



The Human Rights Advisory Panel

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DECISION

Date of adoption: 26 September 2012

Case No. 194/09

Petra KOSTIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 26 September 2012,
with the following members present:

Mr Marek NOWICKI, Presiding Member

Ms Christine CHINKIN

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 on 30 April 2009 and was registered on the same day.
2. On 23 December 2009, 22 June 2011 and 29 March 2012, the Panel asked the complainant to submit additional information and documentation. On 6 September 2011 some information was received by telephone.
3. On 24 August 2011, the Panel requested additional information from the Court Liaison Office (CLO) of the Kosovo Ministry of Justice. The CLO responded on 2 September 2011.

II. THE FACTS

4. The complainant is a former resident of Kosovo, currently residing in Serbia proper.

5. The complainant states that she is the owner of a property located in the village of Retimlë/Retimlje, Municipality of Rahovec/Orahovac. The complainant retained use of the property until July 1999 when due to security reasons and following the abduction of her son she moved to Serbia proper. She states that the property was subsequently usurped, damaged, looted and eventually torn down by unknown perpetrators.

A. Claim before the Municipal Court

6. On 15 June 2004, the complainant lodged a claim with the Municipal Court of Rahovec/Orahovac against the Municipality of Rahovec/Orahovac and the Provisional Institutions of Self-Government (PISG), seeking compensation for the damage caused to the property, in the amount of 280,000 euros.
7. As of the present time, the Municipal Court of Rahovec/Orahovac has not contacted the complainant and no hearings have been scheduled concerning the abovementioned lawsuit.
8. Approximately 17,000 compensation claims were lodged in 2004 before Kosovo courts, the vast majority of these by Kosovo Serbs who, due to 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 generally directed against some combination of UNMIK, KFOR, the PISG and the relevant municipality (see Human Rights Advisory Panel (hereinafter 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 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 § 8 above, at § 6).
10. On 15 November 2005, the DOJ called on the Kosovo 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 the 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.
13. On 6 September 2011, the complainant added that her claim was at that time still pending before the Municipal Court of Rahovec/Orahovac.

B. Proceedings with the Housing Property Directorate (HPD)

14. On 13 March 2002, the complainant filed a claim with the HPD for recognition of the complainant's ownership right over the property. No further details have been provided by the complainant as to whether the Housing and Property Claims Commission (HPCC) of the HPD confirmed her ownership right.

C. Proceedings before the Kosovo Trust Agency (KTA)

15. The complainant states that her son worked for the socially-owned enterprise "Orvin", Rahovec/Orahovac (hereafter: the enterprise) until he was abducted on 18 July 1998. Since that time his whereabouts have remained unknown.
16. Upon learning that the enterprise was being privatised, the complainant filed a claim, on behalf of her son, with the KTA to be included among the workers to be eligible for privatisation proceeds. No additional information regarding this claim was received by the Panel from the complainant.

III. THE COMPLAINT

17. The complainant in substance alleges that the Municipal Court of Rahovec/Orahovac had stayed the proceedings concerning the compensation claim lodged on 15 June 2004 against the Municipality of Rahovec/Orahovac and the PISG for the destruction of her property and that as a result these proceedings have not been concluded within a reasonable time, in violation of Article 6 § 1 of the European Convention on Human Rights (ECHR). She alleges that for the same reason her right to an effective remedy under Article 13 of the ECHR has also been violated. The complainant further complains that by the destruction of her property and by the refusal of the Municipal Court of Rahovec/Orahovac to decide her compensation claim, her right to property (Article 1 of Protocol No.1 to the ECHR) has been violated.
18. As regards to the proceedings before the HPD and KPA the complainant does not allege any specific Human Rights violation.

IV. APPLICATION OF RULE 29BIS OF THE PANEL'S RULES OF PROCEDURE

19. The Panel notes that the complaint raises questions which, insofar as the complaint relates to the proceedings instituted in 2004 before the Municipal Court of Rahovec/Orahovac, are substantially the same as those that have been raised, among others, in the cases *Milogorić*, no. 38/08; *Živaljević*, no. 61/08; *Ćukić*, no. 63/08; and *Bogićević*, no. 69/08, which have already been examined by the Panel. Moreover, it appears from the file that no new admissibility issue arises with regard to that aspect of the present case. 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.

V. THE LAW

20. 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. Complaint with regard to the proceedings before the Municipal Court

21. The Panel considers that, insofar as the complainant invokes a violation of Articles 6 § 1 and 13 of the ECHR, she in fact raises two complaints (see the approach adopted, among others, in *Milogorić*, no. 38/08, decision of 22 May 2009; compare European Court of Human Rights (ECtHR), *Aćimović 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, she complains about the fact that due to the stay of the proceedings in the competent court, she has been unable to obtain the determination of her claims for damages to her destroyed property. The Panel considers that this complaint may raise an issue of her right of access to a court under Article 6 § 1 of the ECHR and of her right to an effective remedy under Article 13 of the ECHR. On the other hand, she complains about the length of the proceedings before the competent courts, due to the fact that the proceedings were instituted in 2004, and that her claims have 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.
22. The Panel considers that the complaint under Articles 6 § 1 and 13 of the ECHR raises 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 at § 18).
23. No other grounds for declaring this part of the complaint inadmissible have been established.

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

24. The complainant complains about a violation of her right to property (Article 1 of Protocol No.1). She generally complains about the fact that her property has been damaged or destroyed and about the failure by the Municipal Court of Rahovec/Orahovac to decide on her claim for damages.
25. 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 damaging and the 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). Bearing in mind that the complainant was made aware of the destruction of her property in November 2003, it follows that this part of the complaints lies outside the Panel’s jurisdiction *ratione temporis*.
26. With respect to the complaint that, due to the stay of the proceedings instituted with regards to the complainant’s claim, she has been unable thus far to obtain compensation for the damage done to her property, 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).

27. 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. Complaint with regard to the proceedings before the HPCC and the KTA

28. Pursuant to Section 3.3 of UNMIK Regulation No. 2006/12 the Panel shall declare inadmissible any complaint which it considers incompatible with the human rights set out in the human rights instruments within the Panel's jurisdiction, or which it considers manifestly ill-founded.

29. The complainant complains about the claims submitted to the HPCC and the KTA. The complaint however lacks any specific details or information about the claims which would allow the Panel to determine whether a human rights violation has occurred.

30. In these circumstances the Panel holds this part of the complaint to be unsubstantiated and therefore manifestly ill-founded.

FOR THESE REASONS,

The Panel, unanimously,

- DECLARES ADMISSIBLE THE COMPLAINTS 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), WITH RESPECT TO THE PROCEEDINGS BEFORE THE MUNICIPAL COURT OF RAHOVEC/ORAHOVAC;

- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member