



The Human Rights Advisory Panel

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DECISION*

Date of adoption: 9 June 2012

Case No. 31/08

Marija LALIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 9 June 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 18 July 2008 and registered on the same date.

* Editorially revised pursuant to Rule 47.2 of the Rules of Procedure, on 14 August 2012.

2. On 23 October 2008, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility and merits of the case. On 11 November 2008, UNMIK provided its response.
3. On 17 November 2008, the Panel requested additional information from the complainant. The Panel received the complainant's responses on 15 December 2008 and on 16 January 2009.
4. On 24 September 2009, the Panel re-communicated the case to the SRSG for UNMIK's comments on the admissibility and merits of the case, following the receipt of additional information from the complainant. On 15 October 2009, UNMIK provided its response.
5. On 10 November 2010, the Panel requested further clarifications from the complainant. The complainant's response was received on 18 November 2010.
6. On 31 January 2011, the Panel requested information from the District Court of Prishtinë/Priština. No response was received.
7. On 3 May 2011, the Panel reiterated its request for further information to the District Court of Prishtinë/Priština. The response of the District Court was received on 5 May 2011.
8. On 20 July 2011, the Panel requested information in relation to the case from the Municipal Court of Prishtinë/Priština. The Municipal Court submitted its response on 4 September 2011.
9. On 6 December 2011, the Panel requested further information from the Municipal Courts of Prishtinë/Priština and Lipjan/Lipljan in relation to the case. The Panel received the responses of the Municipal Court of Prishtinë/Priština and of the Municipal Court of Lipjan/Lipljan on 12 December and 14 December 2011 respectively.
10. On 6 March 2012, the Panel received further information on the complaint from the District Court of Prishtinë/Priština.
11. On 29 March 2012, the Panel re-communicated the case to the SRSG for comments on admissibility, following the receipt of such additional information. UNMIK's response was received on 4 May 2012.

II. THE FACTS

a) Concerning the alleged destruction of the complainant's property

12. The complainant is a former resident of Kosovo currently residing in Serbia. The complainant states that she is the owner of a two-bedroom flat located in Magurë/Magura village, Lipjan/Lipljan municipality, where she used to live with her

two children. On 12 June 1999, due to security concerns, the complainant moved to Serbia proper leaving her property locked. Later on she learned that on an unspecified date following her departure, unknown persons had broken into the above-mentioned flat and looted the furniture and personal belongings remaining there.

13. The complainant states that on 24 August 2006, her legal representative lodged a claim on her behalf with the Municipal Court of Niš (Serbia), to the attention of the Municipal Court of Prishtinë/Priština, against the Provisional Institutions of Self-Government, the Municipality of Lipjan/Lipljan, UNMIK and KFOR, seeking compensation for the damage caused to her property.
14. On 12 December 2011, in response to a request for clarification from the Panel, the Municipal Court of Prishtinë/Priština informed the Panel that no lawsuit filed by the complainant could be found in the Court's records.
15. The complainant further states that subsequently, on an unspecified date, she lodged a second lawsuit for damage compensation concerning the same property, this time before both the Municipal Court of Lipjan/Lipljan and UNMIK, but both claims were rejected. However, the complainant does not provide any evidence that the claims were received by either institution.
16. In response to further enquiries by the Panel, the Municipal Court of Lipjan/Lipljan informed the Panel on 14 December 2011 that there was no record in its registers from 2006 to 2011 of any claim filed in the complainant's name.

b) Concerning proceedings to establish legal paternity of the complainant's child

17. The complainant states that in 1993 she filed a paternity suit with the District Court of Prishtinë/Priština against the alleged father of her daughter, who was born in 1991. The complainant states that on 17 December 1997, the above-mentioned Court, acting as court of first instance, rendered a decision in her favour which was appealed by the respondent.
18. On 22 October 1998, the Supreme Court of Serbia as the appeal court reversed the District Court's decision and referred the matter to the Municipal Court of Prishtinë/Priština for retrial.
19. However, from information gathered by the Panel, it appears that the case file was never transmitted from the District Court to the Municipal Court of Prishtinë/Priština and the proceedings have never been concluded.

III. THE COMPLAINT

20. The complainant complains about a violation of her right to property (Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR)). She generally complains about the fact that her property has been damaged and looted.

She also complains about the failure by the competent courts to decide on her claims for damages, in breach of Article 6 of the ECHR.

21. Secondly, the complainant complains about the alleged failure of the judicial proceedings concerning the determination of the legal paternity of her daughter and that such proceedings have therefore not been concluded within a reasonable time. She also complains that she did not have access to effective remedies and that in the meantime, she has had to provide solely for the upbringing of the child. The Panel considers that the complainant may be deemed to invoke a violation of her right of access to a court and of the reasonable time guarantee envisaged by Article 6 § 1 of the ECHR, and a violation of her right to an effective remedy under Article 13 of the ECHR.

IV. THE LAW

22. 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.
 - a) *Alleged violation of Article 1 of Protocol No. 1 to the ECHR and Article 6 of the ECHR in relation to the destruction of the complainant's property*
23. In his comments, the SRSG argues that this part of the complaint is unsubstantiated and should therefore be declared inadmissible. According to the SRSG, as no claim filed by the complainant was found at the relevant courts, it is not possible to ascertain the substance of the claim or its current status.
24. Insofar as the complainant complains about the destruction of her property, 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 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. According to the complainant, the damage to her property occurred at some time after her departure from Kosovo in 1999.
25. The Panel considers that the damage and destruction of property are instantaneous acts, which do not give rise to a continuing violation (see Human Rights Advisory Panel (HRAP), *Lajović*, no. 09/08, decision of 16 July 2008, § 7; HRAP, *M.S. and others*, 122/09 and others, decision of 5 April 2012, § 21). It follows that this part of the complaint lies outside the Panel's jurisdiction *ratione temporis*.
26. Insofar as the complaint relates to the alleged rejection of her claim for compensation by the courts in question, the Panel recalls that pursuant to Section 3.3 of UNMIK Regulation No. 2006/12, the Panel shall declare inadmissible any complaint which it considers incompatible with the human rights set out in the human rights instruments within the Panel's jurisdiction, or which it considers manifestly ill-founded.

27. The Panel notes that the complainant does not provide sufficient evidence or supporting documentation that her claims for damages were submitted to and received by the competent courts.
28. In these circumstances the Panel holds this part of the complaint to be unsubstantiated and therefore manifestly ill-founded.
- b) *Alleged violation of Articles 6 § 1 and 13 of the ECHR in relation to the court proceedings to establish legal paternity of the complainant's child*
29. The complainant complains that she has received no determination on the paternity suit commenced by her in 1993.
30. In his comments, the SRSG argues that the facts complained of were not included in the original complaint to the Panel. Furthermore, the SRSG states that the complainant does not allege any human rights violation in relation to the relevant facts. For these reasons this part of the complaint should be declared inadmissible.
31. In this regard, the Panel has already stressed that the legal interpretation of facts is not the responsibility of the complainant and that it has jurisdiction to review the circumstances complained of in light of the various human rights instruments mentioned in Section 1.2 of UNMIK Regulation No. 2006/12. In the performance of that task it is free to attribute to the facts of the case a characterisation in law different from that given by the complainant or, if need be, to view facts in a different manner (HRAP, *Zdravković*, no. 46/08, decision of 17 April 2009, § 34). Furthermore, the Panel has to take into account not only the original complaint but also the additional documents provided to it at its request (see European Court of Human Rights (ECtHR), *Orhan v. Turkey*, no. 25656/94, judgment of 18 June 2002, § 358; ECtHR, *Bazorkina v. Russia*, no. 69481/01, judgment of 27 July 2006, § 139; see also HRAP, *Zdravković*, no. 46/08, cited above, § 34). For the above reasons, the Panel rejects the objection raised by the SRSG.
32. The Panel considers that, insofar as the complainant complains about the failure of the judicial proceedings concerning the determination of the legal paternity of her daughter, she raises issues concerning her right of access to a court under Article 6 § 1 of the ECHR and her right to an effective remedy under Article 13 of the ECHR. The Panel also considers that, insofar as the complainant complains about the length of the proceedings relating to the determination of legal paternity in the competent courts, she raises an issue concerning her right to a judicial decision within a reasonable time, in the sense of Article 6 § 1 of the ECHR.
33. The Panel considers that the complaints under Articles 6 § 1 and 13 of the ECHR raise serious issues of fact and law, the determination of which shall depend on an examination of the merits. The Panel therefore concludes that this part of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.

34. No other ground for declaring this part of the complaint inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

- **DECLARES INADMISSIBLE IN FULL THE COMPLAINT CONCERNING THE ALLEGED DESTRUCTION OF THE COMPLAINANT'S PROPERTY;**
- **DECLARES ADMISSIBLE THE COMPLAINT IN RELATION TO THE PROCEEDINGS TO ESTABLISH LEGAL PATERNITY OF THE COMPLAINANT'S CHILD.**

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member