



The Human Rights Advisory Panel

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DECISION

Date of adoption: 22 August 2012

Case No. 322/09

Miloš JOKIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 22 August 2012,
with the following members present:

Mr Paul LEMMENS, Presiding Member
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 noted Mr Marek Nowicki's withdrawal from sitting in the case, pursuant to Rule 12 of the Panel's Rules of Procedure,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaints were introduced on 28 September 2009 and registered on 3 December 2009.
2. On 27 June 2011, the Panel requested a clarification from the Municipal Court of Prishtinë/Priština. The Court responded by a letter dated 4 September 2011.
3. On 16 November 2011, the Panel requested a follow-up clarification from the Graçanicë/Gračanica Department of the Municipal Court of Prishtinë/Priština. The Department responded by a letter dated 18 November 2011.

4. The complainant supplied the Panel with additional information related to the complaint on 20 June 2011, 27 October 2011 and 21 February 2012.
5. On 18 June 2012, the Panel requested the complainant's legal representative to provide further additional information. The response was received on 17 July 2012.

II. THE FACTS

6. The complainant is a former resident of Kosovo, currently living in Serbia proper.
7. The complainant states that on 26 August 1999 he was arrested on suspicion of having committed war crimes during the armed conflict in Kosovo in 1998-1999. After the preliminary investigation, on 25 February 2000 the Gjilan/Gnjilane District Public Prosecutor filed an indictment with the Gjilan/Gnjilane District Court, that was amended on 8 June 2000, accusing Mr Jokić of having committed war crimes against the civilian population, contrary to Article 142 § 1 of the Criminal Code of Yugoslavia.
8. Mr Jokić's trial took place between 15 May and 19 September 2000, in the Gjilan/Gnjilane District Court. The trial panel was composed of three professional judges (two national and one international, with a national judge presiding) and two lay-judges (national). On 20 September 2000, the Court handed down its verdict, by which the complainant was found guilty and sentenced to twenty years imprisonment. Mr Jokić remained in detention.
9. Following an appeal filed by the complainant, the Supreme Court of Kosovo reviewed the verdict. By a decision dated 26 April 2001, an appellate panel of the Supreme Court composed of three international judges overruled the verdict and returned the case to the court of first instance for retrial. Mr Jokić's detention was again extended, pending review of the issue by the first-instance court.
10. An amended indictment was filed by an international prosecutor at the Gjilan/Gnjilane District Public Prosecutor's Office on 21 March 2002.
11. The retrial was held in the Gjilan/Gnjilane District Court between 21 September 2001 and 3 May 2002. By the judgment of 3 May 2002, the trial panel, composed of three professional judges (two international and one national, with an international judge presiding), acquitted Mr Jokić of the charge and he was immediately released.
12. On 12 March 2004, the complainant filed a claim for compensation for the time spent in detention. The claim was submitted to the Department of Judicial Administration (DJA), the authority legally responsible for consideration of such claims. He claimed an amount of 330,000 euros.
13. The complainant further states that, as he did not receive any response to his claim, on 1 September 2005 he submitted a similar claim for compensation to the Gjilan/Gnjilane District Court. The Court has allegedly never responded. The complainant also states that on the same date he submitted the same request to the Gjilan/Gnjilane District Public Prosecutor's Office, but that again he received no reply.
14. On 10 April 2006, the DJA proposed an extra-judicial settlement of the complainant's compensation claim, in the amount of 10,271.97 euros.

15. On 10 April 2009, the complainant filed a compensation claim with the Municipal Court of Prishtinë/Priština, against the Kosovo Ministry of Justice.
16. On 4 September 2011, the Municipal Court of Prishtinë/Priština clarified to the Panel that a number of actions had been undertaken by the judge responsible for the case, but that due to the end of her judicial appointment, the case had been reassigned to another judge in its Department in Graçanicë/Gračanica.
17. On 17 November 2011, the newly assigned judge informed the Panel that no action had been undertaken with regard to the compensation claim until the case had been received by the Graçanicë/Gračanica Department of the Municipal Court of Prishtinë/Priština. According to the same judge, on 3 October 2011 the claim was communicated to the Ministry of Justice. In a response dated 25 November 2011, the Ministry of Justice objected to the claim.
18. The complainant also states that three times (in 2009 and 2010) he submitted written requests to the European Union Rule of Law Mission in Kosovo (EULEX) to re-assign the proceedings with respect to his compensation claim to an international judge. However, the requests were rejected.
19. It appears that the claim before the Municipal Court of Prishtinë/Priština has still not been decided upon until now.

III. THE COMPLAINT

20. The complainant complains about the failure of the Prishtinë/Priština Municipal Court to act on his claim for compensation for his detention.

IV. THE LAW

21. 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.
22. According to Section 1.2 of the Regulation, the Panel has jurisdiction over complaints relating to alleged violations of human rights by UNMIK.
23. The Panel recalls that on 9 December 2008, UNMIK's responsibility with regard to police and justice in Kosovo ended with 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. Thus, on 10 April 2009, when the complainant filed his claim for compensation for the time spent in detention with the Prishtinë/Priština Municipal Court, UNMIK was no longer exercising executive authority over the Kosovo judiciary and had no responsibility for any violation of human rights allegedly committed by the courts, as already considered by the Panel (see Human Rights Advisory Panel, *Sefa*, no. 9/10, decision of 26 November 2011, § 9).

25. The Panel finds no special circumstances that would warrant derogation from the principle set out above.
26. For this reason, the Panel considers that the complaint is outside of its jurisdiction *ratione personae*, and must therefore be declared inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINTS INADMISSIBLE.

Andrey ANTONOV
Executive Officer

Paul LEMMENS
Presiding Member