



The Human Rights Advisory Panel

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OPINION

Date of adoption: 6 June 2013

Case No. 323/09

Velibor JOKIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 6 June 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, makes the following findings and recommendations:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was lodged with the Panel on 1 December 2009 and registered on 3 December 2009.
2. On 12 January 2010, the Panel received additional information from the complainant.
3. On 29 April 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 15 June 2011, the SRSG provided UNMIK's response.
4. On 31 August 2011, the Panel sent a letter to the complainant inviting his response to UNMIK's comments.

5. On 9 September 2011, the complainant responded to UNMIK's comments.
6. On 21 March 2012, the Panel contacted the complainant and requested further information. On 4 May 2012, the Panel received additional documentation from the complainant.
7. On 3 October 2012, the Panel requested additional information from the complainant, to which a response was received on 10 October 2012.
8. On 6 December 2012, the Panel declared the complaint admissible in part.
9. On 10 December 2012, the Panel forwarded the decision on admissibility to the SRSG, inviting UNMIK's observations on the merits of the case. On 21 February 2013, the SRSG provided UNMIK's response.

II. THE FACTS

10. The facts relevant at this stage of the proceedings, may be summarised as follows. For a more detailed account of the facts, the Panel refers to its decision of 6 December 2012 on the admissibility of the complaint (see Human Rights Advisory Panel (HRAP) case no. 323/09, *Jokić*, decision of 6 December 2012, §§§§ 7-14).
11. The complainant is the heir to different properties in the village of Goshicë/Gušica, municipality of Viti/Vitina, specifically cadastral parcels nos 955 and 958, in which he inherited partial rights from his father and mother, which fully vested in 2004.
12. From 1988 until 5 December 1994, the complainant had brought proceedings before several courts in Kosovo to acquire the ownership rights to the abovementioned properties, as well as to a newly created cadastral parcel no. 1298/6. By its judgment of 5 December 1994, the Municipal Court of Viti/Vitina determined that the complainant and his late mother were the owners of cadastral parcels nos 955 and 1298/6, and not the socially-owned enterprise (SOE) PIRO Agromorava, the previously registered owner.
13. On 11 March 2004, the complainant filed a request with the Municipal Cadastral Office (MCO) of Viti/Vitina to register the title of the abovementioned cadastral properties in his name. When this had not been done more than three years later, the complainant filed a request with the Municipal Court of Viti/Vitina for the forced execution of its previous judgment. The Municipal Court of Viti/Vitina granted this application in its judgment of 11 January 2008. This judgment allowed the complainant to take possession and ownership of cadastral parcels nos 955 and 1298/6 and ordered the MCO of Viti/Vitina to register the title of the parcels in his name.
14. On 24 September 2008, the MCO of Viti/Vitina rejected the complainant's request to register him as the title holder of the cadastral parcels because the Municipal Assembly in Viti/Vitina had issued a decision on 6 March 2008 that temporarily suspended the registration of cadastral records with respect to property rights that had been acquired from former SOEs. The complainant requested a revision but on 13 November 2008, the MCO of Viti/Vitina confirmed its earlier decision. The complainant appealed this decision to the Kosovo Cadastral Agency, Directorate of Geodetic, Cadastral and Property Affairs (KCA), but by a decision formalised on 4 May 2009, his appeal was rejected.

15. The complainant appealed the matter to the Supreme Court of Kosovo on 25 June 2009. It appears that the case is still pending.
16. With regard to UNMIK's administrative control of the KCA, following the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK was no longer able to perform effectively the vast majority of its tasks as an interim administration, and the SRSG was unable to enforce the executive authority that is still formally vested upon him under Security Council Resolution 1244 (1999) (see, *e.g.*, Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 12 June 2008, S/2008/354, §§ 7 and 17; Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 15 July 2008, S/2008/458, §§ 3-4 and 29; Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 24 November 2008, S/2008/692, § 21).

III. THE COMPLAINT

17. Insofar as the complaint has been declared admissible, the complainant alleges that the relevant cadastral authorities have denied him his property rights by delaying the registration of his cadastral parcels, in violation of Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR).

IV. THE LAW

A. Admissibility

18. 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.
19. The Panel dismissed the original arguments of the SRSG in its decision on the admissibility of the complaint (see HRAP, *Jokić*, cited in § 10, above). The SRSG submits further arguments regarding the admissibility of the complaint. He argues that because the complainant did not diligently enquire about the progress of his original request to the KCA for the registration of the above-mentioned cadastral parcels in his name, the complaint is therefore manifestly ill-founded. Specifically, the SRSG states that the complainant should have addressed his complaints to the cadastral office in Viti/Vitina and/or to the International Civilian Office, instead of waiting to file a request with the Municipal Court of Viti/Vitina more than three years later. The SRSG states that the complainant "simply failed to proactively and timely avail himself of the avenues of redress which would have been available to him according to the law to remedy his situation."
20. The Panel disagrees. The Panel has already rejected similar argument numerous times in finding that complainants cannot be blamed for not having enquired with the relevant courts as to the progress of their cases (see HRAP, *Prelević*, case no. 11/08, opinion of 17 February 2012, at § 37; see also HRAP, *Mladenović and Others*, cases nos. 172/09 and others, opinion of 16 December 2011, § 26). The Panel sees no reason to depart from its conclusions on these points made in the cases of *Prelević* and *Mladenović and Others*.
21. The Panel therefore rejects this argument of the SRSG.

B. Merits

22. Article 1 of Protocol No. 1 of the ECHR states that every natural or legal person is entitled to the peaceful enjoyment of his possessions. According to ECHR jurisprudence, the right to the peaceful enjoyment of one's property has been violated *inter alia* in situations where a person is not accorded an opportunity to use his or her property. For example, violations of Article 1 of Protocol 1 have been found where a government entity refused to provide a necessary permit, or in some other way, impeded a person from having the peaceful enjoyment of his or her property (see European Commission of Human Rights, *Wiggins v. United Kingdom*, no. 7456/76, decision of 8 February 1978, § 48, D&R 13; European Court of Human Rights (ECtHR), *Satka and Others v. Greece*, no. 55828/00, judgment of 2 March 2006, § 16). The European Court of Human Rights has made clear that "the loss of an individual's ability to dispose of their property, taken together with the State's failure to remedy the situation complained of evidences a clear violation of the right to the peaceful enjoyment of possessions." (see ECtHR, *Papamichalopoulos v. Greece*, no. 14556/89, judgment of 23 June 1993, § 45).
23. In the case at issue, on 11 March 2004, the complainant filed a request with the MCO of Viti/Vitina to register the title of the cadastral properties in his name, in an attempt to exercise his right to the peaceful enjoyment of his property. According to Section 1.2 of Law No. 2002/05 on the Establishment of an Immovable Property Rights Register, as promulgated by UNMIK Regulation No. 2002/22 of 20 December 2002 on the Promulgation of the Law Adopted by the Assembly of Kosovo on the Establishment of an Immovable Property Rights Register, "the Municipal Cadastral Offices shall record immovable property rights in the register under the authority of the KCA and in compliance with the provision of the present law and administrative guidelines issued by the KCA." With respect to the procedure, Section 3.6 clarifies that "the Municipal Cadastral Offices shall register the immovable property right no later than fifteen (15) days after the receipt of the request for registration and inform the applicant immediately of its determination." However, it appears that the MCO of Viti/Vitina neither registered the complainant's property in the 15 days proscribed by law nor informed the complainant of its rejection in writing. It was not until 24 September 2008, more than four years and four months later, that the MCO of Viti/Vitina rejected the complainant's application to register him as the title holder of the cadastral parcels. Subsequently, the complainant appealed the decision three times: once to the MCO of Viti/Vitina, which was rejected, once to the KCA which was rejected, and finally to the Supreme Court, which apparently is still pending.
24. In its admissibility decision, the Panel already found that since the complainant filed his initial request with the MCO of Viti/Vitina in 2004 until today, a period of more than eight years and six months has elapsed during which the complainant has been denied the ability to register his property. The period between April 2005 and June 2008 represents approximately three years and two months that falls within the Panel's jurisdiction (see HRAP, *Jokić*, at § 19 above).
25. The Panel notes that the MCO of Viti/Vitina, by its prolonged failure to decide on the request for the registration of his cadastral parcels, prevented the complainant from having the full enjoyment of his property. Pursuant to Article 33 of the Law on Basic Property Relations of the Socialist Federal Republic of Yugoslavia of 30 January 1980, for these three years and two months the complainant could not legally sell his property, as it was not registered and he did not hold a marketable title. This situation was not remedied even after the Municipal Court of Viti/Vitina issued a judgment on 11 January 2008 that ordered the MCO of Viti/Vitina to register the title of the property in his name. Therefore,

the Panel finds that during this period, the MCO of Viti/Vitina's failure to take a decision on the request to register the complainant's property violated his right to the peaceful enjoyment of his property.

26. It follows that there has been a violation of Article 1 of Protocol No. 1 to the ECHR.

V. RECOMMENDATIONS

27. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.

28. 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 was no longer able to perform effectively the vast majority of its tasks as an interim administration, following the entry into force of the Kosovo Constitution on 15 June 2008 (see § 16, above). UNMIK therefore is no longer in a position to take measures that will have a direct impact on the MCO of Viti/Vitina's registration of the complainant's property.

29. 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. In line with the case law of the ECtHR 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 competent authorities in Kosovo take all possible steps to redress the complainant's case (see, *mutatis mutandis* HRAP, *Milogorić and Others* § 49, and *Lalić and Others* § 32, cited above; compare ECtHR (Grand Chamber), *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, ECHR, 2004-VII, § 333; ECtHR, *Al-Saadoon and Mfudhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171).

30. The Panel further considers that UNMIK should take appropriate steps towards adequate compensation for the complainant for non-pecuniary damage suffered as a result of the MCO of Viti/Vitina's failure to decide on the complainant's request for the registration of his cadastral parcels.

FOR THESE REASONS,

The Panel, unanimously,

1. FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLE 1 OF PROTOCOL 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS.

2. RECOMMENDS THAT UNMIK:

- a. URGE THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS TO REDRESS THE COMPLAINANT'S CASE;**
- b. TAKE APPROPRIATE STEPS TOWARDS ADEQUATE COMPENSATION FOR THE COMPLAINANT FOR NON-PECUNIARY DAMAGE;**

- c. 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
NOWICKI Executive Officer

Marek
Presiding Member