



# *The Human Rights Advisory Panel*

Building D, UNMIK HQ Prishtinë/Priština, Kosovo | E-mail: hrap-unmik@un.org | Tel: +381 (0)38 504-604, ext. 5182

## **OPINION**

**Date of adoption: 2 August 2013**

**Case No. 27/09**

**Vladimir MANOHIN**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 2 August 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 introduced on 27 January 2009 and registered on 2 February 2009.
2. On 15 June 2009, 9 February 2011 and 17 April 2012, the Panel requested the complainant to submit additional information. On 6 June 2012, the Panel received further information from the complainant.
3. On 5 September 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. On 15 October 2012, the SRSG provided UNMIK's response.

4. On 6 December 2012, the Panel declared the complaint partially admissible.
5. 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 15 January 2013, the SRSG provided UNMIK's response.
6. On 19 June 2013, the Panel requested further information from the complainant. On 16 July 2013, the Panel received further information from the complainant.

## II. THE FACTS

7. The facts, insofar as relevant at this stage of the proceedings, may be summarised as follows. For a more detailed description of the facts, the Panel refers to its decision of 6 December 2012 on the admissibility of the complaint, §§ 4-14.
8. The complainant is a former resident of Kosovo currently living in Serbia proper.
9. The complainant claims that he was the owner of an apartment in Prishtinë/Priština. The complainant states that he and his wife were living in the above-mentioned property until 1999 when they were forced to leave for security reasons. He states that he allowed his neighbour Mr H.F. to rent his property, based on an oral agreement that they contracted until the property was purchased by Mr H.F. However, after years of negotiations, the sale contract was not signed and, on 28 October 2004, the complainant filed a lawsuit before the Municipal Court of Prishtinë/Priština against the alleged usurper of his property, Mr H.F., seeking his eviction and compensation for unpaid rent.
10. In the time between the filing of the complainant's lawsuit in 2004 and the Municipal Court in Prishtinë/Priština scheduling the case in 2006, another person, Mr A.K. came to occupy the property. The complainant amended the claim to include Mr A.K.
11. On 5 April 2006, the Municipal Court of Prishtinë/Priština scheduled a session in the complainant's case. However, the complainant apparently did not receive the notification until after the scheduled hearing date and thus did not appear.
12. On 14 September 2006, the Municipal Court of Prishtinë/Priština held another hearing. Neither the complainant nor the respondents appeared, although the complainant's legal representative—who was present—was ordered by the Court to provide it with the correct addresses of both the respondents within thirty days.
13. On 17 October 2006, the complainant was informed via a letter from the non-governmental organisation PRAXIS, that the payments that his legal representation had been receiving from PRAXIS had been discontinued. PRAXIS informed Mr Manohin that due to the completion of its project, it could no longer pay his lawyer's fees. Therefore, PRAXIS informed Mr Manohin that either he could pay his lawyer himself, or withdraw the complaint. The complainant's legal representative discontinued his representation of the complainant at that time. There is no evidence that the complainant retained another legal representative at this stage.
14. On 13 April 2007, the Municipal Court of Prishtinë/Priština issued a judgment dismissing the complainant's property claim as incomplete, for not providing the Court with the respondents' exact addresses as had been ordered on 14 September 2006. The complainant

states that he did not receive a copy of either the above-mentioned order, or the Municipal Court of Prishtinë/Priština's judgment of 13 April 2007.

15. 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.
16. On 26 April 2012, the Acting President of the Municipal Court of Prishtinë/Priština sent the Panel a letter admitting that she had found no evidence that its judgment of 13 April 2007 was ever served on either the complainant or his authorised legal representative. She also stated that she felt sorry for the complainant and that further legal remedies are available to him.
17. On 12 June 2012, the Panel informed the Municipal Court of Prishtinë/Priština that the complainant had never received its judgment of 13 April 2007.
18. On 8 August 2012, the complainant completed the sale of his property to Mr H.F.

### **III. THE COMPLAINT**

19. Insofar as the complaint has been declared admissible, the complainant in substance complains that the Municipal Court of Prishtinë/Priština's delay in the service of its judgment violated his right to a judicial decision within a reasonable time, guaranteed by Article 6 § 1 of the ECHR.

### **IV. THE LAW**

20. The complainant claims that the Municipal Court of Prishtinë/Priština never served him with its decision of 13 April 2007, which dismissed his usurpation claim on procedural grounds. In this respect, in essence he complains that the Municipal Court of Prishtinë/Priština violated his right to a decision within a reasonable time, guaranteed by Article 6 § 1 of the ECHR.
21. In his response, the SRSG argues against UNMIK having responsibility for the alleged violations of the complainant's right to a decision within a reasonable time. The SRSG notes that, "according to the case-law of the European Court of Human Rights 'the reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the case and with reference to a number of criteria including the conduct of the complainants'. It is submitted that Mr Manohin has failed to present evidence showing that he diligently enquired as to the progress of his case before the Municipal Court of Prishtinë/Priština."
22. The SRSG references a letter from PRAXIS of 17 October 2006 (see § 13 above) that informed Mr Manohin that his legal fees would no longer be paid and that he would be required to pay for any further legal representation, or withdraw his complaint. The SRSG notes that this letter, "should have induced the complainant to follow the proceedings before the Municipal Court by himself and in a more proactive way". The SRSG argues

that nothing in the file indicates that the complainant took proactive steps to try to remedy his situation after October 2006; for example, the complainant could have informed the court that he was no longer being represented by his former lawyer. The SRSG states that “given the silence of both the complainant and his authorized legal representative, it is not clear how and by whom else the Municipal Court of Prishtinë/Priština should have been given the correct contact details of the complainant, to be able to serve him with the abovementioned summons and ruling.”

23. In its admissibility decision of 6 December 2012, the Panel noted that “[o]ut of the total duration of more than five years and two months [in which the complainant had filed a complaint with the Municipal Court of Prishtinë/Priština but had not received a judgment], the period between April 2007 and 31 December 2008 represents approximately one year and 8 months that falls within the Panel’s jurisdiction for examination.”
24. The Panel notes that on 19 June 2013, it requested the complainant to provide more information about what steps he took *vis a vis* his claim before the Municipal Court of Prishtinë/Priština after the payment of his legal representation was discontinued by PRAXIS. Specifically, the Panel requested information as to whether the complainant had taken any proactive steps toward his case before the Municipal Court of Prishtinë/Priština. At that time, the complainant informed the Panel that he had not taken any proactive steps after learning that PRAXIS was no longer paying for his legal representation.
25. The Panel cannot but note that in such a circumstance, where the complainant knew that he was losing his legal representation, it was at least partially his responsibility to inform the Municipal Court of Prishtinë/Priština as to who, if anyone, would be representing him in the future and to what address it should send its subsequent summons and rulings. As such, the Panel considers that the complainant’s failure to provide the Municipal Court of Prishtinë/Priština with that pertinent information, in fact substantially contributed to the delay in his receiving the judgment of 13 April 2007.
26. Consequently, there has been no violation of Article 6 § 1 of the ECHR.

**FOR THESE REASONS,**

The Panel, unanimously,

**– FINDS THAT THERE HAS BEEN NO VIOLATION OF ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS.**

Andrey ANTONOV  
Executive Officer

Marek NOWICKI  
Presiding Member