The Human Rights Advisory Panel
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OPINION

Date of adoption: 22 August 2012

Case No. 34/08

Desanka STANIŠIĆ and Zoran STANIŠIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 22 August 2012,
with the following members present:

Mr Paul LEMMENS, Presiding Member
Ms Christine CHINKIN

Assisted by
Mr Andrey ANTONOV, Executive Officer

Having considered the aforementioned complaints, 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 noted Mr Marek Nowicki's withdrawal from sitting in the case, pursuant to Rule 12 of the Panel's Rules of Procedure,

Having deliberated, makes the following findings and recommendations:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 21 August 2008 and registered on 17 September 2008.

2. By decision of 10 June 2012, the Panel declared the complaint admissible in part.

3. On 20 July 2012, the Special Representative of the Secretary-General (SRSG) submitted UNMIK's comments on the merits of the complaint.

II. THE FACTS

4. The complainants are former residents of Kosovo currently living in Serbia proper. The complainants are owners of real property in Kosovo, a family house and a building which used to accommodate a commercial company owned by Mr. Stanišić, "Sigma Commerce".

5. At the end of June 1999, Mr Stanišić left for Serbia proper, for security reasons. Mrs Stanišić stayed in the family house. After Mr Stanišić's departure the commercial premises were allegedly illegally occupied by persons known to the complainants. Some time later, Mrs Stanišić was allegedly illegally detained in the house by the same persons, threatened, and was eventually forced to leave Kosovo.

6. On 15 July 2004, Mrs Stanišić filed a claim for compensation for the damage caused to the house and the commercial building after the entry of KFOR into Kosovo, that is shortly after 15 July 1999. The claim was brought before the Municipal Court of Prishtinë/Priština, against the Municipality of Prishtinë/Priština and the Kosovo Provisional Institutions of Self-Government (PISG). Mrs Stanišić claimed an amount of 295,000 euros.

7. Approximately 17,000 compensation claims were lodged in 2004 before Kosovo courts, the vast majority of which by Kosovo 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, at § 1; for the legal basis upon which the claimants based their claim, see the same opinion, at § 5).

8. 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 § 7 above, at § 6).

9. From July 1999 to June 2005, the family house and the commercial premises were used by other persons. An eviction took place in June 2005, organised by the Housing and Property Directorate.

10. On 10 November 2005, the complainants returned to their property, which they found seriously damaged and looted. They stayed there for about six months, during which period they cleaned the house and fixed the basic necessities. According to the complainants, the Sigma commerce premises were in a deplorable condition and they estimated the necessary repair costs at approximately 100,000 euros. The repairs were not made, and the complainants eventually left the premises again.

11. In the meantime, 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.

12. Although the complainants' case did not entirely fall within the category of cases referred to by the DOJ, the Municipal Court of Prishtinë/Priština began processing the complainants' claim.

13. Hearings took place on 14 July and 18 September 2006. During the proceedings the claim was modified, so as to relate also to the damage inflicted on the commercial building in June 2005 by the illegal occupant, when he had to vacate it. Mr Stanišić appeared as an additional claimant and UNMIK and KFOR were designated as additional respondents.

14. On 23 November 2006, the Municipal Court of Prishtinë/Priština found that UNMIK enjoyed immunity from local jurisdiction, and declared the claim against UNMIK inadmissible.

15. On 19 December 2006, the complainants appealed this judgment to the District Court of Prishtinë/Priština.

16. Insofar as the claim was directed against the Municipality of Prishtinë/Priština and the PISG, the case remained pending with the Municipal Court of Prishtinë/Priština. A further hearing took place on 15 January 2007. On 22 January 2007, the Municipal Court of Prishtinë/Priština found that both respondents lacked "passive legitimacy", and declared the claim against them inadmissible.

17. On 13 February 2007, the complainants filed an appeal against this judgment with the District Court of Prishtinë/Priština. According to the complainants, the file was transferred to the District Court on 25 June 2007.

18. Deciding on this appeal, the District Court on 11 September 2008 reversed the judgment of the Municipal Court of 22 January 2007, and sent the case back to that Court for reconsideration. The District Court held that the question of the capacity to be sued was a matter relating to the merits of the claim, not to its admissibility. The District Court specifically instructed the Municipal Court to invite the complainants to specify the responding parties and then to decide the case on the merits. It seems that this judgment of 11 September 2008 had the effect also of disposing of the appeal against the judgment of the Municipal Court of 23 November 2006, thus bringing the whole dispute back before the Municipal Court.

19. In the proceedings on remittal before the Municipal Court of Prishtinë/Priština, the complainants indicated the responding parties to be the Municipality of Prishtinë/Priština, the Government of Kosovo and UNMIK.

20. 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 (see § 8 above) should now be processed.

21. 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.

22. On 12 January 2009, the Municipal Court held that the Municipality of Prishtinë/Priština and the Government of Kosovo lacked "passive legitimacy", and declared the claim unfounded in this respect. Insofar as the claim was directed against UNMIK, the Court held that it had no jurisdiction, given UNMIK's immunity from legal process in local courts.

23. The complainants appealed against this judgment to the District Court of Prishtinë/Priština. On 18 November 2010, the District Court rejected the appeal and upheld the above decision of the Municipal Court.

24. On 10 January 2011, the complainants filed an application for review with the Supreme Court. On 27 July 2012, the Panel was informed by the Supreme Court that the case of the complainants was still pending.

III. THE COMPLAINT

25. Insofar as the complaint has been declared admissible, the complainants in substance allege that the proceedings concerning their claim for damages for destroyed property have not been concluded within a reasonable time, in breach of Article 6 § 1 of the European Convention on Human Rights (ECHR).

IV. THE LAW

A. Submissions by the parties

The complainants' submissions

26. The complainants refer to various delays in the proceedings before the Municipal Court of Prishtinë/Priština, the District Court of Prishtinë/Priština and the Supreme Court, in the proceedings relating to their claim against the Municipality of Prishtinë/Priština, the PISG and UNMIK.

27. In this respect, as indicated above, they invoke a violation of their right to a decision within a reasonable time, guaranteed by Article 6 § 1 of the ECHR.

UNMIK's submissions

28. In his comments on the merits of the complaint, the SRSG acknowledges that according to the case law of the European Court of Human Rights the assessment of delays in court proceedings should be based on the time frame between the filing of the complaint and the moment at which the national judgment becomes final.

29. The SRSG likewise accepts that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, *i.e.* the conduct of the judicial authorities, the complexity of the case and the conduct of the complainants.

30. The SRSG also accepts that the duty to organise their judicial systems in such a way that the courts can meet each of the requirements of Article 6 of the ECHR, including the obligation to hear cases within a reasonable time, lies on the public authorities. A temporary backlog does not entail responsibility provided the authorities take reasonably prompt remedial action to deal with the exceptional situation.

31. In addition, the SRSG highlights that in assessing whether the duration of the proceedings can be considered reasonable, the complexity of the case must be taken into account. Such complexity may concern questions of fact and of law, and could mitigate the responsibility of the relevant authorities to manage the case within a certain time.

32. The SRSG submits that in the case of the complainants the time frame for the assessment of any delay in the court proceedings is from the date of filing of the complaint with the Municipal Court of Prishtinë/Priština in July 2004 until the time UNMIK handed over to EULEX its remaining responsibilities in the area of justice, 9 December 2008. The SRSG states that within this period the Kosovo judicial institutions were three times seised of the matter, namely in November 2006, January 2007 and September 2008, and that the case is currently pending before the Supreme Court. According to the SRSG, the argument of the complainants that their complaint has not been dealt with within a reasonable time is unmerited.

33. The SRSG adds that the complainants' claim is of a complex nature. Nevertheless, despite its complexity, the matter was adjudicated by the relevant courts in a timely and appropriate fashion.

34. The SRSG concludes that there is no violation of the complainants' right to a judicial decision within a reasonable time, as the matter was handled by the Kosovo judicial authorities without unreasonable delay throughout the period from July 2004 to December 2008.

B. The Panel's assessment

1. General principles

35. Article 6 § 1 of the ECHR states, in relevant part,

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair …hearing within a reasonable time by [a] ... tribunal ..."

36. The Panel recalls that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the complainant and the relevant authorities and what was at stake for the complainant in the dispute (see, among many other authorities, European Court of Human Rights (ECtHR)

(Grand Chamber), *Frydlender v. France*, no. 30979/96, judgment of 27 June 2000, *ECHR*, 2000-VII, § 43; see also Human Rights Advisory Panel (HRAP), *Emini*, no. 17/08, opinion of 18 June 2010, § 21; HRAP, *Mitrović*, no. 05/07, opinion of 17 December 2010, § 85).

37. Further, the Panel recalls that the ECHR places a duty on States to organise their legal system so as to allow the courts to comply with the requirements of Article 6 § 1, including that of a trial within a "reasonable time". While a temporary backlog of court business does not entail responsibility on the part of the authorities if they take appropriate remedial action with the requisite promptness, a chronic overload cannot justify an excessive length of proceedings (see ECtHR, *Pammel v. Germany* and *Probstmeier v. Germany*, judgments of 1 July 1997, *Reports of judgments and decisions*, 1997-IV, p. 1112, § 69 viz. p. 1138, § 64).

2. Application of the general principles to the present case

a. Period to be taken into account

38. The complainant's claim was registered by the Municipal Court of Prishtinë/Priština on 15 July 2004. This date marks the opening of the proceedings. However, the period to be considered starts from the date of the Panel's temporal jurisdiction, which is 23 April 2005. In assessing the reasonableness of the time that elapsed after 23 April 2005, the Panel will nevertheless take into account the state of the proceedings at that moment (ECtHR, *Foti and Others v. Italy*, judgment of 10 December 1982, *Publications of the Court*, Series A, no. 56, p. 15, § 53; ECtHR, *Styranowski v. Poland*, judgment of 30 October 1998, *Reports of judgments and decisions*, 1998-VIII, p. 3376, § 46).

39. The complainants' claim is still pending. However, as indicated above, on 9 December 2008, UNMIK's responsibility with regard to the judiciary in Kosovo ended (see § 21). The period under review therefore ended on 9 December 2008. Insofar as the period from 9 December 2008 is concerned, the Panel cannot examine whether the duration of the proceedings complied with the reasonable time requirement.

40. The total duration of the proceedings, up until the moment when UNMIK was no longer responsible, was thus four years, four months and twenty-four days, of which three years, seven months and sixteen days fall to be examined by the Panel. During the period under review, the case was pending before the Municipal Court of Prishtinë/Priština, the District Court of Prishtinë/Priština and again the Municipal Court.

b. Assessment of the reasonableness of the duration of the proceedings

41. As regards the complexity of the case, the Panel notes that the complainants' claim was one of about 17,000 similar claims, which together created logistical and other problems for the Kosovo courts. All these claims raised the difficult issue of UNMIK's immunity from the jurisdiction of the local courts, as well as of the applicability of the law that made public authorities liable for certain acts committed by unknown perpetrators. The Panel accepts that, because of the specific characteristics of these claims, the complainants' case presented certain complexities.

42. As to the conduct of the complainants, it does not appear from the information in the case file or from the SRSG's submissions, that the complainants were responsible for any delay in the proceedings.

43. Concerning the conduct of the authorities, the Panel notes that the case history before the Municipal Court and the District Court of Prishtinë/Priština can be divided into four distinct periods: a first period from the filing of the claim before the Municipal Court on 15 July 2004 until the letter of the DOJ of 15 November 2005; a second period from the said letter to the (second) judgment of the Municipal Court, handed down on 22 January 2007; a third period from the filing of an appeal with the District Court against that judgment, until the judgment of the District Court, handed down on 11 September 2008; a fourth period, from the referral of the case to the Municipal Court by the said judgment of the District Court until the (third) judgment of the Municipal Court, handed down on 12 January 2009. The later stages of the proceedings need not be examined, as they are situated in a period when UNMIK was no longer responsible.

44. With regard to the first period, this was one in which no action was undertaken by the Municipal Court of Prishtinë/Priština. One year and four months passed between the receipt of the case file by the Municipal Court (on 15 July 2004), and the letter of the DOJ of 15 November 2005. However, only six months and 22 days passed from 23 April 2005, the date from which the Panel has jurisdiction. While the delay during the first period is not sufficiently justified, it concerns only a relatively short part of the entire period currently under review.

45. With regard to the second period, the Panel notes that no significant delays occurred. Two hearings took place, and the Municipal Court handed down two judgments (on 23 November 2006 and 22 January 2007).

46. With regard to the third period, the Panel considers that while the District Court was slow in starting with the instruction of the case, it nevertheless delivered its judgment on 11 September 2008. The Panel therefore does not consider that the proceedings lasted an unreasonably long time.

47. Finally, with respect to the fourth period, the Panel notes that the Municipal Court swiftly organised hearings and decided the matter on 12 January 2009, that is slightly more than three months after the case had been sent back to it. In the period under the Panel's review, which ended on 9 December 2008, there were therefore no unjustifiable delays.

48. As to what was at stake for the complainants, the Panel accepts that the case was of considerable importance to them. They both had to leave Kosovo fearing for their lives, leaving their property and possessions behind. If they were to win their case, they would receive a significant sum as compensation.

c. Conclusion

49. The proceedings in the present case, in the period between 23 April 2005 and 9 December 2008, were characterised by an undeniable court activity, resulting in three successive judgments. Taking all the relevant elements into consideration, and notwithstanding the fact that there were some delays attributable to UNMIK for which no sufficient justification could be given and notwithstanding what was

at stake for the complainants, the Panel cannot conclude that the duration of the proceedings during the above-mentioned period was excessive or that the proceedings failed to satisfy the reasonable-time requirement.

50. There has accordingly not been a 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

Paul LEMMENS
Presiding Member