



DECISION

Date of adoption: 16 December 2011

Case No. 05/09

Dragan PILJEVIĆ

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 including through electronic means, in accordance with Rule 13 § 2 of its Rules of Procedure, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 3 December 2008 and registered on 21 January 2009.

2. On 28 April 2009, the Panel requested the complainant to submit additional information. On 11 June 2009, the Panel repeated the request. The complainant's response was received on 2 July 2009.
3. At the Panel's request, on 2 November 2011 the complainant provided additional clarification of the matter.

II. THE FACTS

4. The complainant is a former resident of Kosovo, currently residing in Serbia. The complainant was the owner of a piece of land and a residential house in Fushë Kosovë/Kosovo Polje. He submits that after the arrival of UNMIK in June 1999 he had to leave that house for security reasons. After his departure, this property was broken into and plundered during 1999 and 2000, which was reported to UNMIK Police.
5. According to the complainant, because of constant pressure and threats from his Albanian neighbours, and fearing total destruction of the property, he had to sell his property at a price significantly below its market value. The sales contract was signed by the parties on 10 May 2000.
6. On 18 January 2002 the complainant brought a claim before the Housing and Property Directorate (HPD), where he contested the validity of the sales contract and asked for restitution of his property rights. The Housing and Property Claims Commission (HPCC), in a decision dated 12 December 2003, rejected his claim. The HPCC indicated that he could make a claim for annulment of the sales contract before a regular court.
7. The complainant confirmed to the Panel that he did not bring such a case before the court, because access to the courts in Kosovo was limited by the security situation and he feared for his personal safety. However, on 24 December 2007 the complainant filed a claim with the Kosovo Property Agency (KPA), the successor of the HPD, with respect to the same property, again contesting the validity of the sales contract. The Panel notes that these proceedings are still pending in the KPA.
8. On 21 July 2004 the complainant filed a claim with the Municipal Court of Prishtinë/Priština, against the Provisional Institutions of Self-Government, the Municipality of Fushë Kosovë/Kosovo Polje, UNMIK and KFOR, for compensation for damages sustained in the total destruction of the immovable property mentioned above.
9. 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 [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 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 § 9 above, at § 6).
11. 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.
12. 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.
13. On 9 December 2008, UNMIK’s responsibility with regard to police and justice 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. THE COMPLAINT

14. The complainant asks the Panel to assist him in the restitution of his property rights, which he claims were violated when he sold his house, under pressure.
15. In addition, the complainant alleges that the Municipal Court has stayed the proceedings concerning his claim for compensation for damage to his property and that as a result these proceedings have not been concluded within a reasonable time.
16. The Panel considers that the complainant may be deemed to invoke a violation of his right to property guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR), his right of access to a court under Article 6 § 1 of the ECHR, and his right to an effective remedy under Article 13 of the ECHR.

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

17. The Panel notes that the complaint raises questions which, at least insofar as the complaint relates to the proceedings before the Municipal Court of Prishtinë/Priština, are substantially the same as those that have been raised in cases nos. 38/08, *Milogorić*, 58/08, *Živaljević*, 61/08, *Gojković*, 63/08 *Ćukić*, and 69/08, *Bogićević* (among others), 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 the present complaint to UNMIK and that it can examine the admissibility of this part of the complaint without so doing.

V. THE LAW

18. Before considering the case on the merits, the Panel must first decide whether to accept the case, considering the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.

Proceedings before the HPD and the KPA

19. 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".
20. Insofar as the complainant complains about the rejection by the HPCC of his claim for annulment of the sale contract he entered into, it should be noted that the HPCC adopted its decision on 12 December 2003.
21. It is true that in December 2007 the complainant initiated proceedings before the KPA. However, the Panel considers that these proceedings concern a new claim (albeit based on the same grounds) which cannot be considered a continuation of the previous proceedings before the HPCC. As the European Court of Human Rights (ECtHR) has determined 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).
22. Applying the same principle to the present matter, the Panel concludes that the new proceedings before the KPA cannot bring the matter back into the Panel's temporal jurisdiction.
23. It follows that this part of the complaint lies outside the Panel's jurisdiction *ratione temporis*.
24. Insofar as the complainant may be deemed to complain separately about the new proceedings before the KPA, the Panel notes that when the complainant filed his complaint with the Panel, the claim before the KPA was still pending. It was therefore premature for the complainant to complain about the outcome of these proceedings.

Compensation proceedings before the Municipal Court of Prishtinë/Priština

25. 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 in HRAP, *Milogorić*, no. 38/08, decision of 22 May 2009; compare 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 courts, he has been unable to obtain the determination of his claims for damages for 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, read in combination with Article 1 of Protocol No. 1. On the other hand, he complains about the length of the proceedings before the competent court, due to the fact that the proceedings were instituted in 2004, and that his claim has 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.
26. The Panel considers that the complaints under Article 6 § 1 and 13 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 § 25 above, at § 18).
27. No other ground for declaring these complaints inadmissible has been established.

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);

- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member