



DECISION

Date of adoption: 15 February 2013

Case No. 05/10

Miroslav GRKOVIĆ

against

UNMIK

The Human Rights Advisory Panel, on 15 February 2013
with the following members taking part:

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, including through electronic means, in accordance with Rule 13 § 2 of its Rules of Procedure, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 22 February 2010 and registered on 24 February 2010.
2. The Panel received additional documentation from the complainant on 4 March 2010.
3. On 13 November 2012, the Panel requested information from the Kosovo Property Agency (KPA). The KPA responded on 14 November 2012.

4. On 13 November 2012, the Panel requested further information and clarification from the complainant. A response was received on 11 and 14 December 2012.
5. On 20 November 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. The SRSG provided UNMIK's response on 15 January 2013.

II. THE FACTS

6. The complainant is a Kosovo resident who left Kosovo for security reasons and who is currently residing in Serbia proper. He is the owner of the following properties:

Property no. 1: Commercial land in Malishevë/Mališevo (cadastral parcel no. 641/3);

Property no. 2: Commercial land in the village of Bellacrkvë/Bela Crkva, municipality of Rahovec/Orahovac (cadastral parcel no. 50/2);

Property no. 3: Commercial land located in the village of Bellacrkvë/Bela Crkva, municipality of Rahovec/Orahovac (cadastral parcel nos 254/1 and 254/3);

Property no. 4: Apartment located at Vuk Karadžić street (currently Te Dëshmorët Pashtriku street), Rahovec/Orahovac; and

Property no. 5: Garage located at Vuk Karadžić street (currently Te Dëshmorët Pashtriku street), in Rahovec/Orahovac.

7. On 31 May 2004, the complainant submitted a claim to the Municipal Court of Rahovec/Orahovac against the Municipality of Rahovec/Orahovac and the Provisional Institutions of Self-Government of Kosovo, seeking compensation for interference with his right of ownership over these properties and enforcing his right to repossession over the same properties.
8. On 23 March 2007, the Municipal Court of Rahovec/Orahovac rejected the claim stating that it retained no jurisdiction to deal with this matter and remitted the case to the KPA in Prishtinë/ Priština. The complainant stated that he intended to appeal this decision but that his letter containing the appeal was returned to him from Kosovo, marked "delivery unsuccessful".
9. After receiving the judgment of the Municipal Court of Rahovec/Orahovac, the complainant subsequently filed five separate applications to the KPA regarding his properties.

A. Actions with regard to Property no. 1

10. The complainant informs the Panel that he filed a claim to the KPA for repossession of the property (claim number KPA33488). The history of the complainant's claim is

available on the website¹. It shows that the claim was registered on 26 April 2007, published on 12 September 2008 and marked as uncontested on 12 October 2008. The process of notification was completed on 28 December 2010.

11. On 14 November 2012, the KPA advised the Panel that on 5 May 2011 the complainant submitted a request to withdraw the claim, due to the fact that he had sold the property. This was confirmed to the Panel by the complainant on 11 December 2012.

B. Actions with regard to Property no. 2

Proceedings before the KPA

12. The complainant informs the Panel that he filed a claim to the KPA for repossession of the property (claim number KPA33486). The history of the complainant's claim is available on the KPA website. It shows that the claim registration was filed on 26 April 2007. The KPA informed the Panel that this claim was initially notified incorrectly, however, an interview was conducted on 17 November 2008 and re-notification was completed by 18 May 2011. The claim is contested and is being processed for presentation before the Kosovo Property Claims Commission (KPCC).

Criminal complaint before the Municipal Public Prosecutor in Rahovec/Orahovac

13. On 17 July 2009, after becoming aware that this property was being occupied, the complainant submitted a criminal complaint to the Municipal Public Prosecutor in Rahovec/Orahovac against the illegal occupant. After having been found guilty, the defendant was subsequently sentenced on 27 June 2011.
14. However, following this criminal complaint the complainant discovered that the property had again been usurped. As a consequence, he filed a second criminal complaint on 9 May 2012. The Panel is unaware of the status of this complaint.

C. Actions with regard to Property no. 3

15. The complainant informs the Panel that on 26 April 2007, he filed a claim to the KPA for repossession of the property (claim number KPA33490). The KPA advised the Panel that the claim was granted by a KPCC decision of 22 February 2008. This was notified to the complainant on 19 May 2009. On 26 May 2009, the complainant submitted a request for the property to be administered by the KPA, under its rental scheme.
16. The complainant informs the Panel that, notwithstanding the decision of the KPCC, the land remains occupied and the local authority has used it as a football ground and placed goal posts and fences there. The complainant references criminal charges but does not produce any supporting documentary evidence.

¹ <http://www.kpaonline.org/>

D. Actions with regard to Property no. 4

17. The complainant informs the Panel that on an unspecified date, he filed a claim to the Housing and Property Directorate (HPD), the predecessor in interest of the KPA (claim number DS600460). The KPA notified the Panel that the claim was granted by the Housing and Property Claims Commission (HPCC) of the HPD, the predecessor of the KPCC, on 27 June 2004. By subsequent action of the HPD, the property in question was vacated and the keys handed over to the complainant on 13 July 2007.
18. Subsequently, the complainant states that he discovered that the property had been occupied and that it had suffered damage as a result.
19. The complainant states that consequently he submitted a criminal complaint to the Municipal Public Prosecutor in Rahovec/Orahovac, on 17 July 2009, against the illegal occupants. The complainant informed the Panel that this criminal complaint was subsequently rejected by the public prosecutor.

E. Actions with regard to Property no. 5

20. The complainant informs the Panel that he filed a claim to the KPA for repossession of this property (claim number KPA33500). The history of the complainant's claim is available on the website. It shows that the claim registration was completed on 26 April 2007, that notification was completed on 26 December 2007, published on 4 March 2008 and listed as uncontested on 3 April 2008.
21. On 14 November 2012, the KPA notified the Panel that the claim is being prepared for submission to the KPCC.
22. The complainant references criminal charges with respect to this property but does not produce any supporting documentary evidence.

F. Termination of UNMIK's Executive Power in Kosovo

23. On 9 December 2008, UNMIK's responsibility with regard to police and justice 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.
24. 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 from that date. 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

25. With regard to properties 1, 2 and 5 the complainant in substance complains about the duration of the proceedings relating to these properties 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 European Convention on Human Rights (ECHR). He alleges that for the same reason his right to an effective remedy under Article 13 of the ECHR has also been violated.
26. With regard to properties 3 and 4, the complainant alleges that the KPA failed to implement the decisions of the KPCC relating to these properties, preventing him from repossessing them. He invokes a violation of his right to a court, guaranteed by Article 6 § 1 of the ECHR, and of the right to protection of property, guaranteed by Article 1 of Protocol No. 1 to the ECHR.
27. With regard to properties 2 and 4 the complainant also alleges that the Municipal Court of Rahovec/Orahovac has not responded to the criminal charges against the individuals suspected to have occupied these properties and caused the damage to them.

IV. THE LAW

Complaint concerning Property no. 1

28. From the most recent information from the complainant and the KPA, the Panel understands that with respect to property no. 1 the matter has now resolved itself through the subsequent sale of the property.
29. In these circumstances, and in accordance with Rule 29 of the Panel's Rules of Procedure, it is appropriate to strike out this part of the complaint in so far as it relates to property no. 1.

Complaints concerning the proceedings before the Kosovo Property Agency with respect to Properties nos 2, 3, 4 and 5

30. Before considering the remainder of 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.

Property no. 2

31. With respect to this property, the complainant complains about the duration of the proceedings relating to it before the KPA.
32. The SRSG objects to the admissibility of this part of the complaint. He states that the period under review by the Panel ends on 31 December 2008 after which "the KPA operated in accordance with legislation adopted by the Assembly of Kosovo (S/2009/149)". Consequently, the length of time during which the claim was pending

before the KPA while it was under the authority of UNMIK cannot be considered as unreasonable. As such the claim should be deemed as “manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12”.

33. With respect to this property, the complaint relates to the prolonged failure of the KPA to effectively implement the KPCC decision of 22 February 2008. The Panel notes that the KPCC’s decision restored the complainant’s property rights and that the complainant was served notice of this decision on 19 May 2009. Subsequently, on 26 May 2009 the complainant requested the property to be administered by the KPA.
34. Insofar as the period between 26 April 2007 and 31 December 2008 (a period of 20 months) is concerned, it appears that during that period an interview was conducted on 17 November 2008. The Panel has been also made aware that the claim regarding the property is contested.
35. Taking into account the high number of claims filed with the KPA (42,387 claims, of which 35,593 have been decided by now)², the Panel does not consider that during that period there was a delay of such a length that it was unreasonable and further notes that some steps were undertaken. 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. The Panel notes that according to Section 1.2 of the Regulation, it has jurisdiction over complaints relating to alleged violations of human rights by UNMIK.
37. 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 (see § 24 above). It follows, as the Panel already considered in *Kušić* (cited in § 24 above, at § 52) and in *Felegi* (cited in § 24 above, at § 44), that from 31 December 2008, UNMIK can no longer be held responsible for acts or omissions imputable to the KPA.
38. Insofar as the period after 31 December 2008 is concerned, this part of the complaint falls outside the jurisdiction *ratione personae* of the Panel (see § 24 above).

Property no. 3

39. With respect to this property, the complainant complains about the failure of the KPA to effectively implement the KPCC decision of 22 February 2008 (see § 15 above).
40. The Panel notes that it has already considered that after 31 December 2008, UNMIK no longer had jurisdiction to oversee the KPA’s functioning (see § 24 above). Therefore, when the complainant was served with the decision regarding confirmation of ownership and his subsequent application to the KPA for it to administer the property, that is, on 19 and 26 May 2009 respectively, UNMIK was no longer responsible for the alleged action or inaction of the KPA.

² 15 February 2013, Information from the KPA official website:
http://www.kpaonline.org/ClaimsTotalDecided_caseload.asp

41. For this reason, the Panel considers that this part of the complainant, falls outside its jurisdiction *ratione personae*, and must therefore be declared inadmissible.

Property no. 4

42. With respect to this property, the complaint complains about the failure of the KPA to protect his property from further usurpation after it had undertaken repossession on behalf of the complainant on 13 July 2007.
43. With regard to the second usurpation the complainant has failed to indicate when this took place and specifically if it occurred during the period up to 31 December 2008, the date that marks the end of UNMIK's executive authority over the KPA. As such, the complainant fails to provide any specific details which would allow the Panel to assess whether a human rights violation by UNMIK may have occurred during this timeframe. In these circumstances the Panel holds this part of the complaint to be unsubstantiated and therefore manifestly ill-founded.
44. With respect to the period after 31 December 2008 UNMIK no longer had executive authority over the KPA (see § 24 above). Therefore, if the complainant's property was usurped after this date, UNMIK was no longer responsible for the alleged action or inaction of the KPA.
45. For this reason, the Panel considers that this part of the complaint falls outside its jurisdiction *ratione personae*, and must therefore be declared inadmissible.

Property no. 5

46. With respect to this property, the complainant complains about the duration of the proceedings before the KPA.
47. Insofar as the period between 26 April 2007, when the claim was submitted, and 31 December 2008 (a period of 20 months) is concerned, it appears that during that period the notification and publication process was completed. The claim is currently in process of being prepared for submission to one of the upcoming sessions of the KPCC.
48. Taking into account the high number of claims filed with the KPA (see § 35 above), the Panel does not consider that during that period there was a delay of such a length that it was unreasonable and further notes that some steps were undertaken. 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.
49. With respect to the period after 31 December 2008 UNMIK no longer had executive authority over the KPA (see § 24above). Therefore, UNMIK was no longer responsible for the alleged action or inaction of the KPA.
50. For this reason, the Panel considers that this part of the complaint falls outside its jurisdiction *ratione personae*, and must therefore be declared inadmissible.

Complaints concerning criminal proceedings with respect to Properties 2 and 4

51. With regard to the criminal proceedings, the Panel notes that after 9 December 2008, UNMIK can in principle no longer be held responsible for acts or omissions imputable to the Kosovo authorities, merely on the basis of the continuing existence of the United Nations Security Council resolution 1244 (1999).
52. The Panel notes that, with respect to property no. 2, the criminal proceedings were commenced on 9 May 2012, and with respect to property no. 4, on 17 July 2009.
53. The Panel notes that on 9 December 2008, UNMIK's responsibility for police and justice ended (see § 23 above). For this reason, the Panel considers that this element of the complaint is outside of its jurisdiction *ratione personae*, and must therefore be declared inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member