



The Human Rights Advisory Panel

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DECISION

Date of adoption: 16 December 2011

Case No. 310/09

Velibor ADANČIĆ

against

UNMIK

The Human Rights Advisory Panel sitting on 16 December 2011,
with the following members present:

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

Assisted by
Mr Andrey ANTONOV, 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 introduced on 18 September 2009 and registered on the same date.
2. On 3 October 2011, the Panel requested the complainant to submit additional information. On 10 November 2011, the Panel received the requested documentation from the complainant. On 12 December 2011, the Panel requested further information from the complainant, which was provided the same day.

II. THE FACTS

3. The complainant is a Kosovo resident. He claims that he is the current owner of immovable property and several parcels of land located in the village of Babi Most/Babin Most, in the Municipality of Obiliq/Obilić. The complainant states that the above-mentioned property was formerly under the ownership of his deceased mother, with whom he lived until KFOR's deployment in June 1999 when they were forced to leave. He states that he was informed that part of this property had been destroyed during the second half of 1999, while another part of the property had been usurped.

A. Court Proceedings

4. On 5 August 2004, the complainant's mother filed a lawsuit in the Municipal Court of Prishtinë/Priština against the Municipality of Obiliq/Obilić and the Provisional Institutions of Self-Government (PISG), seeking compensation for the destruction of her house and the accompanying buildings which were located on her property in the village of Babi Most/Babin Most, on cadastral parcels no. 1124/1 and 1124/2.
5. On 8 September 2004, the complainant's mother died. The complainant became the owner of cadastral parcels no. 1124/1 and 1124/2.
6. By the end of 2008, the Municipal Court of Prishtinë/Priština had not contacted the complainant and no hearings had been scheduled concerning the aforementioned lawsuit.
7. Approximately 17,000 compensation claims were lodged in 2004 before Kosovo courts, the vast majority of these by Kosovo Serbs who, due to 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. The claims were directed against some combination of UNMIK, KFOR, the PISG and 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 the 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 § 7 above, at § 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 the DOJ advised the courts that cases which had not been scheduled according to the 26 August 2004 request should now be processed.
11. On 10 September 2008, the complainant lodged a new claim with the Municipal Court of Prishtinë/Priština, this time seeking the eviction of two named respondents who were allegedly illegally occupying parts of his property (cadastral parcels no. 1124/1 and 1124/2), as well as seeking compensation for his inability to use his property since 1999. It is unclear whether these proceedings are still pending.
12. 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. Proceedings with the Kosovo Property Agency

13. On 2 May 2006, the complainant also submitted three claims with the Kosovo Property Agency (KPA) for recognition of ownership over several properties (cadastral parcels nos. 1124/1, 1124/2, 1076 and 882) located in the Municipality of Obiliq/Obilić.
14. Three decisions were taken on these claims by the Kosovo Property Claims Commission (KPCC), two on 22 February 2008 and the third on 23 October 2008. They all established that the complainant was the owner of said properties and informed the occupants that the properties must be vacated within 30 days of delivery of the order, otherwise they would be evicted.
15. These decisions apparently remained unenforced. It appears from information submitted by the complainant that he complained in August 2009 about the lack of enforcement by the KPA to the KPCC and the Supreme Court of Kosovo.
16. In a letter of 8 December 2009, the KPA explained to the complainant that on 2 December 2009 the KPCC had overturned all three of its decisions mentioned above. The reason given was that after being provided with access to the cadastral information by the Kosovo Cadastral Agency, and following review of this data, it turned out that the claimed properties had been incorrectly notified. Consequently, the respective previous decisions in relation to these claims were deemed to be legally

invalid and not to be used in any legal transaction or for any other use regarding the claimed properties. Pursuant to KPA procedures, the claim and any new replies or information received would be verified and presented to the KPCC for re-determination.

17. On 22 June 2011, the KPCC issued a decision granting the complainant ownership rights over cadastral parcels nos. 1124/1 and 1124/2.
18. To date, there have been no decisions issued by the KPCC concerning the other parcels allegedly owned by the complainant.

III. THE COMPLAINT

19. The complainant in substance alleges that the Municipal Court of Prishtinë/Priština has stayed the proceedings concerning the compensation claim lodged on 5 August 2004 against the Municipality of Obiliq/Obilić and the PISG for the destruction of his property and that as a result these proceedings have not been concluded within a reasonable time, in violation of Article 6 § 1 of the European Convention on Human Rights (ECHR). He alleges that for the same reason his right to an effective remedy under Article 13 of the ECHR has also been violated. The complainant further complains that by the destruction of his property and by the refusal of the the Municipal Court of Prishtinë/Priština to decide his compensation claim, his right to property (Article 1 of Protocol No.1 to the ECHR) has been violated.
20. The complainant also claims that the Municipal Court of Prishtinë/Priština has delayed the proceedings concerning his eviction claim lodged on 10 September 2008 against two named respondents and that as a result these proceedings have not been concluded within a reasonable time, in breach of Article 6 § 1 of the ECHR.
21. Finally, he alleges a violation of his right of property (Article 1 of Protocol No. 1 to the ECHR), as well as a violation of his right to an effective remedy (Article 13 of the ECHR), as a result of the failure of the KPA to implement its decisions of 22 February 2008 and 23 October 2008 establishing his ownership over the claimed properties.

IV. APPLICATION OF RULE 29BIS OF THE PANEL'S RULES OF PROCEDURE

22. The Panel notes that the complaint raises questions which, at least insofar as the complaint relates to the proceedings instituted in 2004 before the Municipal Court of Prishtinë/Priština, are substantially the same as those that have been raised, among others, in cases nos. 38/08, Milogorić, 58/08, Živaljević, 61/08, Gojković, 63/08 Ćukić, and 69/08, Bogičević, which have already been examined by the Panel. Moreover, it appears from the file that no new admissibility issue arises with regard to that aspect of the present case. Therefore, pursuant to Rule 29bis of the Panel's

Rules of Procedure, the Panel finds that it is not necessary to communicate this part of the present complaint to UNMIK. The Panel considers that it can examine the admissibility of the whole complaint without so doing.

V. THE LAW

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

A. Compensation Proceedings before the Municipal Court of Prishtinë/Priština, relating to the compensation claim against the Municipality of Obiliq/Obilić and the PISG

Alleged violation of Articles 6 § 1 and 13 of the ECHR

24. The Panel considers that, insofar as the complainant invokes a violation of Articles 6 § 1 and 13 of the ECHR, he in fact raises two complaints (see the approach adopted, among others, in *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, he complains about the fact that due to the stay of the proceedings in the competent court, he has been unable to obtain the determination of his claims for damages to his destroyed property. The Panel considers that this complaint may raise an issue of his right of access to a court under Article 6 § 1 of the ECHR and of his right to an effective remedy under Article 13 of the ECHR. On the other hand, he complains about the length of the proceedings before the competent courts, due to the fact that the proceedings were instituted in 2004, and that his claims have not been examined since then. This complaint may raise an issue of his 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 complaint under Articles 6 § 1 and 13 of the ECHR raises serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that this complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12 (see, among others, HRAP, *Milogorić*, cited in § 24 above, at § 18).

26. No other grounds for declaring this part of the complaint inadmissible have been established.

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

27. The complainant complains about a violation of his right to property (Article 1 of Protocol No.1). He generally complains about the fact that his property has been

damaged or destroyed and about the failure by the Municipal Court of Prishtinë/Priština to decide on his 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 and 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). Bearing in mind that the damage to his property allegedly occurred in 1999, it follows that this part of the complaints lies outside the Panel’s jurisdiction *ratione temporis*.
29. With respect to the complaint that, due to the stay of the proceedings instituted with regards to the complainant’s claim, he has been unable thus far to obtain compensation for the damage done to his property, 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), *Blečić 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, among others, HRAP, *Gojković*, no. 63/08, decision of 4 June 2009, §§ 24-25).

B. Eviction Proceedings before the Municipal Court of Prishtinë/Priština, relating to the eviction claim

31. The complainant also claims that the Municipal Court of Prishtinë/Priština has delayed the proceedings concerning his eviction claim lodged on 10 September 2008 against two named respondents and that as a result these proceedings have not been concluded within a reasonable time, in breach of Article 6 § 1 of the ECHR.
32. Concerning this claim, the Panel notes that less than three months after it was filed, EULEX assumed full operational control in the area of the rule of law (see § 12 above).
33. For the short period during which UNMIK was still responsible for the operation of the courts, the Panel holds this part of the complaint to be manifestly ill-founded.

34. As far as the period after 9 December 2008 is concerned, this part of the complaint falls outside the jurisdiction *ratione personae* of the Panel.

C. Alleged lack of implementation of Kosovo Property Claims Commission decisions

35. The complainant also claims that the KPA failed to implement the decisions taken by the KPCC in 2008, establishing the complainant's ownership over his claimed properties (cadastral parcels nos. 1124/1, 1124/2, 1076, and 882) located in the Municipality of Obiliq/Obilić.

36. The KPA sent a letter to the complainant on 8 December 2009, explaining that the reason for the non-implementation of the decisions was that on 2 December 2009 the KPCC had overturned all three decisions that it had taken earlier because the claimed properties had been incorrectly notified. The Panel notes that on 22 June 2011, the KPCC issued a decision granting the complainant ownership rights over cadastral parcels nos. 1124/1 and 1124/2 (see § 17, above).

37. The Panel notes that with regard to UNMIK's administrative control of the KPA, the UN Secretary-General in his report to the United Nations Security Council on the Interim Administration Mission in Kosovo dated 17 March 2009, states that as UNMIK's authority over the KPA was not extended after 31 December 2008, the Kosovo authorities and an international director appointed by the International Civilian Representative/European Union Special Representative assumed full operational control of the KPA. Thereafter, the KPA operated in accordance with legislation adopted by the Assembly of Kosovo (S/2009/149, § 24; see HRAP, *Kušić*, no. 08/07, opinion of 15 May 2010, § 51).

38. Furthermore, in *Kušić* (cited above in § 37, at § 52) the Panel has already considered that, from 31 December 2008, UNMIK can no longer be held responsible for acts or omissions imputable to the KPA.

39. It follows that this part of the complaint falls outside the jurisdiction *ratione personae* of the Panel.

FOR THESE REASONS,

The Panel, unanimously,

- DECLARES ADMISSIBLE THE COMPLAINTS RELATING TO THE RIGHT OF ACCESS TO A COURT AND THE RIGHT TO AN EFFECTIVE REMEDY (ARTICLES 6 § 1 AND 13 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS) AND THE RIGHT TO A JUDICIAL DECISION WITHIN A REASONABLE TIME (ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS), WITH RESPECT TO THE PROCEEDINGS FILED IN 2004 BEFORE THE MUNICIPAL COURT OF PRISHTINË/PRIŠTINA;

- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member