



DECISION

Date of adoption: 6 December 2012

Case No. 349/09

Spasena MARKOVIĆ

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 14 April 2009 and registered on 30 April 2009.
2. On 3 May 2011 and 4 April 2012 the Panel requested further information from the complainant. On 12 April 2012, the Panel received further information from the complainant.

II. FACTS

3. The complainant is a former resident of Kosovo currently living in Serbia proper. She claims that she has a property interest in several immovable properties including a house,

and other buildings, as well an orchard and land located in Mushitishtë/Mušutište village, Municipality of Suharekë/Suva Reka. It appears from the documents submitted that the complainant's family lived in the above-mentioned property until KFOR's deployment in June 1999 when they were forced to leave for security reasons. The documents show that the complainant's son was informed that part of this property was destroyed during March 2003.

4. On 7 June 2004, the complainant's son filed a lawsuit in the Municipal Court of Suharekë/Suva Reka against UNMIK, KFOR, the Municipality of Suharekë/Suva Reka and the Provisional Institutions of Self-Government (PISG), seeking compensation for the destruction of the family house and the accompanying buildings which were located on the property in the village of Mushitishtë/Mušutište, on cadastral parcels no. 1977.
5. By the end of 2008, the Municipal Court of Suharekë/Suva Reka had not contacted the complainant and no hearings had been scheduled concerning the aforementioned lawsuit.
6. 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 (hereinafter 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).
7. 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 § 6 above, at § 6).
8. 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.
9. 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.
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. According to the the Municipal Court of Suharekë/Suva Reka, on 17 May 2010, it issued a decision against the complainant's son regarding the compensation claim. It is not known whether this decision has been appealed.

III. THE COMPLAINT

12. The complainant in substance alleges that the Municipal Court of Suharekë/Suva Reka has stayed the proceedings concerning the compensation claim lodged on 7 June 2004 against UNMIK, KFOR, the Municipality of Suharekë/Suva Reka and the PISG for the destruction of her property 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). She alleges that for the same reason her right to an effective remedy under Article 13 of the ECHR has also been violated. The complainant further complains that by the destruction of her property and by the refusal of the the Municipal Court of Suharekë/Suva Reka to decide the compensation claim, her right to property (Article 1 of Protocol No.1 to the ECHR) has been violated.

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

13. The Panel notes that the complaint raises questions which, at least insofar as the complaint relates to the proceedings instituted in 2004 before the Municipal Court of Suharekë/Suva Reka, are substantially the same as those that have been raised, among others, in cases nos. 38/08, *Milogorić*, 58/08, *Živaljević*, 61/08, *Gojković*, 63/08 *Ćukić*, and 69/08, *Bogićević*, 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 this part of the present complaint to UNMIK. The Panel considers that it can examine the admissibility of the whole complaint without so doing.

V. THE LAW

14. 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. Alleged violation of Articles 6 § 1 and 13 of the ECHR

15. 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, among others, in *Milogorić*, no. 38/08, decision of 22 May 2009; compare European Court of Human Rights (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 court, she has been unable to obtain the determination of her claims for damages to the destroyed property. The Panel considers that this complaint may raise an issue of her right of access to a court under Article 6 § 1 of the ECHR and of her right to an effective remedy under Article 13 of the ECHR. On the other hand, she complains about the length of the proceedings before the competent courts, due to the fact that the proceedings were instituted in 2004, and that her claims have not been examined since then. This complaint may raise an issue of her right to a judicial decision within a reasonable time, in the sense of Article 6 § 1 of the ECHR.

16. The Panel considers that the complaint under Articles 6 § 1 and 13 of the ECHR 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 complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12 (see, among others, HRAP, *Milgorić*, cited in § 15 above, at § 18).
17. No other grounds for declaring this part of the complaint inadmissible have been established.

B. Alleged violation of Article 1 of Protocol No. 1 to the ECHR

18. The complainant complains about a violation of her right to property (Article 1 of Protocol No.1). She generally complains about the fact that her property has been damaged or destroyed and about the failure by the Municipal Court of Suharekë/Suva Reka to decide on her claim for damages.
19. 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 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”. The damage to and destruction of property are instantaneous acts, which do not give rise to a continuing violation (see HRAP, *Lajović*, no. 09/08, decision of 16 July 2008, § 7). Bearing in mind that the damage to her property allegedly occurred in 1999, it follows that this part of the complaint lies outside the Panel’s jurisdiction *ratione temporis*.
20. With respect to the complaint that, due to the stay of the proceedings instituted with regards to the complainant’s claim, she has been unable thus far to obtain compensation for the damage done to her property, the Panel notes that, insofar as the court proceedings are referred to from the point of view of the right of property, these proceedings cannot be detached from the acts upon which the claims before the courts are based. Or, to state it positively, as the European Court of Human Rights has done with respect to its jurisdiction under the ECHR:

“... the Court’s temporal jurisdiction is to be determined in relation to the facts constitutive of the alleged interference. The subsequent failure of remedies aimed at redressing this interference cannot bring it within the Court’s temporal jurisdiction” (ECtHR (Grand Chamber), *Blečić v. Croatia*, no. 59532/00, judgment of 8 March 2006, § 77, *ECHR*, 2006-III).

21. It follows that this part of the complaint also lies outside the Panel’s jurisdiction *ratione temporis* (see, among others, HRAP, *Gojković*, no. 63/08, decision of 4 June 2009, §§ 24-25).

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), WITH RESPECT TO THE PROCEEDINGS FILED IN 2004 BEFORE THE MUNICIPAL COURT OF SUHAREKĚ/SUVA REKA;

– DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member