special Chamber of the Supreme Court on Kosovo Trust Agency Related Matters against the Kosovo Trust Agency (KTA) and the two above mentioned SOE's, both represented by the KTA. The claimants 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 Zhitopromet to return that property to them, except for the part on which a building had been constructed and for which part the claimants claimed compensation. The claimants also requested the Special Chamber to order the KTA to stop the privatisation of the piece of land. In the course of the proceedings, the claimants reformulated their claim. They no longer asked for restitution of the land, but requested the Special Chamber to order the KTA to pay a compensation of 800,000 euro for the land that would be privatised.

17. It results from the records of the Special Chamber that it held hearings on 9 February 2005 and 5 April 2005. After the last of these hearings, submissions were filed by the claimants on 13 September 2006. The Special Chamber deliberated on the case on 23 October 2007. The drafting of the judgment took place after the deliberation. According to the complainant, his lawyer made numerous requests in order to receive a copy of the judgment. He was notified of the judgment, which is dated 23 October 2007, on 2 July 2008.

18. The Special Chamber rejected the claimants' claim. It considered that the expropriation of 1965 was valid, and that the former owner had received compensation for it. It 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. Finally, the Special Chamber considered that the land had been used to serve the purpose for which the expropriation had been decided, namely the needs of the SOE Progres.

III. THE COMPLAINT

19. Initially the complainant made the following complaints:
- the Special Chamber of the Supreme Court disregarded the fact that the expropriation decision of 1965 was 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 was 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.

20. Only the second complaint has been declared admissible by the Panel.

IV. THE LAW

A. Scope of the case before the Panel

21. In his submissions on the merits the complainant provides further arguments for his position that the Special Chamber misinterpreted the applicable provisions on the law of expropriation, thus returning to his first complaint and trying to re-argue the case decided by the Special Chamber.

22. The Panel, in its decision of 17 April 2009, declared admissible only the complaint "relating to the delay in the service of the judgment of the Special Chamber of the Supreme Court". The scope of the case on the merits being defined by the Panel's decision on admissibility, the Panel cannot consider the complaint related to the substance of the Special Chamber's decision.

B. Alleged violation of Article 6 § 1 of the European Convention on Human Rights

a. Arguments of the parties

23. 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 concludes that his procedural rights have thus been violated.

24. 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 judge rapporteur 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 judge rapporteur, which then was circulated among all the judges, who could propose amendments to the text. After having received amendments, the judge rapporteur 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.

25. 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.

b. The Panel's assessment

26. The complaint, insofar as it has been declared admissible, 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 considered in its decision on admissibility 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).

1. Period to be taken into account

27. Although the complainant refers to the delay in service of the judgment, the Panel considers that it should look at the duration of the proceedings taken as a whole. Article 6 § 1 of the ECHR guarantees a right to a decision within a reasonable time, and does not distinguish between the various stages of the proceedings. This does not exclude that delays in a particular stage of the proceedings, *e.g.* in the drafting stage, may affect the reasonableness of the overall duration of the proceedings.

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 judgment was served on him. Therefore the overall duration of the proceedings was almost 3.5 years, for one level of jurisdiction. The duration of the period between the deliberation on the case, on 23 October 2007, and the service of the judgment, on 2 July 2008, was 8.5 months.

During this time, the Special Chamber produced the written text of the judgment and served it on the complainant.

2. Reasonableness of the length of the proceedings

29. The Panel recalls that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the complainant and the relevant authorities and what was at stake for the complainant in the dispute (see, among many other authorities, European Court of Human Rights (ECtHR) (Grand Chamber), *Frydlender v. France*, no. 30979/96, judgment of 27 June 2000, *ECHR*, 2000-VII, § 43; see also Human Rights Advisory Panel (HRAP), *Emini*, no. 17/08, opinion of 18 June 2010, § 21; HRAP, *Mitrović*, no. 05/07, opinion of 17 December 2010, § 85).

30. The complainant refers to Sections 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. These provisions, in force at the relevant time, read 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.

31. It is not disputed by UNMIK that the judgment of the Special Chamber was served outside the time-limit set by Section 45.4 of Administrative Direction No. 2006/17. While this is an element that is not wholly irrelevant, the assessment of the reasonableness of the length of the proceedings, as required by Article 6 § 1 of the ECHR, cannot be made dependent on time-limits set by other provisions (consult European Commission of Human Rights (ECommHR), *Böhler v. Austria*, no. 11968/86, opinion of 14 December 1988, § 76). It is therefore necessary to make an assessment having regard to the criteria indicated above (§ 29).

32. The Panel considers that the claim brought by the complainant and his co-claimants before the Special Chamber raised complex legal issues. The arguments developed by the claimants before the Panel and relating to the merits of the claim confirm this assessment. However, in the opinion of the Panel the complexity of the case does not in itself justify a period of 3.5 years for the termination of the proceedings, or even a period of 8.5 months for the drafting and the service of the judgment.

33. While the claimants may have contributed to some delay by filing additional submissions after the completion of the hearings, the delay in the preparation of the written judgment and in the service thereof can obviously not be attributed to them.

34. As regards the conduct of the authorities, the SRSG notes in the first place that a number of administrative tasks were assigned to the judge rapporteur. In the opinion of the Panel, this is not a convincing argument. Article 6 § 1 ECHR imposes on the competent authorities the duty to organise their judicial system in such a way that the courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time. Rather than assigning administrative tasks to the judge, the authorities could have relieved him of these tasks, so as to allow him to draft the text of the judgment (compare ECommHR, *Böhler v. Austria*, cited above, at § 79).

35. The SRSG also points to the delays caused by the deliberations on the draft text of the judgment, the regular absences of the international judges and the need for translations of drafts and amendments. The Panel accepts that the adoption of a judgment by a court composed partly of international judges and partly of Kosovo judges may require more time than if the court were composed exclusively of Kosovo judges, all speaking the same language. However, the SRSG has not given a detailed description of the effects of the presence of international judges on the duration of the deliberations in the present case.

36. Finally, once the judgment was ready in written form, it had to be served on the parties. The SRSG does not mention any specific circumstance that would make it difficult to serve the judgment on the complainant or his representative.

37. An important element in the present case is what was at stake for the complainant. The dispute before the Special Chamber concerned the legality of an expropriation decided in 1965 and involving the predecessor of the complainant. If the complainant and his co-claimants were to win their case, they would be able to receive an important sum as compensation. It seems to appear from the text of the judgment that the respondents did not contest that compensation would be due in the amount claimed by the claimants (800,000 euro), minus the amount of any compensation already paid to them and minus the amount of payments made for the construction and the improvement of the property in question. The case was therefore of considerable importance for the complainant and his co-claimants.

38. Taking all these elements into consideration, the Panel is of the opinion that, mainly as a result of the delay in the delivery of the judgment in writing and its subsequent service, the complainant did not receive a decision within a reasonable time. Accordingly, there has been a violation of Article 6 § 1 ECHR.

V. RECOMMENDATIONS

39. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.

40. The Panel considers that the complainant must have sustained non-pecuniary damage on account of the length of the proceedings. It therefore recommends that UNMIK take appropriate steps toward compensation. However, given the fact that most of the complaints have been declared inadmissible by the Panel, the amount of the compensation can be modest.

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;

2. RECOMMENDS THAT UNMIK TAKE APPROPRIATE STEPS TOWARD COMPENSATION OF THE COMPLAINANT FOR NON-PECUNIARY DAMAGE.

Anila PREMTI
Acting Executive Officer

Marek NOWICKI
Presiding Member