The Human Rights Advisory Panel
UNMIK Administrative HQ, Building D, 10000 Pristina, Kosovo

DECISION

Date of adoption: 15 July 2009

Case No. 25/08

Mr. V. Z.

against

UNMIK

The Human Rights Advisory Panel sitting on 15 July 2009
with the following members present:

Mr. Marek NOWICKI, Presiding Member
Mr. Paul LEMMENS

Mr. Nedim Osmanagić, Officer-in-Charge

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, the facts are as follows:

2. The complainant, Mr. V.Z., is a Kosovo Resident currently living in Novi Sad, Vojvodina.

3. He claims that he was the owner of two kiosks in the municipality of Prizren. Following the war in Kosovo, he left his property on 14 June 1999. Following his departure, one kiosk has been destroyed, and that the other one was taken over by a certain L.R.

4. With respect to the first kiosk, the complainant lodged a claim with the Municipal Court of Prizren against the Provisional Institutions of Self-Government of Kosovo

(the PISG), the Municipality of Prizren, UNMIK and KFOR, seeking 24.000 euro in compensation for the damage caused to that property. The claim was dated 14 June 2004 and recorded by the Municipal Court on 16 September 2004.

5. It results from the file that the claim appears to belong to a large group of compensation claims for damage to property that arose after the entry into Kosovo of NATO forces in 1999. 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 DoJ Director 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."

6. To date, neither the Municipal Court of Prizren nor the respondents have contacted the complainant.. No hearing has been held. The complainant alleges that on an unspecified date he sent a request to the President of the Municipal Court to take action. On 28 November 2007 he also asked the Kosovo Property Agency (KPA) to take action in relation to the first kiosk.

7. With respect to the second kiosk, the complainant filed a claim for recognition of his ownership with the KPA. The complainant submits a copy of a claim dated 28 November 2007. According to information obtained from the KPA on 14 and 28 November 2008, the claim was already filed on 23 April 2007. The claim was published on 15 January 2008, which means that the claim was notified to the general public. Following this notification, a third party filed a competing claim for the same property. The matter is currently pending before the Kosovo Property Claims Commission (KPCC).

II. COMPLAINT

8. The complainant invokes a violation of his right to a fair trial and his right to property, because of the failure of the Municipal Court and the KPA to act.

9. The Panel considers that the complaint raises issues relating to the complainant's right to a fair trial (Article 6 § 1 of the European Convention on Human Rights (ECHR)) and his right to peaceful enjoyment of possessions (Article 1 of Protocol No. 1 to the ECHR).

III. PROCEEDINGS BEFORE THE PANEL

10. The complaint was introduced on 7 July 2008 and registered on the same date. The complainant is represented before the Panel by Ms. Svetlana Kvrgić, lawyer.

11. On 29 October 2008, the Panel requested information on the complainant's claim from the KPA.

12. The KPA responded to the Panel's request on 7 November 2008 and on 14 November 2008.

13. The Panel, by letter dated 17 November 2008, requested additional information from the KPA. A response was received on 28 November 2008.

14. On 8 and 12 December 2008 the Panel invited the complainant to comment on the information received from the KPA. The complainant has not responded.

15. The Panel communicated the case to the Special Representative of the Secretary-General (SRSG) on 23 April 2009 requesting his comments on behalf of UNMIK on the admissibility and merits of the complaint. The SRSG provided comments by letter dated 27 May 2009.

IV. THE LAW

16. 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.

A. With respect to the proceedings pending before the Municipal Court of Prizren

17. In his comments, the SRSG states, with regard to the first kiosk, that the complaint is inadmissible on the basis of non-exhaustion of remedies. He submits that 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 in these cases the obstacles to their efficient processing did not exist any longer. On 28 September 2008, following consultations with the Kosovo Judicial Council, which agreed to provide logistical support for processing the remaining claims, the DoJ opined that the remaining cases should be processed and the courts should be informed accordingly. The SRSG submits that the complainant's case thus has been recently reactivated.

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

19. 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, judgment of 20 February 1991, *Publications of the Court*, Series A, no. 198, p. 12, § 27; ECtHR (Grand Chamber), Selmouni v. France, judgment of 27 July 1999, no. 25803/99, § 76, *ECHR*, 1999-V).

20. 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 (see, in the same sense, the decision of the Panel of 22 May 2009 in case no. 38/08, Milogorić).

Alleged violation of Article 6 § 1 of the ECHR

21. The Panel considers that, insofar as the complainant invokes a violation of the right to a fair trial (Article 6 § 1 of the ECHR), he in fact raises two complaints (see the approach adopted in the above-mentioned Milogorić case; compare ECtHR, Aćimović v. Croatia, decision on admissibility of 30 May 2000, no.

48776/99; ECtHR, Kutić v. Croatia, decision on admissibility of 11 July 2000, no. 48778/99). First, 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. Second, he complains about the length of the proceedings before the Municipal Court, due to the fact that the proceedings have been instituted on 16 September 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.

22. The Panel notes that in his comments the SRSG has not indicated any specific legal remedy available to the complainant with 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.

23. The Panel considers that the complaint under Article 6 § 1 of the ECHR raises 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.

24. No other ground for declaring this complaint inadmissible has been established.

Alleged violation of Article 1 of Protocol No. 1

25. The complainant complains about a violation of his right to property (Article 1 of Protocol No.1), due to the lack of action by the Municipal Court of Prizren with respect to his claim for damages.

26. Regardless of whether or not the complainant failed to exhaust the available remedies in this respect, as submitted by the SRSG, the Panel notes that the complainant's claim before the Municipal Court relates to the destruction and the looting of his property. According to the complainant, he became aware of these acts in January 2003.

27. The Panel recalls that, 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 and the looting of property are instantaneous acts, which do not give rise to a continuing violation (see the decision of the Panel of 16 July 2008, Lajović, no. 09/08, § 7).

28. It is true that before the Panel the complainant does not complain directly about those acts, but only about the fact that, due to the stay of the proceedings, he has been unable thus far to obtain compensation for the damage. Nevertheless, insofar as the court proceedings are referred to from the point of view of the right of property, they cannot be detached from the acts upon which the claim before

the court is 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, judgment of 8 March 2006, no. 59532/00, § 77, *ECHR*, 2006-III).

29. It follows that this part of the complaint lies outside the Panel's jurisdiction *ratione temporis* (see the decision of the Panel of 4 June 2009 in case no. 61/08, Gojković).

B. With respect to the proceedings pending before the Kosovo Property Claims Commission

30. With regard to the second kiosk, the SRSG submits that the complaint is *prima facie* inadmissible for non-exhaustion of remedies as well, since the complainant's claim is still pending before the KPCC.

31. The KPA has indicated on 28 November 2008 that the proceedings concerning the complainant's claim were processed for being adjudicated by the KPCC. The website of the KPA indicates that the claim has not yet been adjudicated.

32. Insofar as the complainant invokes a violation of his right to a fair trial (Article 6 § 1 of the ECHR), the complainant has not raised any issue related to the fairness of the proceedings before the KPCC. This aspect of the complaint therefore does not disclose any appearance of a violation of the rights and freedoms set out in the international human rights instruments mentioned in Section 1.2 of UNMIK Regulation No. 2006/12 and must be rejected as manifestly ill-founded pursuant to Section 3.3 of UNMIK Regulation No. 2006/12.

33. Insofar as the complainant invokes a violation of his right to property (Article 1 of Protocol No.1), the Panel notes that the proceedings concerning his claim for recognition of ownership are still pending before the KPCC. 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.

FOR THESE REASONS,

The Panel, unanimously,

- DECLARES ADMISSIBLE THE COMPLAINT RELATING TO THE RIGHT OF ACCESS TO A COURT AND THE RIGHT TO A JUDICIAL DECISION WITHIN A REASONABLE TIME (ARTICLE 6 § 1 OF THE ECHR), WITH RESPECT TO THE PROCEEDINGS PENDING BEFORE THE MUNICIPAL COURT OF PRIZREN;

- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.

Nedim OSMANAGIĆ
Officer-in-Charge

Marek NOWICKI
Presiding member