



The Human Rights Advisory Panel

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OPINION

Date of adoption: 17 August 2012

Cases Nos 32/08, Božidarka FELEGI; 05/09, Dragan PILJEVIĆ; 203/09, Svetlana MARINKOVIĆ; 310/09, Velibor AĐANČIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 17 August 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 complaints, 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 of Ms Božidarka Felegi (case no. 32/08) was introduced on 30 June 2008 and registered on 18 July 2008. The complaint of Mr Dragan Piljević (case no. 05/09) was introduced on 3 December 2008 and registered on 21 January 2009. In 2009, the complaint of Ms Svetlana Marinković was introduced on 30 April 2009 and registered on the same date and the complaint of Mr Velibor Ađančić (case no. 310/09) was introduced on 18 September 2009 and registered on the same date.
2. By decisions of 16 December 2011, the Panel declared the complaints in the cases of Mr Dragan Piljević (case no. 05/09) and Mr Velibor Ađančić (case no. 310/09) admissible in part.

3. On 5 March 2012, the Special Representative of the Secretary-General (SRSG) submitted UNMIK's comments on the merits of the complaints of Messrs Piljević and Ađančić.
4. By decision of 20 January 2012, the Panel declared the complaint in the case of Ms Božidarka Felegi (case no. 32/08) admissible in part.
5. On 12 March 2012, the SRSG submitted UNMIK's comments on the merits of that complaint.
6. By decision of 16 March 2012, the Panel declared the complaint in the case of Ms Svetlana Marinković (case no. 203/09) admissible in part.
7. On 23 April 2012, the SRSG submitted UNMIK's comments on the merits of that complaint.

II. THE FACTS

8. Ms Felegi, Ms Marinković and Mr Piljević are former residents of Kosovo currently living in Serbia proper, while Mr Ađančić continues to live in Kosovo. All the complainants were owners of real property in Kosovo. They lived there until 1999 when they had to leave that property. Later on, they all became aware that their properties had been damaged or destroyed during the second half of 1999.
9. The complainants lodged claims seeking compensation for the damage caused to their properties with the competent municipal courts. Ms Felegi and Mr Piljević directed their claims against UNMIK, KFOR, the Kosovo Provisional Institutions of Self-Government (PISG) and the relevant municipalities. Ms Marinković and Mr Ađančić directed their claims against the relevant municipalities and the PISG. All claims were lodged in 2004.
10. Approximately 17,000 compensation claims were lodged in 2004 before Kosovo courts, the vast majority of which by Kosovo Serbs who because of 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, at § 1; for the legal basis upon which the claimants based their claim, see the same opinion, at § 5).
11. 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 § 10 above, at § 6).

12. 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.
13. 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.
14. 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.
15. By the end of 2008, the courts had not contacted the complainants and no hearings had been scheduled.
16. The circumstances of the individual cases at issue are outlined in the annex to this opinion.

III. THE COMPLAINTS

17. Insofar as the complaints have been declared admissible, the complainants in substance allege that the proceedings concerning their claims for damages for destroyed property were stayed, thus making it impossible for them to obtain the determination of their claims, in breach of their right of access to a court under Article 6 § 1 of the European Convention on Human Rights (ECHR). They also complain 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. Finally, they allege that for the same reason their right to an effective remedy under Article 13 of the ECHR has been violated as well.

IV. JOINDER OF THE COMPLAINTS

18. The Panel decides, pursuant to Rule 20 of its Rules of Procedure, to join the four complaints.

V. THE LAW

Alleged violations of Article 6 § 1 of the ECHR

19. The Panel notes that the cases of the complainants raise 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 § 10 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. In these cases, the Panel concluded that the complainants' right to have their claim determined by the courts had been violated.

20. The Panel notes that the SRSJ did not provide any comments on the merits of the complaint of Ms Marinković (case no. 203/09). Instead, in his response the SRSJ argued that the fact that the complainant filed her claim to the Municipal Court of Suharekë/Suva Reka has no proof.
21. The Panel requested the Court Liaison Office (CLO) of the Kosovo Ministry of Justice to confirm this fact. The CLO responded that the complainant's claim is registered in their archive under the number 106/SR. As per CLO's records, the claim was filed with the Municipal Court of Suharekë/Suva Reka by CLO officers on behalf of the complainant on 12 August 2004. The Court's Registry gave the claim the case number P.Br. 153/04. Therefore, the Panel rejects this objection of the SRSJ and proceeds with the examination of the case on its merits.
22. In his responses to the other three complaints the SRSJ provides detailed arguments, based on the jurisprudence of the European Court of Human Rights. The SRSJ argues 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 SRSJ also argues 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 SRSJ, the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, and the European Court applies three criteria in particular: the conduct of the judicial authorities, the complexity of the case, and the conduct of the applicant. Only delays attributable to the State cause a violation of the reasonable time requirement. The SRSJ analyses in detail the application of the above three criteria in the context of Kosovo and as they relate to the complainants.
23. As regards the conduct of the complainants, the SRSJ argues that they have 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 have the complainants complained to EULEX subsequent to its deployment in Kosovo in December 2008.

24. The Panel recalls that it already considered and rejected all of these arguments in *Milogorić and Others* (cited in § 10 above), in *Berisha and Others* (HRAP, cases nos. 27/08 and others, opinion of 23 February 2011, § 24) and in *Lalić and Others* (HRAP, cases nos. 30/08 and others, opinion of 13 May 2011, § 21). Concerning the argument that the circumstances in Kosovo must be taken into account, the Panel found that it is true that UNMIK's interim character and related difficulties must be duly taken into account with regard to a number of situations, but 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; *Berisha and Others*, § 25; *Lalić and Others*, § 22).
25. The Panel sees no reason to depart from these findings.
26. Concerning the argument of the SRSG that the complainants did not enquire about the progress of their cases with the relevant courts, either before EULEX's deployment in December 2008 or thereafter, the Panel has already rejected these arguments in *Lalić and Others* (cited in § 24 above). It found that the complainants could not be blamed for not having enquired with the relevant courts as to the progress of their cases (*Lalić and Others*, § 25). Moreover, as to the argument that the complainants did not enquire with EULEX about the progress of their cases, the Panel has found that this issue was irrelevant for the examination of the complaints, since the situation after December 2008 falls in any event outside UNMIK's responsibility (see § 14 above; *Lalić and Others*, § 26).
27. The Panel sees no reason to depart from these findings either.
28. 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.

Alleged violation of Article 13 of the ECHR

29. The Panel finds that the complaints under Article 13 of the ECHR (right to an effective remedy) concern essentially the same issues as those discussed under Article 6 § 1. In these circumstances, it finds that no separate issues arise under Article 13 of the ECHR (HRAP, *Milogorić and Others*, cited in § 10 above, at § 49).

V. RECOMMENDATIONS

30. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.
31. 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 (see § 14) 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.

32. 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 of 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 cases filed by the complainants will be duly processed (see HRAP, *Milogorić and Others* § 49, and *Lalić and Others* § 32, cited above; compare European Court of Human Rights (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 Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171).
33. The Panel further considers that UNMIK should take appropriate steps towards adequate compensation for each of the complainants for non-pecuniary damage suffered as a result of the prolonged stay of the proceedings instituted by them.

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 COMPLAINANTS TO HAVE THEIR CLAIMS DETERMINED BY THE COURTS;**
- 2. FINDS THAT THERE IS NO NEED TO EXAMINE THE COMPLAINTS UNDER ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AS TO THE LENGTH OF THE PROCEEDINGS;**
- 3. FINDS THAT THERE IS NO NEED TO EXAMINE THE COMPLAINTS UNDER ARTICLE 13 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
- 4. RECOMMENDS THAT UNMIK:**
 - a. URGE THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ASSURE THAT THE COMPLAINANTS' CASES WILL BE DECIDED WITHOUT ANY FURTHER DELAY;**
 - b. TAKE APPROPRIATE STEPS TOWARDS ADEQUATE COMPENSATION FOR EACH OF THE COMPLAINANTS FOR NON-PECUNIARY DAMAGE;**

- c. **TAKE IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND INFORM THE COMPLAINANTS AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member

Annex

Case no. 32/08, Božidarka FELEGI

1. The complainant is a former resident of Kosovo currently living in Serbia proper.
2. She is the owner of property in the Gjakovë/Đakovica. Following her departure from Kosovo, she learned that her property had been usurped and damaged.
3. On 12 August 2004, the complainant submitted a claim to the Municipal Court of Gjakovë/Đakovica, against the Municipality of Gjakovë/Đakovica, the Provisional Institutions of Self-Government of Kosovo (PISG), UNMIK and KFOR, seeking compensation for the damage caused to her apartment. She claims 20,000 euros in compensation for this damage.
4. By the end of 2008, the Municipal Court had not contacted the complainant and no hearing had been scheduled.

Case no. 05/09, Dragan PILJEVIĆ

5. The complainant is a former resident of Kosovo currently living in Serbia proper.
6. He was the owner of a piece of land and a residential house in Fushë Kosovë/Kosovo Polje; he lived in that house with his family until 1999. After his departure, the house was broken into and plundered during 1999 and 2000.
7. On 21 July 2004 the complainant filed a claim with the Municipal Court of Prishtinë/Priština, against the PISG, the Municipality of Fushë Kosovë/Kosovo Polje, UNMIK and KFOR, for compensation for damages sustained in the destruction of the house. He claims 60,000 euros in compensation for this damage.
8. By the end of 2008, the Municipal Court had not contacted the complainant and no hearing had been scheduled.

Case no. 203/09, Svetlana MARINKOVIĆ

9. The complainant is a former resident of Kosovo currently living in Serbia proper. She is a co-owner of immovable property, consisting of a land plot, a residential house, accompanying buildings and fruit trees, in the Mushitishtë/Mušutište village, the Municipality of Suharekë/Suva Reka.
10. After her and her family departure in June 1999, the house, accompanying buildings and the trees were plundered and destroyed, which the complainant learned about in 2003.
11. On 12 August 2004, the complainant filed a lawsuit in the Municipal Court of Suharekë/Suva Reka against the Municipality of Suharekë/Suva Reka and the Provisional Institutions of Self-Government (PISG), seeking compensation for the damage. She claims 730,000 euros in compensation for this damage.
12. By the end of 2008, the Municipal Court had not contacted the complainant and no hearing had been scheduled.

Case no. 310/09, Velibor AĐANČIĆ

13. The complainant is a resident of Kosovo.
14. On 5 August 2004, the complainant's mother filed a lawsuit in the Municipal Court of Prishtinë/Priština against the Municipality of Obiliq/Obilić and the PISG, seeking compensation for the destruction of her house and the accompanying buildings in Babi Most/Babin Most village. She claimed 600,000 euros in compensation for this damage.
15. On 8 September 2004, the complainant's mother died. The complainant became the owner of the property that is the object of the aforementioned lawsuit.
16. By the end of 2008, the Municipal Court of Prishtinë/Priština had not contacted the complainant and no hearings had been scheduled concerning his claim.