



The Human Rights Advisory Panel

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DECISION

Date of adoption: 16 December 2010

Case No. 11/08

Dragan PRELEVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 16 December 2010,
with the following members present:

Mr Marek NOWICKI, Presiding Member
Mr Paul LEMMENS
Ms Christine CHINKIN

Assisted by
Mr. Rajesh TALWAR, 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 lodged with the Panel on 5 May 2008 and registered on the same date. The complainant is represented by the lawyers' office of Aleksić, Musicki, and Associates, from Novi Sad, Republic of Serbia.
2. The Panel requested clarification, further information and documents regarding the complaint, by letters dated 16 May 2008 and 6 June 2008. A response to these letters was received on 17 June 2008.

3. The Panel requested further information from the complainant by letters dated 21 July 2008 and 17 November 2008. A response to these letters was received on 19 January 2009.
4. Another letter for further information and clarification, dated 22 May 2009, was sent to the claimant. A response was received on 27 July 2009.
5. On 1 February 2010, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the case. The SRSG responded by letter dated 23 April 2010.
6. On 22 September 2010, the SRSG's response was forwarded to the complainant for comments. The complainant's response was received by the Panel on 18 November 2010.

II. THE FACTS

7. The complainant is a resident of Kosovo currently living as a displaced person in Serbia. He is the owner of a flat located in Prishtinë/Priština. He lived there until June 1999 when he left Kosovo. On 22 June 1999, he concluded a contract with Mr B.M., granting him the right to use the flat, including its furniture and appliances, until his return. No rental amount was fixed. However, the contract provided that the user was obliged to pay for all utility costs, starting from the day he moved into the flat.
8. The complainant alleges that the flat was later damaged, its furniture and appliances were taken away, and no rent or utility bills were paid. The flat was occupied by Mr B.M. until the end of September 2005, time when he was evicted from it by the HPD.
9. On 30 August 2004, the complainant lodged a claim seeking compensation for the damage caused to his flat, as well as unpaid rent and utilities, with the Municipal Court of Prishtinë/Priština through the Municipal Court of Novi Sad, against Mr B.M., the Municipality of Prishtinë/Priština, and the Kosovo Provisional Institutions of Self-Government (PISG). The same complaint was again lodged on 8 May 2006, with the Municipal Court of Prishtinë/Priština, through the Municipal Court of Niš.
10. Approximately 17,000 compensation claims were lodged in 2004 before Kosovo courts, the vast majority of which 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 before Kosovo courts. The claims were directed against UNMIK, KFOR, the PISG and in most cases also 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).
11. 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 § 12 above, § 6).

12. On 15 November 2005, the DOJ called on the courts to begin processing claims for damage caused by identified natural persons and for damage 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. The complainant’s claim against Mr B.M. comes within this category, but by the end of 2008, the court had not contacted the complainant, and no hearing had been scheduled.
13. 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.

III. COMPLAINT

14. The complainant in substance alleges that the Municipal Court of Prishtinë/Priština has stayed the proceedings concerning his claims for compensation for damage to his flat, and for non-payment of rent and utility bills by the tenant Mr B.M., and that as a result, these proceedings 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

15. 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 on the Establishment of the Human Rights Advisory Panel.

Alleged violation of Article 6 § 1 of the ECHR

16. The Panel considers that, insofar as the complainant invokes a violation of Article 6 § 1 of the ECHR, he in fact raises two complaints (see the approach adopted 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). On the one hand, he complains about the fact that due to the stay of the proceedings in the competent courts, he has been unable to obtain the determination of his claims 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. On the other hand, he complains about the length of the proceedings before the competent courts, due to the fact that the proceedings were instituted in 2004 and again in 2006, 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 considers that the complaints under Article 6 § 1 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 these complaints are not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12 (HRAP, *Milogorić*, cited in § 16 above, at § 18).

18. No other ground for declaring these complaints inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member