



The Human Rights Advisory Panel

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DECISION

Date of adoption: 14 March 2013

Case No. 331/09

Nebojša MILADINOVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 14 March 2013,
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 and registered on 4 December 2009.
2. On 4 April 2012, the Panel requested the complainant to submit additional information. On 12 April 2012, the Panel received information from the complainant. On 3 October 2012, the Panel requested the complainant to provide further information; however, no response was received.

3. On 22 September 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 28 October 2011, 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 numerous cadastral parcels formerly owned by his father, including residential, agricultural, and auxiliary buildings and orchards in the village of Miraqë/Miroće, Vushtrri/Vučitrn municipality, and in Vushtrri/Vučitrn town. Specifically, the property in the village of Miraqë/Miroće included a cottage, and the property in Vushtrri/Vučitrn included a house.
5. The complainant states that his father lived in the above-mentioned properties until 1999 when he was forced to leave for security reasons. The complainant states that he was informed that the cottage in Miraqë/Miroće had been destroyed in 2002, while the house in Vushtrri/Vučitrn had been usurped. On 28 August 2006, upon the death of his father, the complainant inherited the rights to the properties mentioned above.

A. Court Proceedings before the Municipal Court of Vushtrri/Vučitrn

6. On 25 May 2005, the complainant's father lodged a compensation lawsuit before the Municipal Court of Vushtrri/Vučitrn against the Municipality of Vushtrri/Vučitrn, the Provisional Institutions of Self Government in Kosovo (PISG), UNMIK and KFOR, seeking compensation for the destruction of his property. He claims 152,800 euros in compensation for this damage. The complainant inherited the property rights.
7. By the end of 2008, the Municipal Court had not contacted the complainant, and no hearing had been scheduled.
8. Approximately 17,000 compensation claims were lodged in 2004 before Kosovo courts, the vast majority by ethnic 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 2004. The claims were directed against some combination of UNMIK, KFOR, the PISG and the relevant municipality (see Human Rights Advisory Panel (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).
9. With respect to these cases, on 26 August 2004, 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. 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 § 8 above, at § 6).

10. 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.
11. On 28 September 2008, the Director of DOJ advised the courts that cases which had not been scheduled according to the 26 August 2004 request should now be processed.
12. 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.

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

13. On 26 March 2002, the complainant’s father filed a claim with the Housing and Property Directorate (HPD) for repossession of the house in Vushtrri/Vučitrn. On 18 December 2002, the complainant’s father filed a claim with the HPD for repossession of the property in the village of Miraqë/Miroće.
14. On 11 April 2003, the HPCC issued a decision granting the property to the complainant’s father in Vushtrri/Vučitrn. The property was put under the administration of the Kosovo Property Agency (KPA), the successor-in-interest to the HPD on 7 March 2006. However, the KPA required the complainant to show proof of inheritance before it would allow him to be included in the voluntary rental scheme. In January 2012, the complainant provided such information to the KPA. However, the KPA had not been able to rent the complainant’s property and thus no rental fees had been generated for him to collect. In the interim, the complainant complained to the KPA. The KPA informed the complainant that it was not responsible for subsequent damage that had occurred to the house and that the complainant should address his claim to the relevant court. There is no information that such actions were taken.
15. On 27 August 2004, the Housing and Property Claims Commission (HPCC) of the HPD issued a decision stating that his father’s property in Miraqë/Miroće had been destroyed but that his father was the owner of the vacant lot. On 9 July 2007, the complainant submitted a request to the KPA to correct mistakes in its decision relating to the classification of this property. On 13 June 2008, the KPA responded to the complainant and referred to a letter that it purportedly sent to either himself or his father on 29 March 2005. The complainant contends that he never received such letter.
16. On 5 February, 27 February and 9 July 2007, the complainant submitted another 26 claims to the KPA requesting repossession of his properties located in the village of Miraqë/Miroće. According to the complainant, these claims were approved by the KPA in 2008, but were later annulled due to incorrect notifications. As of January 2012, the KPA had granted approval for 11 of the claims and placed them under its administration, at the complainant’s request. The KPA informed the Panel that the remaining 15 claims were still in various stages of being processed.

III. THE COMPLAINT

17. The complainant in substance alleges that the Municipal Court of Vushtrri/Vučitrn has stayed the proceedings concerning his claim for damages for destroyed property and that as a result these proceedings have not been concluded within a reasonable time, in breach 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 been violated as well.
18. The complainant further complains that by the destruction of his property and by the refusal of Municipal Court of Vushtrri/Vučitrn to decide his claim for damages, his right to property (Article 1 of Protocol No. 1 to the ECHR) has been violated.
19. Additionally, the complainant complains about the duration of the proceedings relating to his property claims before the HPD and the KPA and about not being compensated by the KPA for damage to his property. 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. APPLICATION OF RULE 29BIS OF THE PANEL'S RULES OF PROCEDURE

20. The Panel notes that part of the complaint relating to the Municipal Court of Vushtrri/Vučitrn staying the proceedings concerning his claim for damages raises questions which 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, *Čukić*, and 69/08, *Bogićević*, which have already been examined by the Panel. Moreover, it appears from the files that no new admissibility issue arises with regard to the present cases. 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 and that it can examine the admissibility of this part of the complaint without so doing.

IV. THE LAW

21. 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. Court Proceedings before the Municipal Court of Vushtrri/Vučitrn

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

22. The Panel considers that, insofar as the complainant invokes a violation of Articles 6 § 1 and 13 of the ECHR, he in fact raises two complaints (see the approach adopted, among others, in HRAP, *Milogorić*, no. 38/08, decision of 22 May 2009; compare European Court of Human Rights (ECtHR), *Acimović 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, he complains about the fact that due to the stay of the proceedings in the Municipal Court of Vushtrri/Vučitrn, he has been unable to obtain the determination of his claims for damages for destroyed property. The Panel considers that this complaint may raise an issue of his right of access to a court under Article 6 § 1 of the ECHR and of his right to an effective remedy under Article 13 of the ECHR. On the other hand, he complains about the length of the proceedings before the competent courts, due to the fact that the proceedings have been instituted in 2005 and that this claim has not been examined since then. This complaint may raise an issue of his right to a judicial decision within a reasonable time, in the sense of Article 6 § 1 of the ECHR.

23. The Panel considers that the complaint concerning the court proceedings before Municipal Court of Vushtrri/Vučitrn regarding Articles 6 § 1 and 13 of the ECHR raise 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, *Milogorić*, cited in § 20 above, at § 18).
24. No other ground for declaring this complaint inadmissible has been established.

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

25. The complainant complains about a violation of his right to property (Article 1 of Protocol No. 1). He generally complains about the fact that his property has been damaged or destroyed during the second half of 1999 and about the failure by the Municipal Court of Vushtrri/Vučitrn to decide on his claims for damages.
26. 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). It follows that this part of the complaint lies outside the Panel’s jurisdiction *ratione temporis*.
27. With respect to the complaint that, due to the stay of the proceedings instituted by the complainants, they have been unable thus far to obtain compensation for the damage, 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).

28. 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).

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

Housing and Property Directorate

29. The complainant also complains that the HPD and the KPA have denied him a decision within a reasonable time, and have delayed him from realising his property rights. As regards the HPD, the complainant's father filed his claims with the HPD on 26 March 2002 and 18 December 2002 and received responses on 27 August 2004 and 11 April 2003, respectively, which granted the complainant's father possessory rights over both the property in Vushtrri/Vučitrn (see § 14 above) and the property in the village of Miraqë/Miroće (see § 15 above).

30. In regard to the proceedings that occurred prior to 23 April 2005, this part of the complaints lies outside the Panel's jurisdiction *ratione temporis*.

31. For the subsequent actions occurring after the Panel's jurisdiction commenced on 23 April 2005 with regards to the property in Vushtrri/Vučitrn, the Panel notes that the complainant did not show the required proof of inheritance to the KPA in order to be included in the voluntary rental scheme until January 2012. Furthermore, the KPA was not able to rent the complainant's property and thus no rent had been generated for him to collect. The Panel therefore rejects this part of the complaint as manifestly ill-founded.

Kosovo Property Agency

32. In regard to the KPA, the complainant filed 26 claims with the KPA on 5 February 2007, 27 February 2007 and 9 July 2007 and with regard to 15 of the claims, has yet to receive a decision, six years later.

33. 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 (see HRAP, *Kušić*, no. 08/07, opinion of 15 May 2010, § 51; HRAP, *Felegi*, no. 32/08, decision of 20 January 2012, § 43; HRAP, *B.D.*, no. 129/09, decision of 6 December 2012).

34. It follows, as the Panel already considered in *Kušić* (cited in § 33 above, at § 52) and in *Felegi* (cited in § 33 above, at § 44), that from 31 December 2008, UNMIK can no longer be held responsible for acts or omissions imputable to the KPA.

35. Out of the total duration of the KPA process of more than six years, between February 2007 at the earliest and December 2008 represents a period of approximately one year and ten months that falls within the Panel's jurisdiction for examination.

36. Taking into account the high number of claims filed with the KPA (42,399 claims, of which 36,017 have been decided as of 6 March 2013)¹, the Panel does not consider that during that period there was a delay of such a length that it was unreasonable. In fact, decisions were taken on these claims by the KPA in the interim, despite the fact that some were incorrectly notified and had to be amended (see § 15 above). 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.
37. Insofar as the period after 31 December 2008 is concerned, the complaint falls outside the jurisdiction *ratione personae* of the Panel (see § 34 above).

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) REGARDING THE CLAIM FILED WITH THE MUNICIPAL COURT OF VUSHTRRI/VUČITRN;

- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member

¹ Information accessed from the KPA official website on 6 March 2013:
http://www.kpaonline.org/ClaimsTotalDecided_caseload.asp