



The Human Rights Advisory Panel

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OPINION

Date of adoption: 17 February 2012

Case No. 11/08

Dragan PRELEVIĆ

against

UNMIK

The Human Rights Advisory Panel sitting on 17 February 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, makes the following findings and recommendations:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was lodged with the Panel on 5 May 2008 and registered on the same date. The complainant is represented by the law office “Aleksić, Mušicki, and Associates”, from Novi Sad, Republic of Serbia.
2. On 16 May 2008, the Panel requested the complainant to submit additional information. No response to this request was received. On 6 June 2008, the Panel reiterated its request. A response was received on 31 July 2008.

3. On 21 July 2008 and 17 November 2008, the Panel requested additional clarification from the complainant. Responses from the complainant were received on 19 November 2008 and 19 January 2009.
4. On 22 May 2009, the Panel requested further information and clarification from the complainant. A response was received on 27 July 2009.
5. On 1 February 2010, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the case. The SRSG responded by letter dated 23 April 2010.
6. On 22 September 2010, the SRSG's response was forwarded to the complainant for comments. The complainant's response was received by the Panel on 18 November 2010.
7. On 16 December 2010, the Panel declared the case admissible.
8. On 20 December 2010, the decision was communicated to the SRSG for UNMIK's comments on the merits of the case. On 3 May 2011, the SRSG provided an interim response to the Panel. On 25 July 2011, the SRSG provided comments on the merits of the case.

II. THE FACTS

9. The complainant is a former resident of Kosovo currently living in Serbia. He is the owner of a flat in Prishtinë/Priština, where he lived until June 1999 when he left Kosovo for security reasons.
10. On 22 June 1999, he concluded a contract with Mr B.M., granting the latter the right to use the flat, including its furniture and appliances, until his return and without paying any rent to the complainant. However, the contract provided that the user was obliged to pay for all utility costs, starting from the day he moved into the flat. The complainant later found out that the flat had been damaged, its furniture and appliances taken away, and that no rent or utility bills paid. The flat was occupied by Mr B.M. until the end of September 2005, when he was evicted from it by the Housing and Property Directorate (HPD).
11. On 4 June 2004, the complainant submitted a claim for the damage caused to his flat, as well as for unpaid rent and utilities, with the Municipal Court of Prishtinë/Priština through the Municipal Court of Novi Sad, Serbia, against Mr B.M., the Municipality of Prishtinë/Priština, and the Kosovo Provisional Institutions of Self-Government (PISG), seeking 20,000 euros in compensation. The claim was actually received by the Municipal Court of Prishtinë/Priština on 30 August 2004.
12. Having heard nothing from the Municipal Court, on 28 April 2006 the complainant prepared another claim, in substance the same as that of 2004, and re-submitted it to the Municipal Court of Prishtinë/Priština, through the Municipal Court of Niš.
13. At the time Mr Prelević complained to the Panel, the Municipal Court had not contacted him, and no hearing had been scheduled, with regard to either of the claims.
14. 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).

15. 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 § 14 above, at § 6).
16. The complainant’s claim, even though not coming within this category as it is also directed against a named person, was classified as such and was therefore affected by the above instruction of the DOJ.
17. 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.
18. 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.
19. 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.

III. THE COMPLAINT

20. Insofar as the complaint has been declared admissible, the complainant in substance alleges that the proceedings concerning his claim for compensation for the damage to his property was stayed by the Municipal Court of Prishtinë/Priština, thus making it impossible for him to obtain the determination of his claim, in breach of his right of access to a court under Article 6 § 1 of the European Convention on Human Rights (ECHR). He also complains that, as a result of the stay, the proceedings have not been concluded within a reasonable time, in breach of Article 6 § 1 of the ECHR.

IV. THE LAW

21. In his response on the merits of the present case the SRSG both raises arguments with respect to the specifics of the present case and reiterates arguments provided in response to the merits of the case *Milogorić and Others* (cited in § 14 above).
22. With respect to this case, the SRSG in particular disputes the authenticity of the receipt stamp on the first claim dated 4 June 2004, arguing that the case may have been received by a “parallel” court, functioning under the authority of the Ministry of Justice of the Republic of Serbia.
23. The Panel finds from the information provided by the Court Liaison Office of the Kosovo Ministry of Justice (on 3 August 2011) that the claim of the complainant was in fact filed with the Prishtinë/Priština Municipal Court on 30 August 2004. The President of the Prishtinë/Priština Municipal Court confirmed, on 23 November 2011, that the case is in the Court and that it is still pending.
24. The SRSG also argues that it is likewise doubtful that the claim from 2006 was properly filed with the Municipal Court of Prishtinë/Priština.
25. In this regard the Panel notes that as the second claim from 2006 is the same in substance as that of 2004, whether it was properly filed or not before the Municipal Court does not change the substantive basis of the complaint before the Panel. Therefore, the Panel considers that it need not examine this issue.
26. The Panel notes that the case of the complainant raises issues the substance of which has already been submitted to the Panel by other complainants. The Panel recalls that in, for instance, the joined cases of *Milogorić and Others* (cited in § 14 above), it examined complaints by five complainants who were also owners of real property in Kosovo. In 1999, fearing hostilities, they too left their homes in Kosovo. Their property was damaged or destroyed during the second half of 1999, after the entry into Kosovo of UNMIK and KFOR. These complainants also filed claims in 2004 before the competent municipal courts against UNMIK, KFOR, the PISG and the relevant municipalities, seeking compensation for the damage caused to their property. They too had not been contacted by the courts and no hearings had been scheduled, due to the above mentioned intervention by the DOJ which halted the judicial proceedings from August 2004 to September 2008.
27. In *Milogorić* the Panel found that “the fact that, for a long period of time, the complainants were prevented from having their compensation claims determined by the courts as a consequence of the interference by the DOJ, constituted a violation of Article 6 § 1 of the ECHR”, more specifically of their right of access to a court (HRAP, *Milogorić and Others*, cited in § 14 above, at § 46). The Panel further found that “it [was] not necessary to examine separately the issue of the length of the proceedings” (same opinion, at § 48).
28. In his comments on the merits of the complaint the SRSG reiterated his objections provided in relation to the merits of the case *Milogorić and Others*.
29. The SRSG argued with regard to the merits in *Milogorić* among other things that UNMIK’s request that the proceedings be stayed must be considered to have had a legitimate aim, and that in the circumstances of post-conflict Kosovo and its burgeoning

judicial system, the temporary stay was the only way for UNMIK to deal with the exceptional situation with which the Kosovo judicial system was faced, caused by the influx of compensation claims. The SRSG also argued that there was a reasonable proportionality between the means employed and the aim sought to be achieved, because a fair balance was struck between the demands of the general interest of society and the requirements for the protection of the individuals' fundamental rights. According to the SRSG, the reasonableness of the length of proceedings was to be assessed in the light of the particular circumstances of the case, and in particular the three criteria applied by the European Court on Human Rights: the conduct of the judicial authorities, the complexity of the case, and the conduct of the applicant. Only delays attributable to the State could cause a violation of the reasonable time requirement. The SRSG analysed in detail the application of the above three criteria in the context of Kosovo and as they related to the complainants.

30. As regards the conduct of the complainants, the SRSG argued in *Milogorić* that the majority of them had not presented any evidence to show that they in any way ever enquired as to the progress of their cases, or complained that their cases were not progressing and should progress within either the local courts in Kosovo, or the DOJ or any other UNMIK or PISG organ, including the Court Liaison Offices. Nor had the complainants complained to EULEX subsequent to its deployment in Kosovo in December 2008. The SRSG also argued that some of the complainants had not shown that they took any steps to repossess their property following the decisions of the Housing and Property Claims Commission made between June 2003 and October 2008.
31. With regard to these arguments, provided in relation to the merits of the case *Milogorić and Others* (cited in § 14 above), the Panel recalls that it has already considered and rejected them in *Milogorić and Others*, in *Lalić and Others* (HRAP, cases nos. 30/08 and others, opinion of 13 May 2011, § 21), and in *Mladenović and Others* (HRAP, cases nos. 172/09 and others, opinion of 16 December 2011, § 22). It found that it was true that UNMIK's interim character and related difficulties must be duly taken into account with regard to a number of situations, but that under no circumstances could these elements be taken as a justification for diminishing standards of respect for human rights, which were duly incorporated into UNMIK's mandate (*Milogorić and Others*, § 44; *Lalić and Others*, § 22; *Mladenović and Others*, § 24).
32. The Panel sees no reason to depart from its findings on these points made in the cases of *Milogorić and Others*, *Lalić and Others*, and *Mladenović and Others*.
33. However, in his comments on the merits of the present complaint the SRSG further argues that the Panel has not expressly addressed UNMIK's policy of balancing competing case management priorities in its efforts to reduce the risk of delays for the courts' other users, while seeking other options for addressing the claims.
34. The Panel notes that in fact no other options were found and that cases that had not been scheduled according to the DOJ's instruction were subsequently allowed to be processed (see §§ 17 and 18 above).
35. Further, the Panel recalls that on a number of occasions the European Court of Human Rights found a violation of the applicants' right of access to a court under Article 6 § 1 of the ECHR insofar as the possibility to have their claim determined by a court was stayed for a long period of time as a result of the intervention of the legislature (see European Court on Human Rights (ECtHR), *Kutić v. Croatia*, no. 48778/99, judgment of 1 March

2002, *ECHR*, 2002-II, § 31, ECtHR, *Aćimović v. Croatia*, no. 61237/00, judgment of 9 January 2003; ECtHR, *Multiplex v. Croatia*, no. 58112/00, judgment of 10 July 2003).

36. Concerning the argument of the SRSG that the complainant did not enquire about the progress of his case with the relevant courts, either before EULEX's deployment in December 2008 or thereafter, the Panel has also already rejected such argument in *Mladenović and Others*. It found that the complainants could not be blamed for not having enquired with the relevant courts as to the progress of their cases (*Mladenović and Others*, cited in § 31 above, at § 26). Moreover, as to the argument that the complainants did not enquire with EULEX about the progress of their cases, the Panel found that this issue was irrelevant for the examination of the complaints, since the situation after December 2008 fell in any event outside UNMIK's responsibility (*Mladenović and Others*, § 26).
37. The Panel sees no reason to depart from its conclusions on these points made in the case of *Mladenović and Others*.
38. In addition to the above, the SRSG submits that it is unclear from the complainant's claim of 2004 or that of 2006, when the damage to the property had in fact been caused. He further argues that if the damage had occurred sometime in 1999, the 2006 claim would have been time-barred.
39. The Panel has already discussed the matter of the claim of 2006 (see §§ 24-25 above), and finds that there is no need to examine this issue further.
40. Finally, the SRSG argues that if the claim of 2004 was in fact duly filed before the Prishtinë/Priština Municipal Court, it would have been rejected by that Court on the ground that the PISG and the municipalities lacked "passive legitimacy". The SRSG refers in this respect to a decision of the Municipal Court of Deçan/Dečani in the case *Stana Stiović v. PISG, Municipality of Deçan/Dečani, UNMIK and KFOR*, dated 20 May 2011.
41. The Panel notes that the decision referred to by the SRSG is related to a situation similar to that in the complaint before it. However, this argument has no relevance to the assessment of the alleged failure of the Municipal Court of Prishtinë/Priština to decide, within a reasonable time, on the merits of the claim before it. Therefore the Panel considers this argument to be irrelevant to the determination of the current complaint.
42. In the light of the foregoing, the Panel finds that there has been a violation of Article 6 § 1 of the ECHR in respect of the inability of the complainants to have their claims determined by the courts, and that it is not necessary to examine separately the issue of the length of the proceedings.

VI. RECOMMENDATIONS

43. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.
44. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted above, UNMIK's responsibility with regard to the judiciary in Kosovo ended on 9 December 2008, with EULEX assuming full operational control in the area of rule of

law. UNMIK therefore is no longer in a position to take measures that will have a direct impact on proceedings pending before the municipal courts.

45. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible. In line with the case law of the European Court on Human Rights on situations of reduced State jurisdiction, the Panel is of the opinion that UNMIK must endeavour, with all the diplomatic means available to it *vis-à-vis* the Kosovo authorities, to obtain assurances that the case filed by the complainant will be duly processed (see HRAP, *Milogorić and Others* § 49, and *Lalić and Others* § 32, cited above; compare ECtHR (Grand Chamber), *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 333; ECtHR, *Al-Saadoon and Mfudhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171).
46. The Panel further considers that UNMIK should take appropriate steps towards adequate compensation for the complainant for non-pecuniary damage suffered as a result of the prolonged stay of the proceedings instituted by him.

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 IN RESPECT OF THE INABILITY OF THE COMPLAINANT TO HAVE HIS CLAIM DETERMINED BY THE COURTS;**
- 2. FINDS THAT THERE IS NO NEED TO EXAMINE THE COMPLAINT UNDER ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AS TO THE LENGTH OF THE PROCEEDINGS;**
- 3. RECOMMENDS THAT UNMIK:**
 - a. URGE THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ASSURE THAT THE COMPLAINANT'S CASE WILL BE DECIDED WITHOUT ANY FURTHER DELAY;**
 - b. TAKE APPROPRIATE STEPS TOWARDS ADEQUATE COMPENSATION FOR THE COMPLAINANT FOR NON-PECUNIARY DAMAGE;**
 - c. TAKE IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND INFORM THE COMPLAINANT AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member