



The Human Rights Advisory Panel

Building D, UNMIK HQ Prishtinë/Priština, Kosovo | E-mail: hrap-unmik@un.org | Tel: +381 (0)38 504-604, ext. 5182

DECISION

Date of adoption: 6 December 2012

Case No. 27/09

Vladimir MANOHIN

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 27 January 2009 and registered on 2 February 2009.
2. On 15 June 2009, 9 February 2011 and 17 April 2012 Panel requested the complainant to submit additional information. On 6 June 2012, the Panel received further information from the complainant.
3. On 5 September 2012, 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 October 2012, the SRSG provided UNMIK's response.

II. THE FACTS

4. The complainant is a former resident of Kosovo currently living in Serbia proper. He claims that he is the current owner of an apartment in Prishtinë/Priština. The complainant states that he and his wife were living in the above-mentioned property until 1999 when they were forced to leave for security reasons. He states that he allowed his neighbour Mr H.F. to rent his property based on an oral agreement that they contracted until the property was purchased by Mr H.F. However, after years of negotiations, the sale contract was not signed and the complainant initiated proceedings against Mr H.F before the Municipal Court in Prishtinë/Priština for the failure to pay rent and usurpation of the property. The complainant also filed a claim for repossession of the property with the Housing and Property Directorate (HPD) and with the Kosovo Property Agency (KPA).

A. Proceedings before the Municipal Court of Prishtinë/Priština

5. On 28 October 2004, the complainant filed a lawsuit before the Municipal Court of Prishtinë/Priština against the alleged usurper of his property, Mr H.F., seeking his eviction and compensation for unpaid rent.
6. In the time between the filing of the complainant's lawsuit in 2004 and the Municipal Court in Prishtinë/Priština scheduling the case in 2006, another person, Mr A.K. was now occupying the property. The complainant amended the claim to include Mr A.K.
7. On 5 April 2006, the Municipal Court of Prishtinë/Priština scheduled a session in the complainant's case. However, the complainant apparently did not receive the notification until after the scheduled hearing date and thus did not appear.
8. On 14 September 2006, the Municipal Court of Prishtinë/Priština held another hearing. Neither the complainant nor the respondents appeared, although the complainant's legal representative-who was present-was ordered by the Court to provide it with the correct addresses of both the respondents within thirty days. In October 2006, the complainant was informed that the legal representation that he had been receiving from the non-governmental organisation PRAXIS, and who had attended the previous hearing, had been discontinued.
9. On 13 April 2007, the Municipal Court of Prishtinë/Priština issued a judgment dismissing the complainant's property claim as incomplete, for not providing the Court with the respondents' exact addresses as had been ordered on 14 September 2006. The complainant states that he never received a copy of neither the above-mentioned order, nor the Municipal Court of Prishtinë/Priština's judgment of 13 April 2007.
10. 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.

11. On 26 April 2012, the Acting President of the Municipal Court of Prishtinë/Priština sent the Panel a letter admitting that she found no evidence that its judgment of 13 April 2007 was ever served on either the complainant or his authorised legal representative. She also stated that she felt sorry for the complainant and that further legal remedies are available to him.
12. On 12 June 2012, the Panel informed the Municipal Court of Prishtinë/Priština that the complainant had never received its judgment of 13 April 2007.

B. Proceedings with the Housing and Property Directorate and the Kosovo Property Agency

13. On 6 March 2004, the complainant filed a claim with the HPD for repossession of the property in Prishtinë/Priština. However, the claim was not accepted by the HPD as it was submitted after the deadline.
14. On 6 March 2007, the complainant filed a similar claim with the KPA (KPA 28259) for repossession of the same property. On 20 July 2011 and June 2012, the KPA informed the Panel that the complainant's claim was still being processed due to the necessary exchange of supporting documentation between the parties. This claim apparently remains in process.

III. THE COMPLAINT

15. The complainant in substance alleges that the Municipal Court of Prishtinë/Priština stopped his private usurpation claim from being processed without giving him proper and effective notification. As such, his right to a fair trial as guaranteed by Article 6 § 1 of the European Convention on Human Rights (ECHR) was violated because the Municipal Court of Prishtinë/Priština did not properly notify him of the proceedings before it. He also complains that the Municipal Court of Prishtinë/Priština's failure to inform him about its judgment violated his right to a decision within a reasonable time, guaranteed by Article 6 § 1 of the ECHR.
16. The complainant also complains about the duration of the proceedings before the KPA relating to his property claim. 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

17. 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

18. The SRSG raises an objection to the admissibility of the complaint, based on the non-exhaustion of available remedies. The SRSG, quoting the letter of the Acting President of the Municipal Court of Prishtinë/Priština, states that “further legal remedies are available to [the complainant]”, and as such the complainant’s complaint to the Panel is premature (see § 11 above). Likewise, the SRSG argues that the KPA proceedings are still ongoing and that therefore the matter is not yet finalised, because as long as these claims are still subject to these processes, the complainant cannot be said to have made use of all available avenues.
19. The Panel considers that under Section 3.1 of UNMIK Regulation No. 2006/12 normal recourse should be had by a complainant to avenues which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the avenues in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (HRAP, *Balaj and Others*, no. 04/07, decision of 31 March 2010, § 45; HRAP, *N.M. and Others*, no. 26/08, decision of 31 March 2010, § 35; compare, with respect to the requirement of exhaustion of domestic remedies under Article 35 § 1 of the ECHR, European Court of Human Rights (ECtHR) (Grand Chamber), *Paksas v. Lithuania*, no. 34932/04, judgment of 6 January 2011, § 75). It would normally be for the Panel to satisfy itself that the court process, like any other avenue that may be advanced by UNMIK, “was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant’s complaint and offered reasonable prospects of success” (see HRAP, *Balaj and Others*, § 45, and *N.M. and Others*, § 35, referring to ECtHR, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions*, 1996-IV, p. 1211, § 68).
20. The SRSG, in quoting the letter of the Acting President of the Municipal Court of Prishtinë/Priština has essentially stated that the complainant can bring further lawsuits before the Municipal Court of Prishtinë/Priština regarding his private claims against the alleged usurpers. For its part, the Panel agrees with the SRSG with regard to the complainant’s private claims; it appears that there still exists the possibility for the complainant to appeal against the judgment of the Municipal Court of Prishtinë/Priština, dated 13 April 2007.
21. As such, the Panel considers that by filing such an appeal, the complainant can have his usurpation claim heard before a competent judicial authority in an effective and fair process, thereby ameliorating any deficiencies that may have previously occurred.
22. Therefore, the Panel finds that the complainant’s complaint concerning his right to a fair trial inadmissible because of the lack of exhaustion of available avenues, as required by Section 3.1 of UNMIK Regulation No. 2006/12.
23. As per the SRSG’s objection to the non-exhaustion of the complainant’s claim before the KPA and the complainant’s complaint against the Municipal Court of Prishtinë/Priština for its unreasonable delay in the service of its judgment, the Panel notes that these complaints are 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).

24. The Panel therefore concludes that these complaints cannot be rejected for non-exhaustion of available avenues within the meaning of Section 3.1 of UNMIK Regulation No. 2006/12. It dismisses this objection of the SRSG.

B. Delay in the service of the judgment of the Municipal Court of Prishtinë/Priština

25. The complainant claims that the Municipal Court of Prishtinë/Priština never served him with its decision of 13 April 2007, which dismissed his usurpation claim on procedural grounds. In this respect, in essence he complains that the Municipal Court of Prishtinë/Priština violated his right to a decision within a reasonable time, guaranteed by Article 6 § 1 of the ECHR.
26. The Panel notes that, on 26 April 2012, the Acting President of the Municipal Court of Prishtinë/Priština sent the Panel a letter admitting contrition in regard to the handling of the complainant's case and stating that she found no evidence of its judgment of 13 April 2007 ever having been served on either the complainant or his authorised legal representative. Moreover, the complainant had not received the judgment as of 2012.
27. Out of the total duration of more than five years and two months, the period between April 2007 and December 2008 represents approximately one year and 8 months that falls within the Panel's jurisdiction for examination.
28. The Panel considers that this part of the complaint raises serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that this part of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
29. No other ground for declaring this part of the complaint inadmissible has been established.
30. 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 (see § 10 above).

C. Proceedings before the Kosovo Property Agency

31. The complainant also complains that the KPA has denied him a decision within a reasonable time, and has delayed him from recognising his property rights. The complainant filed his claim with the KPA on 6 March 2007 and has yet to receive a decision, more than five years and nine months later.
32. 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).

33. It follows, as the Panel already considered in *Kušić* (cited in § 32 above, at § 52) and in *Felegi* (cited in § 32 above, at § 44), that from 31 December 2008, UNMIK can no longer be held responsible for acts or omissions imputable to the KPA.
34. Out of the total duration of the KPA process of more than five years and eleven months, the period between March 2007 and December 2008 represents approximately one year and nine months that falls within the Panel's jurisdiction for examination.
35. 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 the period within the Panel's jurisdiction 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.
36. Insofar as the period after 31 December 2008 is concerned, the complaint falls outside the jurisdiction *ratione personae* of the Panel (see § 32 above).

FOR THESE REASONS,

The Panel, unanimously,

- **DECLARES THE COMPLAINT ADMISSIBLE WITH RESPECT TO THE DELAY IN THE SERVICE OF THE JUDGMENT OF THE MUNICIPAL COURT OF PRISHTINË/PRIŠTINA (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

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