



The Human Rights Advisory Panel

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OPINION

Date of adoption: 6 December 2012

Case No. 10/08

Zvonimir RISTIĆ

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, makes the following findings and recommendations:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 5 May 2008 and registered on the same date.
2. On 10 June 2008, the Panel communicated the complaint to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on the admissibility and merits of the complaint. The SRSG provided UNMIK's response on 3 October 2008.

3. On 6 October 2008 the Panel forwarded UNMIK's comments to the complainant and invited him to provide his comments. The complainant did not avail himself of this opportunity.
4. On 15 May 2009, the Panel requested further information from the complainant. On 11 November 2009, the Panel received the complainant's response.
5. On 8 February 2012, the Panel re-communicated the complaint to the SRSG for additional comments on its admissibility. The SRSG provided UNMIK's response on 19 March 2012.
6. By decision of 22 August 2012, the Panel declared the complaint admissible in part. On 7 September 2012, the Panel informed the SRSG of that decision and invited additional comments from UNMIK on the merits of the complaint.
7. On 9 October 2012, the SRSG submitted UNMIK's comments on the merits.

II. THE FACTS

8. The complainant is a former resident of Kosovo currently living in Serbia proper. He is the owner of an apartment in Prishtinë/Priština, where he and his family lived until 20 November 1999, when they had to leave Kosovo for security reasons. Later the complainant became aware that his apartment had been looted and damaged by unknown perpetrators.
9. On 23 August 2004, the complainant lodged a claim seeking compensation for the damage caused to his property with the Municipal Court of Prishtinë/Priština, against the Municipality of Prishtinë/Priština and the Kosovo Provisional Institutions of Self-Government (PISG).
10. His claim falls within the group of approximately 17,000 compensation claims which were lodged in 2004 before Kosovo courts, the vast majority of which by Kosovo Serbs who because of 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 the second half of 2004. The claims were directed against some combination of UNMIK, KFOR, the PISG and the relevant municipalities (see Human Rights Advisory Panel (HRAP), *Milogorić and Others*, 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, at § 5).
11. 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 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 § 10 above, at § 6).

12. 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.
13. On 22 February 2007, the Municipal Court of Prishtinë/Priština, citing UNMIK Regulation No. 2006/10 of 16 October 2006 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property, held that the Kosovo Property Agency (KPA) had competence to decide on the complainant’s claim. The Court declared itself without jurisdiction over the dispute. According to information received from the Municipal Court, that Court sent the case file to the KPA on the same date.
14. On 9 July 2007, the complainant received notification of the judgment of the Municipal Court. The Panel cannot determine at this point whether the notification was delivered by the Court or by the KPA. The complainant states that he duly appealed that judgment to the District Court of Prishtinë/Priština, as the court of second instance, within the prescribed 15-day time limit, sending the appeal letter by registered mail to the Municipal Court, as required by the relevant provisions of procedural law. However, as of 17 January 2012 he has not heard anything regarding his appeal.
15. According to information received from the KPA, that body is in possession of the complainant’s claim, as it was referred to it by the Municipal Court of Prishtinë/Priština. The KPA explains that it has not undertaken any action with respect to the case, as it has never received notice from the District Court either that the decision of the Municipal Court referring the case to the KPA has been confirmed, or that that decision has been quashed and the case sent back to the Municipal Court.
16. In turn, the District Court of Prishtinë/Priština informed the Panel that the complainant’s case has never been registered with that Court.
17. On 28 September 2008, the Director of the DOJ advised the courts that cases which had not been scheduled following the order of 26 August 2004 should now be processed.
18. 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.

III. THE COMPLAINT

19. Insofar as the complaint has been declared admissible, the complainant in substance alleges that the proceedings concerning his claim for damaged property have been stayed, thus making it impossible for him to obtain the determination of his claim, in breach of his right of access to a court under Articles 6 § 1 and 13 of the European Convention on Human Rights (ECHR). He likewise complains that, as a result of the

stay, the proceedings have not been concluded within a reasonable time, in breach of Article 6 § 1 of the ECHR.

V. THE LAW

A. Alleged violation of Article 6 § 1 of the ECHR

The complainant's submission

20. The complainant first refers to a delay in the proceedings before the Municipal Court of Prishtinë/Priština, which did not decide upon his claim against the Municipality of Prishtinë/Priština and the PISG for two and a half years. Second, he complains about the failure of the District Court of Prishtinë/Priština to act upon his appeal against the decision of the Municipal Court of Prishtinë/Priština.
21. In this respect, as indicated above, he invokes violations of his rights of access to a court and to a decision within a reasonable time, as guaranteed by Article 6 § 1 of the ECHR.

UNMIK's submission

22. In his comments on the merits of the complaint, the SRSG asserts that to the extent that the rights protected under Article 6 § 1 were limited in Kosovo, any limitation was compatible with the ECHR, due to it being in the pursuit of a legitimate aim where there was reasonable proportionality between the means employed and the aim sought to be achieved.
23. The SRSG acknowledges that according to the case law of the European Court of Human Rights the assessment of delays in court proceedings should be based on the time frame between the filing of the complaint and the moment at which the national judgment becomes final.
24. The SRSG submits that in the case of the complainant the time frame for the assessment of any delay in the court proceedings is from the date of filing of the complaint with the Municipal Court of Prishtinë/Priština in August 2004 until the time UNMIK handed over to EULEX its remaining responsibilities in the area of justice, 9 December 2008.
25. The SRSG adds that following the above-mentioned DOJ's letter of 15 November 2005 (see § 0 above), the Municipal Court of Prishtinë/Priština decided upon the complainant's claim "shortly thereafter" (on 22 February 2007), which of itself indicates that the court acted diligently to settle the claim.
26. The SRSG opines that the delay on the side of the District Court of Prishtinë/Priština was due to the complainant's failure to properly file his appeal with that Court, and subsequently due to his failure to take sufficient proactive steps to remedy this situation.
27. Therefore, the SRSG concludes that the matter was handled by the Kosovo judicial authorities without unreasonable delay and that the subsequent delay arising from lack of service of the relevant paperwork should not be attributed to UNMIK.

The Panel's assessment

1. General principles

28. Article 6 § 1 of the ECHR states, in relevant part,

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ...hearing within a reasonable time by [a] ... tribunal ...”

29. The Panel recalls that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the complainant and the relevant authorities, and what was at stake for the complainant in the dispute (see, among many other authorities, European Court of Human Rights (ECtHR) (Grand Chamber), *Frydlender v. France*, no. 30979/96, judgment of 27 June 2000, *ECHR*, 2000-VII, § 43; see also Human Rights Advisory Panel (HRAP), *Emini*, no. 17/08, opinion of 18 June 2010, § 21; HRAP, *Mitrović*, no. 05/07, opinion of 17 December 2010, § 85).

30. Further, the Panel recalls that the ECHR places a duty on States to organise their legal system so as to allow the courts to comply with the requirements of Article 6 § 1, including that of a trial within a “reasonable time”. While a temporary backlog of court business does not entail responsibility on the part of the authorities if they take appropriate remedial action with the requisite promptness, a chronic overload cannot justify an excessive length of proceedings (see ECtHR, *Pammel v. Germany*, no. 17820/91, and *Probstmeier v. Germany*, no. 20950/92, judgments of 1 July 1997, *Reports of judgments and decisions*, 1997-IV, p. 1112, § 69 viz. p. 1138, § 64).

2. Application of the general principles to the present case

a. Period to be taken into account

31. The complainant’s claim was registered by the Municipal Court of Prishtinë/Priština on 23 August 2004. This date marks the opening of the proceedings. However, the period to be considered starts from the date of the Panel’s temporal jurisdiction, which is 23 April 2005. In assessing the reasonableness of the time that elapsed after 23 April 2005, the Panel will nevertheless take into account the state of the proceedings at that moment (ECtHR, *Foti and Others v. Italy*, nos 7604/76 and others, judgment of 10 December 1982, § 53, Publications of the Court, Series A, no. 56, p. 15; ECtHR, *Styranski v. Poland*, no. 28616/95, judgment of 30 October 1998, § 46, Reports of judgments and decisions, 1998-VIII, p. 3376).

32. On 22 February 2007, the Municipal Court of Prishtinë/Priština, declared itself without jurisdiction to decide the complainant’s claim as a first-instance court. The complainant’s appeal against this decision is still pending with the District Court of Prishtinë/Priština. It is therefore the Panel’s conclusion that the complainant’s claim still awaits resolution.

33. However, as indicated above, on 9 December 2008, UNMIK’s responsibility with regard to the judiciary in Kosovo ended (see § 18 above). The period under review therefore ended on 9 December 2008. Insofar as the period from 9 December 2008 is concerned,

the Panel cannot examine whether the duration of the proceedings complied with the reasonable time requirement.

34. The total duration of the proceedings, up until the moment when UNMIK was no longer responsible, was thus four years, three months and fifteen days, of which three years, seven months and fifteen days fall to be examined by the Panel. During the period under review, the case was pending before the Municipal Court of Prishtinë/Priština, the District Court of Prishtinë/Priština and the KPA.

b. Assessment of the reasonableness of the duration of the proceedings

35. As regards the complexity of the case, the Panel notes that the complainant's claim was one of about 17,000 similar claims, which together created logistical and other problems for the Kosovo courts. All these claims raised the difficult issue of UNMIK's immunity from the jurisdiction of the local courts, as well as of the applicability of the law that made public authorities liable for certain acts committed by unknown perpetrators. The Panel accepts that, because of the specific characteristics of these claims, the complainant's case presented certain complexities.
36. The Panel further notes that a substantial part of the issue raised by this case has been submitted to the Panel by other complainants. The Panel recalls that in, for instance, the joined cases of *Milogorić and Others* (cited in § 10 above), it examined complaints by five complainants who were also owners of real property in Kosovo. In 1999, fearing hostilities, they too left their homes in Kosovo. Similarly, their property was damaged or destroyed during the second half of 1999, after the entry of UNMIK and KFOR into Kosovo. In 2004, those complainants also filed their claims against UNMIK, KFOR, the PISG and the relevant municipalities before the competent municipal courts, seeking compensation for the damage caused to their property. By the time of filing of their complaints with the Panel, none of the complainants in those cases have been contacted by the relevant courts and no date for hearings have been set.
37. In *Milogorić and Others* the Panel found that "the fact that, for a long period of time, the complainants were prevented from having their compensation claims determined by the courts as a consequence of the interference by the DOJ, constituted a violation of Article 6 § 1 of the ECHR", more specifically of their right of access to a court (HRAP, *Milogorić and Others*, cited above, at § 46). The Panel further found that "it [was] not necessary to examine separately the issue of the length of the proceedings" (same opinion, at § 48).
38. However, unlike in *Milogorić and Others*, in this case the complainant's claim for compensation had in fact been adjudicated by the Municipal Court of Prishtinë/Priština on 22 February 2007, when the court declared itself without competence to decide over the complainant's claim and referred it to the KPA. Thus, the judicial proceedings were in fact halted due to the above mentioned intervention by the DOJ (see § 11 above) for two and a half years, from August 2004 to February 2007.
39. Contrary to the SRSG's argument that the said decision of the Municipal Court of Prishtinë/Priština was delivered following the DOJ's letter of 15 November 2005 (see § 0 above), the Panel notes that the complainant's claim was not directed against a unidentified individual, and thus it does not fall within the category of claims, which the Kosovo courts were invited to process by that letter. The Panel therefore rejects this argument as having no application to the present case.

40. Concerning the conduct of the judicial authorities, the Panel notes that the case history can be divided into two periods: a first period from the filing of the claim before the Municipal Court on 23 August 2004 until the judgment of the Municipal Court, handed down on 22 February 2007, and a second period from the filing of an appeal with the District Court against that judgment until the end of the UNMIK's responsibility with regard to the judiciary in Kosovo, 9 December 2009.
41. With regard to the first period, two years and six months passed between the receipt of the case file by the Municipal Court (on 23 August 2004) and the day when its judgment was handed down on 22 February 2007. However, of that time only one year and ten months fall within the period over which the Panel has jurisdiction (from 23 April 2005). The Panel has already found that delay in judicial proceedings due to the order of the UNMIK DOJ, as is the case during this first period, is not sufficiently justified (see *Milogorić and Others*, cited in § 10 above, at § 46).
42. Nevertheless, although it concerns a significant part of the entire period currently under review, the Panel does not consider this as an unreasonable delay. However, this judgment of the Municipal Court was not the final act in the proceedings with regard to the complainant's claim since he entered an appeal against this decision.
43. Turning to the second period, the Panel, first, considers that the fact that the KPA is aware of the complainant's appeal against the Municipal Court's decision (see § 15 above) constitutes sufficient evidence to determine that the complainant's appeal did reach the judicial authorities, which from that moment assumed the responsibility to decide upon his appeal. Likewise, in the initial comments with regard to this complaint, UNMIK agreed that the complainant's case is still pending before the District Court of Prishtinë/Priština. Therefore, the Panel finds these facts sufficient to determine that the appeal of the complainant properly reached the relevant judicial authorities. The complainant received the Municipal Court's decision on 9 July 2007, therefore the Panel considers it safe to conclude that his appeal was filed by 1 August 2007, which date will be used for further considerations.
44. The Panel further notes that from 1 August 2007 until at least 17 November 2011 (the date of its last communication with the Panel) no action has been undertaken either by the District Court of Prishtinë/Priština on the complainant's appeal, nor by the KPA, pending a decision by the District Court. However, only the time until 9 December 2008 falls within the period over which the Panel has jurisdiction, which is one year, four months and 10 days.
45. As to the conduct of the complainant, it does not appear from the information in the case file nor from the SRSG's submissions that the complainant is to be held responsible for the delay in the proceedings before the first-instance court.
46. As to what was at stake for the complainant, the Panel accepts that the case was of considerable importance to him. He had to leave Kosovo fearing for his life, leaving his property and possessions behind. If he were to win his case, he would receive a significant sum as compensation.
47. The Panel recalls that it already considered and rejected most of the SRSG's arguments in *Milogorić and Others* (cited in § 10 above) and in *Berisha and Others* (HRAP, nos. 27/08 and others, opinion of 23 February 2011, § 24). It found that it is true that

UNMIK's interim character and related difficulties must be duly taken into account, but that under no circumstances could these elements be taken as a justification for diminishing standards of respect for human rights, which were duly incorporated into UNMIK's mandate (*Milogorić and Others*, cited in § 10 above, at § 44; *Berisha and Others*, § 25).

48. Concerning the argument of the SRSB that the complainant did not enquire about the progress of his case with the relevant court, the Panel has already rejected this argument in *Lalić and Others* (HRAP, cases nos. 30/08 and others, opinion of 13 May 2011, § 21). It found that the complainants could not be blamed for not having enquired with the relevant courts as to the progress of their cases (*Lalić and Others*, § 25).
49. The Panel sees no reason to depart from its findings in the cases of *Milogorić and Others* and *Berisha and Others*.

3. Conclusion

50. In the light of the foregoing, taking the period within the Panel's jurisdiction with respect to the procedures both before the Municipal Court of Prishtinë/Priština and the appeal to the District Court of Prishtinë/Priština, the Panel finds that there has been a violation of Article 6 § 1 of the ECHR in respect of the inability of the complainant to have his claim finally determined by the competent authorities and with respect to the length of proceedings.

B. Alleged violation of Article 13 of the ECHR

The parties' submissions

51. The complainant refers to the continuous failure of the District Court of Prishtinë/Priština to act upon his appeal.
52. In this respect, he invokes a violation of his right for an effective remedy against the failure of the judiciary to decide over his case within a reasonable time, guaranteed by Article 13 of the ECHR.
53. UNMIK did not provide any specific comments with regard to Article 13.

The Panel's assessment

1. General principles

54. Article 13 of the ECHR states, in relevant parts,
- “Everyone whose rights ... as set forth in this Convention are violated shall have an effective remedy before a national authority ...”
55. The Panel recalls that the issues under Articles 6 and 13 of the ECHR usually overlap and that the European Court of Human Rights has on a number of occasions stressed that the requirements of Article 13 are less strict than, and are absorbed by, those of Article 6, thus finding that there is no need to consider whether there was a separate violation of Article 13 (see, e.g. ECtHR, *Kamasinski v. Austria*, no. 9783/82, judgment of 19 December 1989, § 110, Series A, No. 168 (1991), 33 EHRR 36). The same

approach was adopted by the Panel in cases similar to the present case (see *Milogorić and Others*, referred above).

56. The situations where the European Court finds a need for a separate examination of the issue under Article 13 of the ECHR are related to the excessive length of proceedings. However, it is not excluded that there may be situations when Article 13 will have to be examined in a different context.
57. The Panel finds that in this particular case there is a need to examine separately the alleged violation under Article 13 of the ECHR.

2. Application of the general principles to the present case

58. The Panel has already concluded that the complainant's appeal should be considered filed with the District Court of Prishtinë/Priština as of 1 August 2007 as the latest. It has also been established that the Court has not since processed his appeal.
59. This approach is justified by the fact that the failure of the District Court of Prishtinë/Priština to decide upon the complainant's appeal does not only stop him from obtaining a final judicial decision in the regular court system, but also effectively prevents the KPA from taking appropriate action on the matter.
60. This failure of the District Court of Prishtinë/Priština has two consequences. First, that because of the Court's failure to decide upon the complainant's appeal there has been no final determination of the complainant's claim initially filed with the Municipal Court of Prishtinë/Priština. The second is that the KPA was (and still is) unable to process the complainant's case without the District Court's determination on the appeal of the decision referring his claim to KPA.
61. In its comments on this matter, UNMIK did not show to the Panel that there was any remedy available to the complainant where he would have been able to address this situation, in the period of time under the Panel's review.

3. Conclusion

62. The Panel finds that there was a violation of the complainant's right to an effective remedy guaranteed by Article 13 of the ECHR.

VI. RECOMMENDATIONS

63. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.
64. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted above, UNMIK's responsibility with regard to the judiciary in Kosovo ended on 9 December 2008, with EULEX assuming full operational control in the area of rule of law. UNMIK therefore is no longer in a position to take measures that will have a direct impact on proceedings pending before the competent authorities.

65. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.
66. With respect to the complaints and the case the Panel considers it appropriate that UNMIK:
- in line with the case law of the European Court of Human Rights on situations of reduced State jurisdiction, the Panel is of the opinion that UNMIK must endeavour, with all the diplomatic means available to it *vis-à-vis* the Kosovo authorities, to obtain assurances that the case filed by the complainant will be duly processed (see ECtHR (Grand Chamber), *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, § 333, *ECHR*, 2004-VII and *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; compare HRAP, *Milogorić and Others*, cited in § 10, above, at § 49).
 - takes appropriate steps towards adequate compensation for the complainant for non-pecuniary damage suffered as a result of the prolonged stay of the proceedings instituted by him.
67. The Panel also considers it appropriate that UNMIK must endeavour to urge the competent authorities in Kosovo to take all possible steps in order to assure that any individual suffering as a consequence of the delay in the administration of justice will have at his/her disposal an effective remedy within the sense of Article 13 of the European Convention on Human Rights.

FOR THESE REASONS,

The Panel, unanimously,

- 1. FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN RESPECT OF THE INABILITY OF THE COMPLAINANT TO HAVE HIS CLAIM DETERMINED BY THE COURTS AND IN RESPECT OF THE LENGTH OF THE PROCEEDINGS;**
- 2. FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLE 13 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN RESPECT OF THE LACK OF AN EFFECTIVE REMEDY.**
- 3. RECOMMENDS THAT UNMIK:**
 - a. URGE THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ASSURE THAT THE COMPLAINANT'S CASE WILL BE DECIDED WITHOUT ANY FURTHER DELAY;**
 - b. TAKE APPROPRIATE STEPS TOWARDS ADEQUATE COMPENSATION FOR THE COMPLAINANT FOR NON-PECUNIARY DAMAGE;**
 - c. URGE THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ASSURE THAT ANY INDIVIDUAL SUFFERING AS A CONSEQUENCE OF THE DELAY IN THE**

ADMINISTRATION OF JUSTICE WILL HAVE AT HIS/HER DISPOSAL AN EFFECTIVE REMEDY WITHIN THE SENSE OF ARTICLE 13 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;

d. TAKE IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND INFORM THE COMPLAINANT AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member