



The Human Rights Advisory Panel

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DECISION

Date of adoption: 27 September 2012

Case No. 88/10

T. P.

against

UNMIK

The Human Rights Advisory Panel, sitting on 27 September 2012, with the following members present:

Mr Marek NOWICKI, 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 deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 31 March 2010 and registered on 1 April 2010.
2. On 4 October 2010, the complainant submitted additional information to the Panel.
3. On 14 March 2012, the Panel requested the complainant to provide additional information. The complainant's response was received on 5 April 2012.
4. On 14 June 2012, the Panel obtained further clarifications from the complainant by telephone.

5. On 31 July 2012 and on 2 August 2012, the Panel submitted a request for information in relation to the complaint to the District Court in Prishtinë/Priština and the Municipal Court in Ferizaj/Uroševac. The former did not respond. The latter responded on 3 August 2012.

II. THE FACTS

A. Alleged destruction of the complainant's family house and related judicial proceedings before the Municipal Court of Ferizaj/Uroševac

6. The complainant is a former resident of Kosovo currently living in Serbia proper.
7. The complainant states that her mother was the owner of a house, including a backyard and orchard, in Ferizaj/Uroševac. The complainant also lived there with her husband and children. She submits that in June 1999, after the arrival of KFOR and UNMIK in Kosovo, they had to depart from Kosovo due to the security situation. The complainant states that they learned from neighbours that on 14 June 1999, the family house was looted and burned down.
8. On 24 August 2004, the complainant's mother filed a lawsuit with the Municipal Court of Ferizaj/Uroševac against the Provisional Institutions of Self-Government (PISG), the Municipality of Ferizaj/Uroševac, UNMIK and KFOR for compensation for damages sustained in the destruction of the above-mentioned property, in the amount of 136,000 euros.
9. By the end of December 2008, the Municipal Court of Ferizaj/Uroševac had not contacted the complainant's mother and no hearing had been scheduled concerning the aforementioned lawsuit. On 12 February 2009, the complainant's mother wrote to the President of the Municipal Court of Ferizaj/Uroševac requesting that the examination of the case be expedited.
10. On 3 March 2011, the Municipal Court of Ferizaj/Uroševac rendered a first instance ruling on the matter, rejecting the claim for compensation. There is no indication that the complainant appealed the aforementioned decision.
11. 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 (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).

12. 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 § 11 above, at § 6).
13. 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.
14. 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.
15. On 9 December 2008, UNMIK’s responsibility with regard to police and justice 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.

B. Concerning the destruction of the property on lease to the complainant’s husband

16. The complainant also states that on 15 March 1999, the Housing Commission of the Government of the Republic of Serbia issued a decision according to which a two-bedroom flat located in Ferizaj/Uroševac would be leased for an indefinite period of time to her husband, a government employee, for the use of the family. The complainant states that, after the events of 1999 in Kosovo, somebody else illegally occupied the flat.
17. On 3 November 2002, the complainant’s husband lodged a claim with the Housing and Property Directorate (HPD) asking for the repossession of the above-mentioned flat. By decision dated 24 February 2005, the Housing and Property Claims Commission of the HPD rejected his claim on the ground that he had no property right on it.

III. THE COMPLAINT

18. As regards the alleged destruction of her mother’s house, the complainant complains about the fact that the property has been looted and destroyed and that her family did not receive any compensation. In this respect, the complainant may be deemed to

invoke a violation of their right to property guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR).

19. The complainant also complains that the Municipal Court of Ferizaj/Uroševac has stayed the proceedings concerning the claim lodged on 24 August 2004 and that as a result these proceedings have not been concluded within a reasonable time, in violation of Article 6 § 1 of the ECHR. She alleges that for the same reason their right to an effective remedy under Article 13 of the ECHR has also been violated.
20. As regards the property leased to her husband, the complainant does not allege any specific human rights violation.

IV. APPLICATION OF RULE 29BIS OF THE PANEL'S RULES OF PROCEDURE

21. The Panel notes that the complaint raises questions which, insofar as the complaint relates to the proceedings before the Municipal Court of Ferizaj/Uroševac, are substantially the same as those that have been raised in the cases *Milogorić*, no. 38/08; *Živaljević*, no. 58/08; *Gojković*, no. 61/08; *Ćukić*, no. 63/08 and *Bogićević*, no. 69/08, (among others), which have already been examined by the Panel. Moreover, it appears from the file that no new admissibility issue arises with regard to that aspect of the present case. Therefore, pursuant to Rule 29bis of the Panel's Rules of Procedure, the Panel finds that it is not necessary to communicate the present complaint to UNMIK and that it can examine the admissibility of this part of the complaint without so doing.

V. 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. Complaint concerning the alleged destruction of the complainant's family house and compensation proceedings before the Municipal Court of Ferizaj/Uroševac

23. Insofar as the complainant complains about the destruction of her mother's 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 mother's property occurred on 14 June 1999.
24. 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*.

25. As regards the compensation proceedings before the Municipal Court of Ferizaj/Uroševac, the Panel considers that, insofar as the complainant invokes a violation of Articles 6 § 1 and 13 of the ECHR, she in fact raises two complaints (see the approach adopted in HRAP, *Milogorić*, no. 38/08, decision of 22 May 2009; compare ECtHR, *Aćimović v. Croatia*, no. 48776/99, decision of 30 May 2000; ECtHR, *Kutić v. Croatia*, no. 48778/99, decision of 11 July 2000). On the one hand, she complains about the fact that due to the stay of the proceedings in the competent courts, the family have been unable to obtain the determination of their claims for damages for destroyed property. The Panel considers that this complaint may raise an issue of their right of access to a court under Article 6 § 1 of the ECHR and of the right to an effective remedy under Article 13 of the ECHR, read in combination with Article 1 of Protocol No. 1. On the other hand, she complains about the length of the proceedings before the competent court, due to the fact that the proceedings were instituted in 2004, and that this claim has not been examined since then. This complaint may raise an issue of right to a judicial decision within a reasonable time, in the sense of Article 6 § 1 of the ECHR.
26. The Panel notes that as of February 2009, the Municipal Court of Ferizaj/Uroševac had not contacted the complainant's mother and no hearing had been scheduled concerning the aforementioned lawsuit. The Panel also notes that the lawsuit for compensation for damages was decided upon by the Municipal Court of Ferizaj/Uroševac in March 2011, almost 7 years after the claim was filed.
27. The Panel considers that the complaints under Article 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 (HRAP, *Milogorić*, cited in § 25 above, at § 18).
28. No other ground for declaring these complaints inadmissible has been established.

B. Complaint concerning the property leased to the complainant's husband

29. As regards this part of the complaint, the Panel finds that the complaint and subsequent submissions lack any specific details or information which would allow the Panel to assess whether a human rights violation by UNMIK may have occurred.
30. In these circumstances the Panel holds this part of the complaint to be unsubstantiated and therefore manifestly ill-founded in the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.

FOR THESE REASONS,

The Panel, unanimously,

- **DECLARES ADMISSIBLE THE COMPLAINT RELATING TO THE RIGHT OF ACCESS TO A COURT AND THE RIGHT TO AN EFFECTIVE REMEDY (ARTICLES 6 § 1 AND 13 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS) AND THE RIGHT TO A JUDICIAL DECISION WITHIN A REASONABLE TIME (ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS);**

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

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member