



The Human Rights Advisory Panel

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DECISION

Date of adoption: 20 January 2012

Case No. 32/08

Božidarka FELEGI

against

UNMIK

The Human Rights Advisory Panel, sitting on 20 January 2012,
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 30 June 2008 and registered on 18 July 2008.
2. On 14 November 2008, the Panel asked the complainant to submit additional information. The complainant responded on 22 December 2008.
3. On 16 April 2009, the Panel requested information from the Kosovo Property Agency (KPA). The KPA responded on 18 May 2009.

4. On 7 October 2009, the Panel invited the complainant to submit her comments on the information received from the KPA. According to information later received from the complainant, she did not receive that letter.
5. On 29 December 2010, the Panel requested again some clarification from the complainant. On 15 January 2011, the complainant responded.
6. On 10 March 2011, the Panel requested additional information from the KPA. On 14 March 2011, the KPA responded.
7. On 11 May 2011, the Panel invited the complainant to submit her comments on the new information received from the KPA, and requested additional information from her. The complainant's husband responded on 23 November 2011.

II. THE FACTS

8. The complainant is a Kosovo resident currently residing in Serbia. On 13 June 1999, fearing hostilities, the complainant and her husband left Kosovo.
9. The complainant is the owner of an apartment in Gjakovë/Đakovica. Some time after her departure she found out that the apartment was illegally occupied and damaged by unknown perpetrators.
10. The complainant's husband is the owner of a piece of commercial land in the same area. Some time after his departure he came to know that the land was being used by unknown individuals.

A. Proceedings before the Housing and Property Directorate and the Kosovo Property Agency

11. On 18 March 2002, the complainant's husband, apparently on behalf of the complainant, filed a claim with the Housing and Property Directorate (HPD) for recognition of the complainant's ownership right over the apartment. On 30 April 2005, the Housing and Property Claims Commission (HPCC) confirmed her ownership right.
12. On 29 March 2006, at the request of the complainant, the HPD executed an eviction of illegal occupants from the apartment, but neither the complainant, nor her husband collected the keys.
13. On 18 October 2007, the complainant's husband requested the Kosovo Property Agency (KPA) to take the said apartment under its administration. On 17 June 2008, he signed an agreement with the KPA that the apartment would be included in the KPA voluntary rental scheme. The agreement includes a clause stating, among other conditions, that the property right holder will receive the rent once and if the rent is paid to the KPA.
14. On 14 March 2011, the KPA confirmed to the Panel that the apartment was still under its administration, adding that until that date the KPA had not been able to rent the property, and that therefore no rent had been collected.

15. In the meantime, on 18 October 2007, a claim by the complainant's husband was registered by the KPA, for the recognition of his ownership right over the piece of commercial land claimed by him.
16. According to the information received from the KPA, there was an error with the initial physical notification of the property claimed, and the property was re-notified through publication on 17 June 2010. The claim is currently being processed. At a later stage it will be presented to the Kosovo Property Claims Commission (KPCC) for adjudication.
17. According to information received from the complainant, the piece of land has in the meantime been sold, allegedly at a low price.

B. Claim before the Municipal Court

18. On 12 August 2004, the complainant lodged a claim with the Municipal Court of Gjakovë/Đakovica against the Municipality of Gjakovë/Đakovica, the Provisional Institutions of Self-Government (PISG), UNMIK and KFOR, seeking compensation for the damage caused to the apartment, in the amount of 20,000 euro.
19. 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 generally 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).
20. 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 § 19 above, at § 6).
21. On 15 November 2005, the DOJ called on the Kosovo 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.
22. 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.
23. 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.

24. On 15 January 2011, the complainant stated that her claim was at that time still pending before the Municipal Court of Gjakovë/Đakovica.

III. THE COMPLAINT

25. The complainant complains about the duration of the proceedings before the HPD/HPCC, relating to her apartment. In this respect she can be deemed to invoke a violation of the right to a decision by a court within a reasonable time, in the sense of Article 6 § 1 of the European Convention on Human Rights (ECHR). She also alleges that by not receiving any rent for her apartment under the KPA rental scheme, her right to property, guaranteed by Article 1 of Protocol No. 1 to the ECHR, has been violated.
26. The complainant further complains about the duration of the proceedings before the KPA, relating to her husband's piece of land. In this respect she can again be deemed to invoke a violation of Article 6 § 1 of the ECHR.
27. Finally, the complainant complains about the fact that the Municipal Court of Gjakovë/Đakovica stayed the proceedings concerning her claim for compensation because of the damage to her property. The Panel considers that the complainant can be deemed to invoke a violation of the right to obtain a decision within a reasonable time, guaranteed by Article 6 § 1 of the ECHR, as well as of the right to an effective remedy, guaranteed by Article 13 of the ECHR.

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

28. 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 Gjakovë/Đakovica, 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, *Čukić*, and 69/08, *Bogićević*, 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

29. 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. Complaint with regard to the duration of the proceedings relating to the complainant's property before the Housing and Property Directorate/Housing and Property Claims

Commission, and with respect to the administration of that property by the Kosovo Property Agency

30. The complainant complains in the first place about the duration of the proceedings relating to the ownership right over her apartment.
31. The claim relating to the apartment was filed with the HPD on 18 March 2002. On 7 June 2005, the HPCC issued its decision. As further explained by the KPA, that decision was executed on 29 March 2006, when the illegal occupant was evicted from the apartment.
32. The present complaint was submitted to the Panel on 30 June 2008, that is more than six months after the final decision in the HPD/HPCC proceedings and more than six months after the implementation of that decision.
33. It follows that this part of the complaint is inadmissible as being lodged out of time, within the meaning of Section 3.1 of UNMIK Regulation No. 2006/12.
34. The complainant further complains about a violation of her right to property as a result of the non-payment of rent for her apartment under the KPA rental scheme.
35. The KPA explained that the property was placed under its administration on 14 November 2007, at the request of the complainant's husband, and included in the voluntary rental scheme on 17 June 2008. It further explained that it had not been able to rent the apartment, and that for that reason no rent has been collected.
36. The complainant does not dispute these facts.
37. The Panel recalls that the KPA, when taking a property under its administration, does not guarantee that any income from the property will be realised, or even 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 rents to the KPA (see HRAP, *Trajković*, no. 35/08, decision of 17 April 2009, § 20).
38. The complaint and the subsequent information obtained contain no evidence that support the conclusion that the complainant's right to protection of property was violated because of a failure of the KPA to rent the property or to pay any rental amounts due to the complainant (see HRAP, *Trajković*, no. 35/08, mentioned above, at § 21; see also HRAP, *Živković*, no. 29/08, decision of 26 November 2010, § 36; HRAP, *Sokoli*, no. 14/08, decision of 17 March 2011, § 27).
39. 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.

B. Complaint with regard to the proceedings relating to the property of the complainant's husband, before the Kosovo Property Agency

40. The complainant also complains about the duration of the proceedings relating to the piece of land allegedly belonging to her husband.

41. It results from the explanation given by the KPA that the claim was registered by the KPA on 18 October 2007 and physically notified on 2 September 2008. The claim was also published on 7 November 2008 (*KPA Gazette*, no. 17, November 2008). It was not contested within the 30-day period from the publication. The KPA then undertook the verification of the documents submitted by the complainant's husband in support of his claim. As the authenticity of these documents could not be verified, the claimant was asked to provide additional documents. It was later found, presumably upon consultation of the records of the Kosovo Cadastral Agency, that an error had been made during the physical notification of the claim. As a result, the claim was re-notified through publication on 17 June 2010 (*KPA Gazette - Notification*, no. 2, June 2010). On 14 March 2011, the KPA wrote to the Panel that the verification process had been concluded and that the claim was being processed for adjudication by the KPCC.
42. The complainant does not dispute the facts as presented by the KPA.
43. 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).
44. Furthermore, in *Kušić* (mentioned above, 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.
45. Insofar as the period between 18 October 2007 and 31 December 2008 is concerned, it appears that during that period the claim was physically notified on 2 September 2008 and published on 7 November 2008.
46. Taking into account the high number of claims filed with the KPA, the Panel does not consider that there was during that period a delay of such length that it exceeded the reasonable time requirement. The Panel therefore holds this part of the complaint, with respect to the said period, to be manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
47. Insofar as the period after 31 December 2008 is concerned, this part of the complaint falls outside the jurisdiction *ratione personae* of the Panel.

C. Complaint with regard to the proceedings before the Municipal Court of Gjakovë/Dakovica

48. The Panel considers that, insofar as the complainant invokes a violation of Articles 6 § 1 and 13 of the ECHR, she 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), *Acimović 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 court, she has been unable to obtain the determination of her claim for

compensation because of damage to her 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 and of her right to an effective remedy under Article 13 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.

49. 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 § 48 above, at § 18).

50. No other ground for declaring this part of the complaint 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), WITH RESPECT TO THE PROCEEDINGS FILED IN 2004 WITH THE MUNICIPAL COURT OF GJAKOVË/ĐAKOVICA;

- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member