



## **DECISION**

**Date of adoption: 22 May 2009**

**Case No. 38/08**

**Petko MILOGORIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel sitting on 22 May 2009  
with the following members present:

Mr. Marek NOWICKI, Presiding member

Mr. Paul LEMMENS

Ms. Snezhana BOTUSHAROVA

Mr. John RYAN, 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. THE FACTS**

1. According to the complainant, he was the owner of immovable property and land in the "Krivoglava" area, next to the local road Mitrovicë/Mitrovica - Pejë/Pec. He lived there with his family for more than 40 years until the outbreak of hostilities in Kosovo. He stated that he moved, together with his family, to central Serbia proper on 15 June 1999 and that the house remained locked and completely furnished. The complainant has been informed by his neighbours that his property has been demolished and plundered during the second half of 1999.

2. On 13 December 2004 the complainant lodged a claim before the Municipal Court of Pejë/Pec against the Municipality of Pejë/Pec and the Provisional Institutions of Self-Government (the PISG) seeking compensation for the damage caused to his property.

3. According to the claim, the complainant's house was destroyed following the arrival of KFOR and UNMIK in Pejë/Pec region and the complainant became aware of the devastation of his property late 2001. The complainant alleges that he suffered property damage in the amount of 197.145 euro.

4. According to the complainant, since the filing of his claim in 2004, he has not been contacted by the Municipal Court and no date for a hearing has been set.

5. The complainant submits the copy of a letter sent on 26 August 2004 by the Director of the UNMIK Department of Justice (DOJ) to all Municipal and District Court presidents and to the President of the Supreme Court of Kosovo regarding compensation claims for damage to property that arose after the entry into Kosovo of NATO forces in 1999. In the letter, the DOJ Director mentioned that "over 14.000" of such claims had been lodged by ethnic Serbians. 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."

6. On 13 June 2008, the complainant addressed an urgent request to the President of the Municipal Court to initiate the trial procedure. According to the complainant, he has not received any official answer to this request.

## **II. COMPLAINTS**

7. The complainant claims that the Municipal Court in Pejë/Pec has stayed the proceedings concerning his request for damages for destroyed property and that these proceedings have not been concluded within a reasonable time (Article 6 § 1 and Article 13 of the European Convention on Human Rights (ECHR)). He further complains that by the refusal of the Municipal Court in Pejë/Pec to decide his claim for damages his right to property (Article 1 of Protocol No. 1 to the ECHR) has been violated. He alleges also a violation of his right to family life and home, as he is prevented from returning to his home (Article 8 of the ECHR).

## **III. PROCEEDINGS BEFORE THE PANEL**

8. The complaint was introduced on 18 September 2008 and registered on the same date. Mr Milogorić is represented by Ms. Jasmina Zupanjac from the Danish Refugee Council.

9. The Panel communicated the case to the Special Representative of the Secretary-General (the SRSG) on 23 October 2008 requesting his comments on behalf of UNMIK on the admissibility and merits pursuant to Rule 30.1(b) of the Panel's Rules of Procedure. The SRSG provided comments by letter received on 13 November 2008 in which he indicated that he was not provided with sufficient information.

10. The Panel re-communicated the case on 2 December 2008 and provided a copy of the full complaint. The SRSG responded with comments by letter received on 18 December 2008.

#### IV. THE LAW

11. Before considering the case on its merits the Panel has to decide whether to accept the case, taking into consideration the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12 referred to above.

12. In his comments, the SRSG states that “the case appears *prima facie* inadmissible” on the basis of non-exhaustion of remedies. He submits that as of November 2005, the courts in Kosovo had started processing claims such as the complainant’s concerning property damage that occurred after the entry of KFOR and UNMIK into Kosovo. The SRSG noted that “on 28 September 2008, the courts were instructed to proceed with all remaining claims expeditiously”.

13. Section 3.1 of UNMIK Regulation No. 2006/12 provides that the Advisory Panel may only deal with a matter after it determines that all other available avenues for review of the alleged violations have been pursued.

14. The Panel notes that the rationale for the exhaustion requirement is to give the competent authorities, in particular the courts, the opportunity to remedy the alleged violation. However, complainants are only required to exhaust remedies that are effective, available in theory and in practice (see, among others, European Court of Human Rights (ECtHR), *Vernillo v. France*, 20 February 1991, *Publications of the Court*, Series A, no. 198, p. 12, § 27; ECtHR, 27 July 1999, *Selmouni v. France* [GC], no. 25803/99, § 76, *ECHR*, 1999-V).

15. The Panel considers that the objection based on non-exhaustion of remedies cannot be examined in a general way, but should be examined in the specific context of each of the various complaints. It is in that context that the Panel will also consider whether certain complaints do not raise other objections to their admission.

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

16. 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 (compare ECtHR, decision on admissibility, 30 May 2000, *Aćimović v. Croatia*, no. 48776/99; ECtHR, decision on admissibility, 11 July 2000, *Kutić v. Croatia*, no. 48778/99). On the one hand, he complains about the fact that due to the stay of the proceedings in the Municipal Court, he has been unable to obtain the determination of the claim 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, read in combination with Article 1 of Protocol No. 1. On the other hand, he complains about the length of the proceedings before the Municipal Court, due to the fact that the proceedings have been instituted on 13 December 2004, and that his 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.

17. The Panel notes that in his comments the SRSG has not indicated any specific legal remedy available to the complainant as regard to the stay or the duration of the proceedings. For its part, the Panel does not see any such remedy. The fact that on 28 September 2008 the courts were instructed to proceed with the claims like the one of the complainant is not relevant from the point of view of remedies to be exhausted by the complainant. The Panel therefore concludes that the complaint cannot be rejected for non-exhaustion of remedies within the meaning of Section 3.1 of UNMIK Regulation No. 2006/12.

18. The Panel considers that the complaints under 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.

#### **Alleged violation of Article 1 of Protocol No. 1**

19. The complainant complains about a violation of his right to property (Article 1 of Protocol No.1), due to the refusal of the Municipal Court of Pejë/Pec to decide on his claim for damages.

20. The Panel notes that the proceedings concerning the complainant's claim are still pending before the Municipal Court. It follows that this part of the complaint is premature and must be rejected for non-exhaustion of remedies, in accordance with Section 3.1 of UNMIK Regulation No. 2006/12 (compare ECtHR, decision on admissibility, 30 May 2000, *Acimović v. Croatia*, no. 48776/99).

#### **Alleged violation of Article 8 of the ECHR**

21. The complainant complains about a violation of his right to family life and home (Article 8 of the ECHR), due to the fact that since fleeing the conflict in Kosovo in 1999 he has been prevented from returning to his home.

22. The Panel notes that his property, including the house in Kosovo where he lived with his family, was destroyed sometime between 1999 and 2001.

23. According to Section 2 of UNMIK Regulation No. 2006/12, the Panel 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 destruction of property is an instantaneous act, which does not give rise to a continuing violation.

24. This complaint therefore lies outside the Panel's competence *ratione temporis*.

#### **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 ECHR) AND THE RIGHT TO A JUDICIAL DECISION WITHIN A REASONABLE TIME (ARTICLE 6 § 1 OF THE ECHR);**

**- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.**

  
John J RYAN  
Executive Officer

  
Marek NOWICKI  
Presiding member