



The Human Rights Advisory Panel

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DECISION

Date of adoption: 6 December 2012

Case No. 323/09

Velibor JOKIĆ

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 lodged with the Panel on 1 December 2009 and registered on 3 December 2009.
2. On 12 January 2010, the Panel received additional information from the complainant.
3. On 29 April 2011, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the case. On 15 June 2011, the SRSG provided UNMIK's response.
4. On 31 August 2011, the Panel sent a letter to the complainant inviting his response to UNMIK's comments.

5. On 9 September 2011, the complainant responded to UNMIK's comments.
6. On 21 March 2012, the Panel contacted the complainant and requested further information. On 4 May 2012, the Panel received additional documentation from the complainant. On 3 October 2012, the Panel requested additional information from the complainant, to which a response was received on 10 October 2012.

II. THE FACTS

7. The complainant is the heir to different properties in the village of Goshicë/Gušica, municipality of Viti/Vitina, specifically cadastral parcels nos 955 and 958, in which he inherited partial rights from his father. In 2004, the remaining property rights were bequeathed to him upon the death of his mother.
8. From 1988 until 5 December 1994, the complainant had brought proceedings before several courts in Kosovo to acquire the ownership rights to the abovementioned properties, as well as to a newly created cadastral parcel 1298/6. By its judgment of 5 December 1994, the Municipal Court in Viti/Vitina determined that the complainant and his late mother were the owners of cadastral parcels nos 955 and 1298/6., and not the socially-owned enterprise (SOE) PIRO Agromorava, the previously registered owner.
9. On 11 March 2004, the complainant filed a request with the Kosovo Cadastral Agency, Directorate of Geodetic, Cadastral and Property Affairs (KCA) to register the title of the abovementioned cadastral properties in his name. When this had not been done more than three years later, the complainant filed a request with the Municipal Court in Viti/Vitina for the forced execution of its previous judgment. The Municipal Court in Viti/Vitina granted this application in its judgment of 11 January 2008. This judgment allowed the complainant to take possession and ownership of cadastral parcels nos 955 and 1298/6 and ordered the Directorate of Geodetic, Cadastral and Property Affairs of Viti/Vitina (Cadastral Office of Viti/Vitina) to register the title of the parcels in his name.
10. On 24 September 2008, the cadastral office of Viti/Vitina rejected the complainant's application to register him as the title holder of the cadastral parcels because the Municipal Assembly in Viti/Vitina had issued a decision on 6 March 2008 that temporarily suspended the registration of cadastral records with respect to property rights that had been acquired from former SOEs. The complainant requested a revision but on 13 November 2008, the cadastral office of Viti/Vitina confirmed its earlier decision. The complainant appealed this decision to the KCA, but by a decision formalised on 4 May 2009, his appeal was rejected.
11. The complainant appealed the matter to the Supreme Court of Kosovo on 25 June 2009. It appears that the case is still pending.
12. With regard to UNMIK's administrative control of the KCA, following the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK was no longer able to perform effectively the vast majority of its tasks as an interim administration, and the SRSG was unable to enforce the executive authority that is still formally vested upon him under Security Council Resolution 1244 (1999) (see, *e.g.*, Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 12 June 2008, S/2008/354, §§ 7 and 17; Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 15 July 2008, S/2008/458, §§ 3-4 and 29; Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 24 November 2008, S/2008/692, § 21).

13. On 10 August 2006, the complainant filed two claims with the Kosovo Property Agency (KPA), in reference to cadastral parcels nos 955, 958 and 1298/6. Although the KPA has acknowledged receipt of these claims and various administrative processes have occurred in the interim, as of October 2012, the settlement of these claims was still pending.
14. 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).

III. THE COMPLAINT

15. The complainant alleges that the relevant cadastral offices have denied him his property rights by refusing to register his legitimate title with regards to his cadastral parcels and as a result have delayed him from realising his property rights, in violation of Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR). He also alleges that the KPA has denied him a decision within a reasonable time, in violation of Article 6 § 1 of the ECHR, and as a result has delayed him from realising his property rights in violation of Article 1 of Protocol 1 of the ECHR.

IV. THE LAW

A. Proceedings before the Kosovo Cadastral Agency

16. 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.
17. The complainant alleges that the relevant cadastral offices denied him his property rights by not registering his cadastral parcels and therefore delaying him the recognition of his property rights.
18. The SRSB argues that the complaint was filed outside the six-month time-limit. According to Section 3.1 of UNMIK Regulation No. 2006/12, the Panel may only deal with a matter after it determines that the matter has been submitted "within a period of six months from the date on which the final decision was taken". He notes that the final decision was taken by the KCA on 2 April 2009 and that the six-month period started to run from that date. The complainant submitted his complaint to the Panel on 1 December 2009. However, the complainant disputes the service of this decision, stating that he received only a faxed copy in a language (Albanian) that he was not able to read. Without resolving on the merits of whether the complainant was properly served with the decision, the Panel deems that the time the complainant received the faxed decision, 8 June 2009, and not 2 April 2009, the date on which it was taken, should be the determinative date for the purposes of the running of the six-month time-limit (see HRAP, *Xhema* no. 01/09, decision of 5 June 2009, at § 19). Because the complainant filed his complaint with the Panel within six-months of this date, the Panel rejects this objection of the SRSB.

19. The SRSG argues that because the complainant did not appeal the decision of the KCA to the Supreme Court of Kosovo, the complainant has not exhausted all other available avenues prior to filing a complaint with the Panel, as required by section 3.1 of UNMIK Regulation No. 2006/12.
20. The Panel disagrees. The Panel has received documentary evidence showing that the complainant did file an appeal of the KCA decision to the Supreme Court of Kosovo on 2 June 2009. Therefore, the Panel rejects this objection of the SRSG.
21. Notwithstanding, the Panel notes that its jurisdiction is limited to alleged violations committed by UNMIK. It cannot examine complaints relating to facts or omissions that took place at a moment when UNMIK was no longer responsible. For matters involving administrative organs such as the KCA, the Panel has found that the period under its review ended following the entry into force of the Kosovo Constitution on 15 June 2008, when UNMIK was no longer able to perform effectively the vast majority of its tasks as an interim administration, and the SRSG was unable to enforce the executive authority that is still formally vested upon him under Security Council Resolution 1244 (1999) (see § 12 above).
22. Pursuant to Section 2 of UNMIK Regulation No. 2006/12, the Panel's jurisdiction relates to alleged human rights violations that had 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.
23. Since the commencement of the various KCA administrative proceedings in 2004 until today- a period of more than eight years and six months- between April 2005 and June 2008 represents approximately three years and 2 months that falls within the Panel's jurisdiction for examination.
24. The Panel considers that this delay in the registration of the complainant's cadastral parcels raises serious issues of fact and law, the determination of which should depend on an examination of the merits.
25. With respect to the continued denial of the KCA to register the complainant's cadastral parcels after 15 June 2008, the complaint falls outside the jurisdiction *ratione personae* of the Panel (see § 21 above).

B. Proceedings before the Kosovo Property Agency

26. The complainant also complains that the KPA has denied him a decision within a reasonable time, and has delayed him **the recognition of** his property rights. The complainant filed his claims with the KPA on 10 August 2006 and has yet to receive a decision, more than six years later. As such, the complainant argues that the delay of this process resulted in a violation of the reasonable time requirement laid down in Article 6 § 1 of the ECHR, and delayed him from recognizing his property rights in violation of Article 1 of Protocol 1 of the ECHR.
27. The Panel notes that with regard to UNMIK's administrative control of the KPA, 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 (see § 14 above). 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).

28. It follows, as the Panel already considered in *Kušić* (cited in § 27 above, at § 52) and in *Felegi* (cited in § 27 above, at § 44), that from 31 December 2008, UNMIK can no longer be held responsible for acts or omissions imputable to the KPA.
29. Out of the total duration of the KPA process of more than six years and two months, between August 2006 and December 2008 represents approximately two years and five months that falls within the Panel's jurisdiction for examination.
30. 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. 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.
31. Insofar as the period after 31 December 2008 is concerned, the complaint falls outside the jurisdiction *ratione personae* of the Panel (see § 27 above).

FOR THESE REASONS,

The Panel, unanimously,

– **DECLARES ADMISSIBLE THE COMPLAINT RELATING TO THE KOSVO CADASTRAL AGENCY FAILING TO REGISTER THE COMPLAINANT'S CADASTRAL PARCELS (ARTICLE 1 OF PROTOCOL 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS);**

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

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member

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