



The Human Rights Advisory Panel

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DECISION

Date of adoption: 16 September 2011

Case No. 13/10

Feti ISLAMI

against

UNMIK

The Human Rights Advisory Panel sitting on ...September 2011,
with the following members present:

Mr Marek NOWICKI, Presiding Member
Mr Paul LEMMENS
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 15 March 2010 and registered on the same date.

II. THE FACTS

2. The complainant states that he is the heir of the late Mr Ramadan Islami, who owned property in Pejë/Peć. According to the complainant, this property has been occupied by the Municipality of Pejë/Peć, which used it partly for the construction of a road.

3. In 1997, the heirs of Mr Ramadan Islami, including the complainant, brought a claim against the Municipality of Pejë/Peć before the Municipal Court in Pejë/Peć. The claimants claimed the restitution of the property or, where this was not possible, compensation.
4. By its judgment of 30 March 2001 the Municipal Court granted the claim, and ordered the Municipality to restitute part of the property and for the other part, either to give them in use another piece of construction land belonging to the Municipality of an equal value, or to pay a compensation of 228,000 DEM.
5. On 9 July 2001, the claimants requested the Department of Urbanism, Geodesy and Cadastre of the Municipality of Pejë/Peć to register the property under their name, on the basis of the above-mentioned judgment.
6. On 7 November 2001, the abovementioned department requested the Municipal Administrator of Pejë/Peć to provide an opinion on the legal validity of the judgment of the Municipal Court.
7. On 15 March 2002, the complainant's representative sent a letter to the Municipal Administrator of Pejë/Peć, stating that according to Article 6.2 of UNMIK Regulation 2000/54 of 27 September 2000, "administration by UNMIK of property shall be without prejudice to the right of any person or entity to assert ownership or other rights in the property in a competent court in Kosovo, or in a judicial mechanism to be established by regulation." Therefore, he argued that the decision of the Municipal Court in the complainants' case should not be subjected to any assessment of its legal validity by any other authority.
8. The Municipality of Pejë/Peć submitted an application to the Municipal Court for the reopening of the proceedings in the case of the Islami heirs.
9. On 4 November 2004, the Municipal Court of Pejë/Peć took a decision allowing the reopening of the proceedings. It also annulled its previous judgment of 30 March 2001. According to the Court, the decision to reopen the proceedings was based on new evidence presented by the Municipality of Pejë/Peć, which at the time of the first decision existed, but could not be presented to the Court.
10. On 1 September 2005, the Islami heirs requested the Government of Kosovo and the Special Representative of the Secretary-General (SRSG) to order the Municipality to execute the judgment of 30 March 2001.
11. By judgment of 26 May 2006, the Municipal Court of Pejë/Peć declared the claim of the Islami heirs unfounded. It noted that the claimed property had been regularly expropriated in 1953, for the construction of a bridge, and held that the claimants could therefore not claim restitution of the property or payment of its counter-value.
12. The Islami heirs appealed against the above judgment of the Municipal Court to the District Court in Pejë/Peć. On 22 May 2008 the District Court rendered a judgment, confirming the Municipal Court judgment.

13. The Islami heirs submitted a request to the Supreme Court of Kosovo for revision of the District Court judgment. On 2 June 2009, the Supreme Court rejected the request for revision as ungrounded.
14. After the request for revision was rejected by the Supreme Court, the complainant submitted a request for review of legality to the Kosovo State Prosecutor's Office. On 24 December 2009, this Office sent a response to the complainant stating that in accordance with Article 245 para.3 of the Law on Contested Procedure, such a request is not allowed against a court decision (in the present case a judgment of the Supreme Court).
15. In the meantime, on 5 August 2009, two of the Islami heirs, including the complainant, submitted a complaint to EULEX, requesting it to reconsider the judgments of the Municipal Court of Pejë/Peć, to quash the judgments of the District Court of Pejë/Peć and of the Supreme Court.
16. On 6 January 2010, a EULEX Judge at the District Court of Pejë/Peć, responded that EULEX Judges did not have the power of a final appeal instance against cases decided by the local courts, so that they could not reopen cases that had been finally settled by the local courts.

III. THE COMPLAINT

17. The complainant in substance alleges a violation of his right of property (Article 1 of Protocol No. 1 to the European Convention on Human Rights), as well as a violation of his right to an effective remedy (Article 13 of the ECHR), as a result of the failure to implement the Municipal Court judgment of 30 March 2001, as well as a result of the decision to reopen the case and the subsequent unfavourable judgments taken by the Municipal Court, the District Court and the Supreme Court.

IV. THE LAW

18. 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.
19. 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.
20. Thus, at the moment when the final decision in the complainant's case, the Supreme Court judgment of 2 June 2009, was taken, UNMIK was no longer exercising executive authority over the Kosovo judiciary and had no responsibility for any violation of human rights allegedly committed by them.

21. For this reason, the Panel considers that the complaint is outside of its jurisdiction *ratione personae*, and must therefore be declared inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member