

**DECISION**

**Date of adoption: 17 September 2014**

**Case No. 38/10**

**Radmila ARSIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 17 September 2014,

with the following members taking part:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

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 deliberated, including through electronic means, in accordance with Rule 13 § 2 of its Rules of Procedure, decides as follows:

**I. PROCEEDINGS BEFORE THE PANEL**

1. The complaint was introduced on 15 March 2010 and registered on 30 March 2010.
2. On 30 January 2012, the Panel requested further information from the complainant. On 31 January 2012 and 2 February 2012, the Panel received the complainant’s response.
3. On 26 May 2014, the Panel communicated the complaint to the Special Representative of the Secretary-General (SRSG), for UNMIK’s comments on the admissibility of the case. On 18 June 2014, the SRSG provided UNMIK’s response.
4. On 3 July 2014, the Panel forwarded UNMIK’s comments to the complainant and invited him to provide his comments. On 29 July 2014, the Panel received the complainant’s response.

**II. THE FACTS**

1. The complainant is a former resident of Kosovo currently living in Serbia proper. She, along with her son, Mr Bratislav Arsić, is the co-owner of a house in Prishtinё/Priština, where she and her family lived until 19 June 1999 when they had to leave Kosovo for security reasons. The complainant claims that later she became aware that her neighbour Mr A.D. had usurped her house. The complainant also claims that after 17 March 2004, she became aware that her house had been destroyed.

**A. Civil Court Proceedings before the competent courts in Prishtinё/Priština**

1. On 3 June 2004, the complainant lodged a compensation lawsuit before the Municipal Court of Prishtinё/Priština against the Municipality of Prishtinё/Priština, the Provisional Institutions of Self Government in Kosovo (PISG), UNMIK and KFOR, seeking compensation for the destruction of her property. She claims 345,000 euros in compensation for this damage.
2. On 22 February 2007, the Municipal Court of Prishtinё/Priština, citing UNMIK Regulation No. 2006/10 of 16 October 2006 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property, held that the Kosovo Property Agency (KPA) had competence to decide on the complainant’s claim. The Court declared itself without jurisdiction over the dispute.
3. The complainant received notification of the judgment of the Municipal Court, and on 27 July 2007, the complainant’s son, Mr Bratislav Arsić, appealed that judgment to the District Court of Prishtinё/Priština, as the court of second instance. However, as of 10 September 2014, he has not heard anything regarding his appeal.
4. Approximately 17,000 compensation claims were lodged in 2004 before Kosovo courts, the vast majority by ethnic 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, § 1; for the legal basis upon which the claimants based their claim, see the same opinion, § 5).
5. With respect to these cases, on 26 August 2004, 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. 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 HRAP, *Milogorić and Others*, cited in § 9 above, at § 6).
6. 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.
7. On 28 September 2008, the Director of DOJ advised the courts that cases which had not been scheduled according to the 26 August 2004 request should now be processed.
8. 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.

**B. Proceedings with the Housing and Property Directorate and UNMIK**

1. On 11 December 2002, Mr Arsić filed a claim with the Housing and Property Directorate (HPD) for repossession of the house in Prishtinё/Priština.
2. On 11 April 2003, the Housing and Property Claims Commission (HPCC) issued a decision which Mr Arsić received on 23 January 2004, granting him the right to repossess the property. On 28 January 2004, Mr Arsić requested that the HPD administer the property. On 15 December 2005, the HPD informed Mr Arsić that his property was destroyed, and as such, had been categorised by HPD as property that could not be taken under its administration.
3. In the meantime, by a letter dated 12 July 2004, Mr Arsić submitted a request to the SRSG, informing him that his property had been destroyed after the riots of 17 March 2004 and requesting that “the international community build the same house on the same location.” On 21 December 2004, UNMIK responded to Mr Arsić, informing him that the HPD confirms that his property was destroyed and “[i]t is, however, believed that it was done before the March event, which excludes you from compensation by the PISG-programme set up for this purpose…The HPD will assist you in re-possessing your land upon your request.”
4. On 3 February 2006, the HPD contacted Mr Arsić and informed him that they would liaise with him in Belgrade on 17 February 2006 to assist him in re-possessing his property. However, on 7 February 2006, the HPD contacted Mr Arsić and informed him that the meeting in Belgrade had been postponed indefinitely. On 29 June 2006, the HPD granted Mr Arsić repossession of the property, and the HPCC executed an eviction of the illegal occupant, Mr A.D., who had been using Mr Arsić’s property. In addition, the borders of the property were fixed with HPD tape in cooperation with the Cadastre.
5. On 23 January 2007, Mr Arsić sent a letter to the HPD requesting information on the implementation of his claim. On 31 January 2007, the HPD responded that his property had been deemed to have been destroyed and that he had been informed of this fact on 9 February 2006. The HPD noted that its eviction warrant had been executed on 29 June 2006, and that the HPD had no further jurisdiction regarding these matters. As such, it advised him to refer the matter to the Municipal Court where the property is located.

**C. Criminal Court Proceedings before the Municipal Court of Prishtinё/Priština**

1. On 9 July 2009, the complainant filed a criminal charge with the Municipal Public Prosecutor’s Office in Prishtinё/Priština against Mr A.D. for the “Unlawful Occupation of Real Property”. On 17 December 2010, the Municipal Public Prosecutor’s Office in Prishtinё/Priština registered the criminal complaint. It does not appear that any further action was taken on the complaint by the Municipal Court of Prishtinё/Priština.

**III. THE COMPLAINT**

1. The complainant in substance alleges that the Municipal Court of Prishtinё/Priština declared itself without jurisdiction and that her appeal against that decision has not been processed by the District Court of Prishtinё/Priština. The result is that she has not been able to obtain a decision on the merits of her claim for damages for destroyed property. In this respect, she can be deemed to invoke a violation of her right of access to a court and her right to a judicial determination of the dispute, guaranteed by 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 been violated as well.
2. The complainant further complains that by the destruction of her property and by the refusal of Municipal Court of Prishtinё/Priština to decide her claim for damages, her right to property (Article 1 of Protocol No. 1 to the ECHR) has been violated.
3. Furthermore, the complainant complains that by UNMIK’s failure to include her in the PISG-programme compensating owners of property that was destroyed during the 17 March 2004 riots, her right to property (Article 1 of Protocol No. 1 to the ECHR) has been violated.
4. Additionally, the complainant complains about the duration of the proceedings relating to her property claims before the HPD and about not being compensated by the HPD through the administration of her property under its rental scheme. In this respect she can be deemed to invoke a violation of the right to a decision by a court within a reasonable time, in the sense of Article 6 § 1 of the ECHR and her right to property, guaranteed by Article 1 of Protocol No. 1 to the ECHR.
5. Finally, the complainant complains that the Municipal Court of Prishtinё/Priština has not acted on her criminal complaint and as a result she has not had a decision by a court within a reasonable time, in violation of Article 6 § 1 of the ECHR.

**IV. THE LAW**

1. 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.
2. **Civil Court Proceedings before the Municipal Court of Prishtinё/Priština**

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

1. 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 HRAP, *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). First, she complains about the fact that due to the stay of the proceedings in the Municipal Court of Prishtinё/Priština, she has been unable to obtain any determination of her claim for damages for 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.
2. Secondly, the complainant complains about the duration of the proceedings before the Municipal Court of Prishtinë/Priština and the District Court of Prishtinë/Priština. These proceedings started on 3 June 2004, when the complainant’s claim was filed with the Municipal Court. The proceedings were subsequently stayed during a certain time. On 22 February 2007, the Municipal Court handed down its judgment, by which it declared itself without jurisdiction. The complainant further states that she filed an appeal against that decision and that the proceedings on appeal are still pending before the District Court.
3. The Panel considers that the complaints concerning the court proceedings before the Municipal Court of Prishtinё/Priština regarding 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 (see, among others, HRAP, *Milogorić*, cited in § 26 above, at § 18).
4. No other ground for declaring this complaint inadmissible has been established.

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

1. 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 was damaged during the second half of 1999 and about the failure by the competent courts in Prishtinё/Priština to decide upon her claims for compensation.
2. 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 damage to and 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). It follows that this part of the complaint lies outside the Panel’s jurisdiction *ratione temporis*.
3. With respect to the complaint that, due to the stay of the proceedings instituted by the complainant, they have been unable thus far to obtain compensation for the damage, 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), *Blečič v. Croatia*, no. 59532/00, judgment of 8 March 2006, § 77, *ECHR*, 2006-III).

1. 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).
2. **UNMIK’s Decision to Exclude the Complainant from the PISG Compensation Programme and Proceedings before the HPD**

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

1. The complainant complains that by UNMIK not including her in the PISG-programme compensating owners of property that was destroyed during the events of 17 March 2004, her right to property (Article 1 of Protocol No. 1 to the ECHR) has been violated.
2. The SRSG raises an objection to the admissibility of this part of the complaint, arguing that it is outside the Panel’s jurisdiction *ratione temporis,* as theproperty was destroyed prior to 23 April 2005, the commencement date of the *ratione temporis* jurisdiction of the Panel. The SRSG states that “[i]t is clear from the case file that the HPD undertook a time consuming investigation in an attempt to establish the facts surrounding the destruction of the Property. At the time, it was determined that the destruction of the Property occurred before the riots in March 2004. UNMIK submits that the HPD was best placed at that time to make this determination.”
3. The Panel considers that the damage and destruction of property are instantaneous acts, which do not give rise to a continuing violation (see HRAP, *Lajović*, no. 09/08, cited in § 31 above, at § 7; HRAP, *M.S. and others*, nos 122/09 and others, decision of 5 April 2012, § 21). The exact date of the alleged damage to the complainant’s property is not known. However, both the complainant and the SRSG agree that it occurred on or before 17 March 2004, (see § 16 above) which is prior to the commencement date of the *ratione temporis* jurisdiction of the Panel. Similarly, the date on which UNMIK decided to not include the complainant in the PISG compensation scheme, 21 December 2004 also precedes the commencement date of the *ratione temporis* jurisdiction of the Panel.
4. It follows that this part of the complaint lies outside the Panel’s jurisdiction *ratione temporis*.

***Alleged violations of Articles 6 § 1 of the ECHR and Article 1 of Protocol No. 1 to the ECHR***

1. The complainant also complains about the duration of the proceedings relating to her property claims before the HPD and about not being compensated by the HPD through administering the property in its rental scheme. The Panel notes that the complainant’s son filed his claims with the HPD on 11 December 2002 and received a response on 23 January 2004, granting him the right to repossess the property (see §§ 14-15 above).
2. In regard to the proceedings that occurred prior to 23 April 2005, this part of the complaint lies outside the Panel’s jurisdiction *ratione temporis*.
3. For the subsequent actions occurring after the Panel’s jurisdiction commenced on 23 April 2005 with regards to the property, the Panel notes that on 15 December 2005, the HPD informed Mr Arsić that his property was destroyed, and as such, had been categorised by HPD as property that could not be taken under its administration. Thereafter, on 29 June 2006, the HPD granted Mr Arsić repossession of the property, and the HPCC executed an eviction of the illegal occupant, Mr A.D., who had been using Mr Arsić’s property. On 23 January 2007, Mr Arsić sent a letter to the HPD requesting information on the implementation of his claim. On 31 January 2007, the HPD responded that his property had been deemed to have been destroyed and that he had originally been informed of this fact on 9 February 2006 (see §§ 17-18 above). The Panel finds that the HPD acted on Mr Arsić’s request for repossession in a timely fashion. The Panel also finds that the HPD did not violate the complainant’s property rights afforded her by Article 1 of Protocol No. 1 to the ECHR in finding that the property was not habitable and thus not eligible to be administered in its rental scheme. The Panel therefore rejects this part of the complaint as manifestly ill-founded.
4. **Criminal Court Proceedings before the Municipal Court of Prishtinё/Priština**
5. The complainant complains that the Municipal Court of Prishtinё/Priština has not acted on her criminal complaint and as a result she has not had a decision by a court within a reasonable time, in violation of Article 6 § 1 of the ECHR.
6. The Panel notes that the complainant states that he filed the criminal complaint on 9 July 2009, and that the Municipal Public Prosecutor’s Office in Prishtinё/Priština registered the criminal complaint. The Panel also notes that it does not appear that any further action was taken on the complaint by the Municipal Court of Prishtinё/Priština (see § 19 above).
7. As this criminal complaint was filed after 9 December 2008 is concerned, this part of the complaint falls outside the jurisdiction *ratione personae* of the Panel (see § 13 above).

**FOR THESE REASONS,**

The Panel, unanimously,

**- DECLARES ADMISSIBLE THE COMPLAINT RELATING TO THE ALLEGED INABILITY OF THE COMPLAINANT TO OBTAIN A JUDICIAL DECISION OF HER COMPENSATION CLAIM WITHIN A REASONABLE TIME (ARTICLES 6 § 1 AND 13 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS);**

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

Andrey Antonov Marek Nowicki

Executive Officer Presiding Member