



The Human Rights Advisory Panel

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DECISION

Date of adoption: 6 December 2012

Case No. 129/09

B. D.

against

UNMIK

The Human Rights Advisory Panel, sitting on 6 December 2012,
with the following members present:

Mr Marek NOWICKI, Presiding Member
Ms Christine CHINKIN
Ms Françoise TULKENS

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 9 March 2009 and registered on 30 April 2009.
2. On 13 January 2009, 20 April 2011 and 28 October 2011, the Panel requested the complainant to submit additional information. On 28 October 2011, the Panel received the requested documentation from the complainant. On 22 May 2012, the Panel requested that the complainant provide further information from the complainant, which was provided the same day during a deposition of the complainant by the Panel's Secretariat.

II. THE FACTS

3. The complainant is a former resident of Kosovo currently living in Serbia proper. He claims that he is the current owner of cadastral parcel no. 3149, which includes residential, agricultural and commercial buildings in the Municipality of Viti/Vitina. The complainant states that the above-mentioned property was formerly under his ownership until 2003 when he and his family were forced to leave for security reasons. He states that he was informed that part of this property had been destroyed during the second half of 2003, while another part of the property had been usurped.

A. Court Proceedings

4. On 9 June 2004, the complainant filed a lawsuit before the Municipal Court of Viti/Vitina against the alleged usurper of his property, Mr M.I., seeking the right to repossess his property and compensation for the destruction of his house and the accompanying agricultural buildings.
5. On 7 March 2007, the Municipal Court of Viti/Vitina issued a judgment holding that the Kosovo Property Agency (KPA) had exclusive jurisdiction over disputes with respect to restitution of immovable property. It accordingly decided that it lacked jurisdiction and ordered the file transferred to the KPA. On 12 July 2007, the complainant appealed this judgment to the District Court of Gjilan/Gnjilane. On 26 November 2007, the District Court of Gjilan/Gnjilane set aside the first-instance judgment of the Municipal Court of Viti/Vitina, holding that it had jurisdiction to hear the lawsuit. The case was sent back to the Municipal Court of Viti/Vitina, which was ordered to hear the merits of the claim.
6. On 15 October 2008, 30 June 2011, 15 September 2011, and 3 November 2011 the Municipal Court of Viti/Vitina held hearings in the case. The case was prolonged in part due to the fact that the complainant did not appear. The case is still pending with the Municipal Court of Viti/Vitina.
7. 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.

B. Proceedings with the Kosovo Property Agency

8. On 8 November 2006, the complainant filed three claims with the KPA for repossession of the property in Viti/Vitina.
9. Three decisions were taken on these claims by the Kosovo Property Claims Commission (KPCC), on 11 March 2007, on 5 November 2007 and on 7 November 2007. They all established the complainant as the owner. The occupants were informed that the properties must be vacated within 30 days of delivery of the order, otherwise they would be evicted.

10. These decisions apparently remained unenforced. It appears from information submitted by the complainant that he complained in August 2009 about the lack of enforcement by the KPA to the KPCC and the Supreme Court of Kosovo.
11. In a letter of 8 December 2009, the KPA explained to the complainant that on 2 December 2009 the KPCC had overturned all three of its decisions mentioned above. The reason given was that after being provided with access to the cadastral information by the Kosovo Cadastral Agency, and following review of this data, it turned out that the claimed properties had been incorrectly notified. Consequently, the respective decisions in relation to these claims were deemed to be legally invalid and not to be used in any legal transaction, or for any other purpose regarding the claimed properties. Pursuant to KPA procedures, the claim and any new replies or information received would be verified and presented to the KPCC for re-determination.
12. On 22 June 2011, the KPCC issued a decision granting the complainant ownership rights over cadastral parcels nos. 1124/1 and 1124/2.
13. To date, there have been no decisions issued by the KPCC concerning the other parcels allegedly owned by the complainant.

III. THE COMPLAINT

14. The complainant in substance alleges that the Municipal Court of Viti/Vitina delayed the proceedings concerning the compensation claim lodged on 9 June 2004 and that as a result these proceedings have not been concluded within a reasonable time, in violation of Article 6 § 1 of the European Convention on Human Rights (ECHR). The complainant also complains about the duration of the proceedings relating to his property claims before the KPA. In this respect he can be deemed to invoke a violation of the right to a decision by a court within a reasonable time, in the sense of Article 6 § 1 of the ECHR and his right to property, guaranteed by Article 1 of Protocol No. 1 to the ECHR.

IV. THE LAW

15. 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. Whether all available avenues have been exhausted

16. The SRSG raises a first objection to the admissibility of the complaint, based on the non-exhaustion of available avenues. According to the SRSG, the complainant's claim is still pending with both the Municipal Court of Viti/Vitina and with the KPA and therefore the matter is not yet finalised. As long as these claims are still subject to these processes, the complainant cannot be said to have made use of all available avenues.
17. Section 3.1 of UNMIK Regulation No. 2006/12 provides that the Panel may only deal with a matter after it has determined that all other available avenues for review of the alleged violation have been pursued.

18. The Panel notes that the complaint is about the length of the proceedings. Such complaints can be brought before it, even before the termination of the proceedings in question (see, with respect to applications to the European Court of Human Rights (ECtHR), *e.g.*, ECtHR, *Biçer v. Turkey*, no. 19441/04, judgment of 20 July 2010, § 20). The Panel indeed fails to see how the fact that the proceedings are still pending can remedy the alleged violation of Article 6 § 1 of the ECHR stemming from the duration of the proceedings (see ECtHR, *Todorov v. Bulgaria*, no. 39832/98, decision of 6 November 2003).
19. The SRSG has not indicated any specific legal remedy available to the complainant with regard to the duration of the proceedings before either the Municipal Court of Viti/Vitina or the KPA. For its part, the Panel does not see any such remedy.
20. The Panel therefore concludes that the complaint cannot be rejected for non-exhaustion of available avenues within the meaning of Section 3.1 of UNMIK Regulation No. 2006/12. It dismisses the first objection of the SRSG.

B. Proceedings before the Municipal Court of Viti/Vitina

21. The complainant claims that the Municipal Court of Viti/Vitina has delayed the proceedings concerning his compensation claim lodged on 9 June 2004 against one named respondent and that as a result these proceedings have not been concluded within a reasonable time, in breach of Article 6 § 1 of the ECHR.
22. Concerning this claim, the Panel notes that approximately 4.5 years after it was filed, EULEX assumed full operational control in the area of the rule of law (see § 7 above).
23. The Panel notes that numerous judicial processes occurred within the 4.5 year period during which UNMIK was still responsible for the operation of the courts. On 7 March 2007, the Municipal Court of Viti/Vitina issued a judgment which was overturned by the District Court of Gjilan/Gnjilane on 26 November 2007. The Municipal Court of Viti/Vitina held a hearing on October 15 2008, which was prolonged in part due to the non-appearance of the complainant. As the Panel finds that there was sufficient court activity during this time, it holds this part of the complaint to be manifestly ill-founded.
24. As far as the period after 9 December 2008 is concerned, this part of the complaint falls outside the jurisdiction *ratione personae* of the Panel.

C. Proceedings before the Kosovo Property Agency

25. The complainant also complains that the KPA has denied him a decision within a reasonable time, and has delayed him from realising his property rights. The complainant filed his claims with the KPA on 8 November 2006 and has yet to receive a decision, more than six years later.
26. The Panel notes that with regard to UNMIK's administrative control of the KPA, the UN Secretary-General in his report to the United Nations Security Council on the Interim Administration Mission in Kosovo dated 17 March 2009, states that as UNMIK's authority over the KPA was not extended after 31 December 2008, the Kosovo authorities and an international director appointed by the International Civilian Representative/European Union Special Representative assumed full operational control

of the KPA. Thereafter, the KPA operated in accordance with legislation adopted by the Assembly of Kosovo (S/2009/149, § 24; see Human Rights Advisory Panel (HRAP), *Kušić*, no. 08/07, opinion of 15 May 2010, § 51; HRAP, *Felegi*, no. 32/08, decision of 20 January 2012, § 43).

27. It follows, as the Panel already considered in *Kušić* (cited in § 26 above, at § 52) and in *Felegi* (cited in § 26 above, at § 44), that from 31 December 2008, UNMIK can no longer be held responsible for acts or omissions imputable to the KPA.
28. Out of the total duration of the KPA process of more than six years, between November 2006 and December 2008 represents a period of approximately two years and one month that falls within the Panel's jurisdiction for examination.
29. Taking into account the high number of claims filed with the KPA (42,239 claims, of which 34,309 have been decided as of 6 December 2012)¹, the Panel does not consider that during that period there was a delay of such a length that it was unreasonable. If fact, three decisions were taken on these claims by the KPCC, on 11 March 2007, on 5 November 2007 and on 7 November 2007 (see § 9 above). The Panel therefore holds this part of the complaint, with respect to the said period, to be manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
30. Insofar as the period after 31 December 2008 is concerned, the complaint falls outside the jurisdiction *ratione personae* of the Panel (see § 26 above).

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member

¹ Information accessed from the KPA official website on 6 December 2012:
http://www.kpaonline.org/ClaimsTotalDecided_caseload.asp