



# **The Human Rights Advisory Panel**

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## **DECISION**

**Date of adoption: 16 March 2012**

**Case No. 41/08**

**Dragiša ĐURAŠKOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel sitting on 16 March 2012  
with the following members present:

Mr Paul LEMMENS, Presiding Member  
Ms Christine CHINKIN

Assisted by

Mr Andrey ANTONOV, Executive Officer

Having noted Mr Marek NOWICKI's withdrawal from sitting in the case pursuant to Rule 12 of the Rules of Procedure,

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 11 September 2008 and registered on 20 October 2008.
2. On 22 July 2009, the Panel asked the complainant to submit additional information. The complainant responded by a letter dated 17 August 2009.

3. On 2 February 2010 the complaint was communicated to the Special Representative of the Secretary-General (SRSG), for comments on admissibility of the complaint. The SRSG responded on 15 March 2010.
4. On 2 April 2010, the Panel communicated UNMIK's observations on the admissibility of the complaint to the complainant, inviting him to comment. The complainant's response was received on 23 June 2010.

## **II. THE FACTS**

5. The complainant is a Kosovo resident who left Kosovo in June 1999 for security reasons and who is currently residing in Montenegro. He is the owner of two properties in Pejë/Peć, Kosovo: a flat and small yard located at 124 Bora Vukmirovića / Serdara Janka Vukotića 124 (the first property) and a house and plot of land at 4 Beogradska Street (the second property).
6. At the end of 2003, the complainant learned that a large part of his properties in Kosovo had been damaged, looted and usurped. Later he also discovered that his second had been expropriated by the Pejë/Peć Municipality, and that a public road was built over it.

### **A. Actions with regard to the first property**

#### *Proceedings before the Housing and Property Directorate*

7. In 2004, the complainant filed a claim with the Housing and Property Directorate (HPD) for repossession of the first property. In a decision of 27 August 2004 the Housing and Property Claims Commission (HPCC) confirmed the complainant's rights over this property. By the subsequent action of the HPD, the property in question was vacated.
8. In March 2006 the complainant visited this property for the first time since 1999. He discovered that a large part of the property had been occupied by S.K., who had also undertaken construction work on the building and in the yard. Thereafter, the complainant requested the HPD to place the property under its administration.
9. In a letter dated 21 June 2006, the HPD informed the complainant that it was unable to place the property under its administration, as the property was found to be severely damaged. In the same letter, in accordance with its usual practice, the HPD advised the complainant of its willingness to assist him by providing necessary documentation, should he decide to initiate civil or criminal proceedings for compensation for material loss caused by damage to or destruction of his property.
10. On 9 August 2006, the complainant asked the HPD to re-examine the state of his property and to revise its decision not to take the property under its administration. On 14 September 2006, the HPD responded by resending its letter of 21 June 2006, thereby rejecting his request for reconsideration.
11. The complainant states that he visited the property again in February 2008 but was prevented from entering it by S.K.'s brother.

*Proceedings before the Kosovo Property Agency*

12. On 18 June 2008, the complainant submitted a letter to the Kosovo Property Agency (KPA), the successor-in-interest to the HPD/HPCC, raising his difficulties in obtaining the effective implementation of the HPCC decisions with respect to his property, and in obtaining a decision from the Municipal Court of Pejë/Peć with regard to his claim for compensation (for this part see §§ 14-18 below).
13. By letter dated 18 July 2008, the KPA stated that the HPCC decision of 27 August 2004 had been properly implemented, that the KPA was no longer authorised or responsible to protect the property, and that it had no competence to examine claims for compensation for damage. The KPA also informed the complainant that he could complain to the Kosovo Judicial Council (KJC) regarding the inaction of the Municipal Court.

*Proceedings before the Municipal Court*

14. On 8 June 2004 the complainant submitted a claim to the Municipal Court of Pejë/Peć, against the Municipality of Pejë/Peć and the Provisional Institutions of Self-Government of Kosovo (PISG), seeking compensation for the damage caused by the destruction of all the movable property in his flat. This claim was registered by the Court on 13 December 2004.
15. This lawsuit belongs to a group of approximately 17,000 compensation claims, the vast majority of which were filed by Kosovo Serbs who because of the hostilities had left their homes in Kosovo in 1999 and whose properties were 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 before Kosovo courts around the same time in the second half of 2004. The claims were generally directed against UNMIK, KFOR, the PISG and in most cases also the relevant municipality (see Human Rights Advisory Panel [HRAP], *Milogorić and others*, cases nos. 38/08 and others, opinion of 24 March 2010, § 1; for the legal basis upon which the claimants based their claim, see the same opinion, § 5).
16. 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 § 15 above, at § 6).
17. On 15 November 2005, the DOJ called on 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.
18. Having heard nothing with regard to his claim, on 14 August 2008 the complainant addressed a letter to the Municipal Court of Pejë/Peć, urging the Court to take action for resolution of this claim. This submission was received by the Court on 5 September

2008. The complainant alleges that the Court has failed to render any decision regarding this lawsuit.

*Complaint to the Kosovo Judicial Council*

19. On 12 August 2008 the complainant complained to the KJC that he had received no response from the Municipal Court of Pejë/Peć with respect to his claim for compensation for damage to his property. The complainant states that he never received any response from the KJC in this regard.

**B. Actions with regard to the second property**

*Proceedings before the HPD/KPA*

20. The complainant informs the Panel that his second property was totally destroyed after his departure from Kosovo in June 1999. Nevertheless, the complainant filed a claim with the HPD. By a decision of 22 October 2004 the HPCC confirmed that “at the date of destruction of the identified residential property, the claimant ... satisfied the requirement for an order of repossession ... in respect of the property”.

*Proceedings before the Municipal Court*

21. On 20 May 2004 the complainant submitted a claim to the Municipal Court of Pejë/Peć, against the Municipality of Pejë/Peć and the Provisional Institutions of Self-Government of Kosovo (PISG), seeking compensation for the damage caused by the destruction of the house, of movable property and of the professional tools in the house. This claim was registered by the Court on 9 June 2004. The complainant states that he has until now received no response from this Court. This claim is similar to the compensation claim filed with respect to the first property, and also falls into the category of the 17,000 compensation claims described above (see §§ 14-17).

*Complaint to the Kosovo Judicial Council*

22. The lack of any response from the Municipal Court of Pejë/Peć with respect to the compensation claim for damage to this property was also the subject of the above-mentioned complaint to the KJC (see § 19 above).

*Claims before the Municipality for compensation for the expropriation of the second property*

23. The complainant further submits that on 27 March 2007 he discovered that a public road had been built over his second property. In August 2008 he submitted a compensation request to the Municipality of Pejë/Peć, Directorate of Administration and Personnel. In a letter dated 9 September 2008, the Director of Administration of the Municipality responded that the complainant should address the matter to the municipal Office of Property and Legal Affairs, as the body responsible for expropriations.
24. In a letter dated 23 September 2008 and addressed to the Office of Property and Legal Affairs of the Municipality of Pejë/Peć, the complainant repeated his request for compensation. The complainant states that he has never received any response from the municipal authorities to this request.

*Claim before the Municipal Court against the Municipality for Compensation for the Expropriation of the Second Property*

25. On 14 August 2008, the complainant addressed another claim to the Municipal Court of Pejë/Peć against the Pejë/Peć Municipality and “Kosovo – UNMIK”, this time for compensation for the damage caused to his property by the expropriation. This claim was registered by the Court on 5 September 2008. The complainant states that he has received no response from this Court.

**C. Criminal proceedings with regard to both properties**

26. On 14 August 2008, the complainant submitted a criminal report to the Municipal Public Prosecutor’s Office (MPPO) of Pejë/Peć against the illegal occupant of the first property and against the responsible officials of the Pejë/Peć Municipality for the illegal expropriation of the second property. The report was received by the MPPO on 4 September 2008.
27. At the prosecutor’s invitation, on 3 October 2008, the complainant gave a statement as the injured party. On the same day, the MPPO dismissed the criminal report as ungrounded, based on the fact that the property was not habitable. The complainant was advised by the MPPO of his right to undertake further proceedings as a subsidiary prosecutor, in accordance with Article 62(1) of the Provisional Criminal Procedure Code of Kosovo (PCPCK).
28. The complainant informs the Panel that on 14 October 2008, as a subsidiary prosecutor, he filed an indictment against the illegal occupant of the first property with the Municipal Court of Pejë/Peć. The complainant alleges that he has not been contacted by the Court with regard to this indictment from that time.

**D. Termination of UNMIK’s responsibility with regard to judiciary in Kosovo**

29. 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**

30. The complainant alleges that the HPD, later the KPA, failed to implement the decision of the HPCC relating to his first property, preventing him from repossessing this property. He invokes a violation of his right to the execution of the decision, guaranteed by Article 6 § 1 of the European Convention on Human Rights (ECHR), and of the right to protection of property, guaranteed by Article 1 of Protocol No. 1 to the ECHR.
31. The complainant also complains that by not deciding on his request for compensation for his second property, which was used for municipal needs, the municipal authorities violated his right to protection of property, guaranteed by Article 1 of Protocol No. 1 to the ECHR.

32. In addition, the complainant argues that the Municipal Court of Pejë/Peć stayed the proceedings concerning his various claims for damages for destruction of his property and that these proceedings have not been concluded within a reasonable time, which violated his right to a judicial determination of the disputes, within a reasonable time, guaranteed by Article 6 § 1, and his right to an effective remedy, guaranteed by Article 13 of the ECHR.
33. The complainant also alleges that the Municipal Court of Pejë/Peć has not responded to the criminal charges against the individual suspected to have caused the damage to his second property (see § 28 above), thus violating his right to a court, guaranteed by Article 6 § 1 of the ECHR.

#### **IV. THE LAW**

34. 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. HPD/KPA action implementing the decision of the HPCC with regard to the first property**

35. This part of the complaint relates to the failure of the HPD/KPA to effectively implement the HPCC decision of 27 August 2004 (see § 7 above). The Panel notes that the HPCC's decision restored the complainant's property rights and that the property was vacated through action of the HPD, thus effectively implementing the decision. From the moment of the eviction the complainant's case before the HPD was considered closed.
36. The subsequent request of the complainant for the HPD to take the property under its administration is not a continuation of the efforts to implement the above decision of the HPCC, but a separate action. The Panel notes that the initial request, as well as the request for reconsideration, were rejected by the HPD. The complainant was duly informed of these decisions (see §§ 9-10 above) and advised that he could institute compensation or criminal proceedings before the competent bodies. The Panel also notes that the complainant did in fact institute such proceedings, as advised, by bringing initiating criminal proceedings in the MPPO of Pejë/Peć (see §§ 26-28 above).
37. Therefore, the Panel finds that this part of the complaint is unsubstantiated, and thus is manifestly ill-founded.

##### **b. Claims for compensation of damages before the Municipal Court of Pejë/Peć, with regard to both properties**

38. 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 Human Rights Advisory Panel [HRAP], *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).

39. On the one hand, he complains about the fact that due to the ordered stay of the proceedings in the competent courts, he has been unable to obtain the determination of his claim 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.
40. On the other hand, he complains about the length of the proceedings before the competent courts, due to the fact that the proceedings which have been instituted in August 2004 have not been completed until the present time. 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.
41. The Panel further recalls its decision in the case of *Milogorić* that such complaints under Articles 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 (*Milogorić*, cited above in § 39, at § 18; HRAP, *Lalić and others*, 30/08 and others, decision of 23 February 2011, §§ 18-20).
42. No other ground for declaring this part of the complaint inadmissible has been established.

**c. Claim before the Municipality of Pejë/Peć, for compensation of damages caused by expropriation, with regard to the second property**

43. The Panel recalls that in the *Krasniqi* case, it has already considered that after 15 June 2008 UNMIK was no longer able to perform effectively the vast majority of its tasks as an interim administration, that the SRSG was unable to enforce the executive authority that is still formally vested upon him under Security Council resolution 1244 (1999), and that from that date UNMIK can in principle no longer be held responsible for acts or omissions imputable to the Kosovo authorities (HRAP, *Krasniqi*, 48/08, decision of 13 September 2010, § 12-13).
44. The Panel notes that all the proceedings before the Municipality were initiated by the complainant after 15 June 2008. For this reason, the Panel considers that these parts of the complaint fall outside its jurisdiction *ratione personae*.

**d. Claim against the Municipality of Pejë/Peć, for compensation for damages caused by expropriation, and criminal complaint, both before the Municipal Court of Pejë/Peć, with regard to the second property**

45. The Panel notes that the proceedings against the Municipality of Pejë/Peć, for compensation for damages caused by expropriation, were initiated by the complainant on 14 August 2008 (see § 25 above), and that the criminal charges were filed with the same Municipal Court on 14 October 2008 (see § 28 above). By 9 December 2008, when UNMIK completely handed over the responsibility with regard to the judiciary in Kosovo to EULEX (explained in § 29 above), these procedures were still ongoing, which appears to be the situation until now.
46. The Panel finds that there is no evidence of a significant delay in proceedings between the date the claims were filed, and the date when UNMIK's responsibility with respect to the judiciary in Kosovo terminated (see § 29 above).

47. For this reason, the Panel considers that these parts of the complaint are manifestly ill-founded.

***Complaint to the Kosovo Judicial Council***

48. The Panel notes that the KJC, as an independent institution, is a body of administrative rather than judicial functions. As the Panel has already noted (see § 43 above), UNMIK cannot be held responsible for acts or omissions imputable to the Kosovo authorities allegedly committed after 15 June 2008.

49. As the complaint to the KJC was filed on 12 August 2008, the complaint related to an alleged failure by the KJC to act upon it falls outside the Panel's jurisdiction *ratione personae*.

**FOR THESE REASONS,**

The Panel, unanimously,

**- DECLARES ADMISSIBLE THE COMPLAINT RELATING TO THE RIGHT OF ACCESS TO A JUDICIAL DECISION WITHIN A REASONABLE TIME AND THE RIGHT TO AN EFFECTIVE REMEDY (ARTICLES 6 § 1 AND 13 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS), WITH REGARD TO THE CLAIMS BEFORE THE MUNICIPAL COURT OF PEJË/PEĆ, FILED IN DECEMBER 2004 AND JUNE 2004 RESPECTIVELY, RELATING TO BOTH PROPERTIES;**

**- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.**

Andrey ANTONOV  
Executive Officer

Paul LEMMENS  
Presiding Member