The Human Rights Advisory Panel
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OPINION

Date of adoption: 24 March 2010

Cases No. 38/08, Petko Milogorić; 58/08, Milisav Živaljević; 61/08, Dragan Gojković; 63/08, Danilo Ćukić; and 69/08, Slavko Bogićević

against

UNMIK

The Human Rights Advisory Panel on 24 March 2010,
with the participation of the following members:
Mr. Marek NOWICKI, Presiding Member
Mr. Paul LEMMENS
Ms. Christine CHINKIN

Assisted by
Mr. Rajesh TALWAR, 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,

Makes the following findings and recommendations:

I. THE FACTS

1. During and mostly at the end of armed conflict in Kosovo in 1999, a large number of ethnic Serbs left their homes. In a great number of instances, their property was later damaged or destroyed. With a view to meeting the legal 5-year time-limit for submitting civil compensation claims, approximately 17,000 compensation claims were lodged in 2004 before

Kosovo courts against UNMIK, KFOR and/or Kosovo Provisional Institutions of Self-Government (PISG).

2. All five complainants are residents of Kosovo currently living as displaced Kosovo Serbs in Serbia.

3. They are owners of a real property in Kosovo, where they lived until the outbreak of hostilities. In 1999, fearing hostilities, the complainants moved to central Serbia leaving their property locked. Later on the complainants became aware that their property has been damaged or destroyed during the second half of 1999.

4. All complainants lodged lawsuits before the competent municipal courts against the relevant municipalities and the PISG seeking compensation for the damage caused to their property. Their lawsuits were recorded before the municipal courts in the second half of 2004. Since the filing of their lawsuits, the complainants have not been contacted by the courts and no hearings have been set.

5. The complainants based their lawsuits on Section 180(1) of the Civil Obligations Act (1978 SFRY *Zakon o obligacionim odnosima*, applicable by virtue of UNMIK Regulation 1999/24 and 2000/59 On the Law Applicable in Kosovo), which in relevant part reads as follows:

> "Responsibility for loss caused by death or bodily injury or by damage or destruction of another's property, when it results from violent acts or terror or from public demonstrations or manifestations, lies with the ... authority whose officers were under a duty, according to the laws in force, to prevent such loss."

6. 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. The letter reads as follows:

> "Honorable President,
>
> As you will be aware, during the last few months, over 14,000 civil claims for compensation relating to property that was damaged after the entry into Kosovo of NATO forces in 1999, have been lodged by ethnic Serbian claimants.
>
> The Department of Justice is mindful of the problems that such a huge influx of claims will pose for the courts, and is currently looking into how best to provide you with the logistical support necessary for processing the claims as efficiently as possible.
>
> Additionally, many claimants will require escorts in order to travel to the courts and this aspect alone will necessitate significant planning and coordination. The Department will contact you in the near future to seek your input to resolve this problem.
>
> In the meantime, we ask that no case be scheduled until such time as we have jointly determined how best to effect the processing of these cases.

> We will need to follow these cases closely. As part of this process, we have already taken steps to create a database to record and track the progress of these claims through the courts.
>
> Thank you for your cooperation and continued assistance in this matter."

7. On 15 November 2005, 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 the efficient processing of these cases" did not exist any longer. This covered mainly claims arising out of the 2004 riots directed against natural persons, not, however, claims related to the 1999 armed conflict.

8. On 28 September 2008 the Director of DOJ advised the courts that cases which had not been scheduled according to the 26 August 2004 DOJ request should now be processed.

9. 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.

10. Circumstances of the individual cases at issue are outlined in the annex to this opinion.

II. COMPLAINTS

11. Insofar as the complaints have been declared admissible, the complainants in substance allege that the Municipal Courts in Pejë/Peć and Zubin Potok have stayed the proceedings concerning their requests for damages for destroyed property and that these proceedings have not been concluded within a reasonable time (Article 6 § 1 of the European Convention on Human Rights (ECHR)), violating their right to an effective remedy under Article 13 of the ECHR as well.

III. PROCEEDINGS BEFORE THE PANEL

12. The complaint of Mr Milogorić (38/08) was lodged on 18 September 2008 and registered on the same date, while the other complaints at issue (Živaljević, 58/08; Gojković, 61/08; Ćukić, 63/08; and Bogićević, 69/08) were lodged on 15 December 2008 and registered on the same date. In the proceedings before the Panel, Mr Bogićević (69/09) was initially represented by Mr. Siniša Zabunović and the other complainants were represented by Ms. Jasmina Zupanjac, both Legal/Senior Legal Officers of the Danish Refugee Council (DRC). However, the DRC withdrew from participation in the proceedings before the Panel in December 2009.

13. The Panel communicated the case of Mr Milogorić (38/08) to the Special Representative of the Secretary-General (the SRSG) on 23 October 2008 and on 2 December 2008 requesting his comments on behalf of UNMIK on the admissibility and merits pursuant to Rule 30.1(b) of the Panel's Rules of Procedure. The SRSG responded with comments by a

letter received on 18 December 2008. The Panel communicated the cases of Mr Živaljević (58/08), Mr Gojković (61/08) and Mr Ćukić (63/08) on 28 April 2009, while the case of Mr Bogićević (69/08) was communicated to the SRSG on 5 May 2009. The SRSG submitted UNMIK's comments in these cases on 18 May 2009.

14. By a decision of 22 May 2009 the Panel declared the complaint of Mr Milogorić (38/08) admissible in part, and by decisions of 6 June 2009 the Panel declared the four other complaints at issue admissible in part.

15. On 3 July 2009 the SRSG submitted UNMIK's comments on the merits in the cases at issue. On 17 August 2009 the DRC submitted its response on behalf of the complainants it represented.

16. The Panel decided on 12 March 2010 to join the complaints.

IV. THE LAW

A. UNMIK's responsibility and the Panel's competence ratione temporis

17. UNMIK acknowledges that the organization and administration of the Kosovo judicial system was under its sole authority in 2004 but stresses that, shortly thereafter, the administration of justice was transferred from UNMIK to the Provisional Institutions of Self-Government in the pursuance of UNMIK's mandate under Security Council Resolution 1244 (1999) to build institutions in the rule of law sector. According to UNMIK, this has to be taken into account when assessing how UNMIK dealt with the thousands of cases submitted.

18. Accordingly, the Panel considers it relevant to address UNMIK's responsibility in the area of the administration of justice, once the relevant competence was transferred from UNMIK to the PISG. It should be noted at the outset that pursuant to the Constitutional Framework for Provisional Self-Government (UNMIK Regulation No. 2001/9 of 15 May 2001, Section 1.5), courts were among the PISG. However, the Panel recalls that it resulted from the Constitutional Framework, in particular from Chapter 12, that the SRSG retained a power of oversight over the PISG, their officials and their agencies. He was in particular empowered to take appropriate measures whenever their actions were inconsistent with the Constitutional Framework. Since the PISG had to "observe and ensure internationally recognized human rights and fundamental freedoms", including those rights and freedoms set forth in a number of international human rights instruments (Section 3.2), it was within the power of the SRSG to take action if these rights were violated. This in itself leads to the conclusion that UNMIK remained responsible, from a human rights perspective, for any action or omission imputable to the PISG (see HRAP, *Spahiu* case, no. 02/08, partial opinion of 20 March 2009, paras. 25, 28 and 29). Finally, and most significantly, it was the direct action of UNMIK's authority, i.e. the DOJ, and not of the PISG, which effectively prevented the courts from dealing with the complainants' cases.

19. With regard to its competence *ratione temporis*, the Panel recalls that it has jurisdiction over complaints alleging violations of human rights arising from facts occurred prior to 23 April 2005 only where these facts give rise to a continuing violation of human rights (Section 2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel). In the cases at issue, the Panel notes that the initial violation alleged

by the applicant was the August 2004 DOJ letter which halted judicial proceedings. While the letter in itself does not fall within the Panel's temporal jurisdiction, its effects were extended to 28 September 2008 (see above, para. 8), therefore constituting a continuing situation to that date. Similarly, the period to be taken into consideration with regard to length of procedure starts from the date of the Panel's temporal jurisdiction, which is 23 April 2005. However, the Panel will take into account the state of proceedings at that date (European Court of Human Rights (ECtHR), *Foti and Others v. Italy*, judgment of 10 December 1982, *Publications of the Court*, Series A, no. 56, p. 15, § 53).

20. The period under review ended on 9 December 2008, when UNMIK's responsibility with regard to the judiciary in Kosovo, and consequently for its handling of the present cases, ceased (see above, para. 9).

B. Alleged violation of Article 6 § 1 of the ECHR

21. The complainants in substance allege two violations of Article 6 § 1 of the ECHR, which in relevant part reads as follows:

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

22. Firstly, they complain that their right of access to a court has been violated given that the stay of the proceedings in the municipal courts has prevented them from obtaining determinations of their claims for damaged and/or destroyed property.

23. Secondly, they complain about the length of the proceedings before the municipal courts, due to the fact that their cases, instituted in 2004, have not been examined since then, in breach of their right to a judicial decision within a reasonable time.

UNMIK's submission

24. At the outset, UNMIK notes that the complainants' cases fall within the group of civil claims filed in 2004 in relation to property that was damaged after the entry into Kosovo of NATO forces in 1999. In August 2004, when the UNMIK Department of Justice was in charge of ensuring the proper functioning of the judicial system in Kosovo, more than 14,000 civil claims by ethnic Serbian claimants had been lodged within a few months, in order to meet the statutory limitation period. By the end of the year, more than 17,000 of such claims had been submitted. The Kosovo courts were not in a position to efficiently process these claims and faced a real possibility of a complete standstill of the court system.

25. Therefore, in August 2004 the DOJ requested the Kosovo courts not to schedule these cases, due to the lack of sufficient logistical support, the need to ensure appropriate security arrangements, including escort, for claimants and their attorneys to 24 different municipal courts. Significant planning and organization was required to ensure access to justice by vulnerable minority plaintiffs. If UNMIK had not requested that the courts delay the scheduling of the cases, the courts would not only have been unable to deal with these cases expeditiously, but the normal functioning of a number of courts would have been impaired. Accordingly, the August 2004 request must be considered appropriate in view of these circumstances, as it was the only way for UNMIK to deal with this exceptional situation.

26. Elaborating developments following the August 2004 DOJ letter, UNMIK notes that it initially developed a strategy of how this category of cases could be dealt with outside the court system, then considered it best that such cases be dealt with by the court system. This required issuance of legislation and the establishment of additional institutional capacity. Further, UNMIK considered the option of including this issue in a status settlement agreement for Kosovo. At one point in the settlement negotiations, there was a view that financial settlement issues could be better addressed in direct talks. However, in mid-December 2007, when the talks failed, it became clear that no relevant agreement was attainable. Only from that time did UNMIK consider urging the Kosovo courts to process these cases.

27. On 28 September 2008, after consultations with the Kosovo Judicial Council (KJC), responsible for the administration of Kosovo courts, the Director of DOJ advised the courts that cases which had not been scheduled according to the August 2004 DOJ request should then be processed. At the same time, UNMIK would assist the KJC in providing whatever logistical support might be required for the processing of these cases. UNMIK argues that it was not clear then at what time UNMIK would transfer its responsibilities in the area of justice to EULEX. After EULEX assumed full operational control in the justice sector on 9 December 2008, UNMIK was no longer in a position to provide the envisaged assistance to KJC.

28. UNMIK argues that, compared to a State with a well organized and established judicial system, which has the responsibility to deal with the sudden submission of a large number of cases, UNMIK, as the interim administration in Kosovo, also had to be concerned with its mandate, which required it to build rule of law institutions and transfer certain competencies in the justice sector to local institutions established by UNMIK under Security Council Resolution 1244 (1999); once these competencies were transferred, the PISG were required to organize the local judicial system in a sustainable manner. These facts and obligations have to be taken into account when assessing the reasonableness of the length of proceedings. The standards which are required from a State cannot be the same in the case of an interim administration that is tasked to build justice institutions. Given the complete transfer of responsibilities in the area of administration of justice to the PISG in 2005, the call was then on the new institutions to act, once they became fully operational with the support of UNMIK.

29. UNMIK further argues that the length of the stay of proceedings was due to several factors: UNMIK was confronted with significant logistical and other difficulties in handling the 17,000 cases; claims were submitted at a time when UNMIK had to transfer its responsibilities in the area of administration of justice to local institutions; UNMIK had to build those capacities in a parallel effort. Soon after that the possibility arose that these claims could be handled under a status settlement arrangement, and only at the end of 2007 it became clear that this was no longer a viable possibility. Taking into account the relevant explanations, UNMIK argues that it becomes clear that it acted diligently and was always concerned with finding the best practical solution for the resolution of these claims. The delay caused when UNMIK was in charge of justice matters cannot be held against UNMIK but was due to the unusual circumstances and events surrounding the 17,000 damage claims submitted in 2004.

30. Finally, considering the complexity of the cases, UNMIK stresses that the legal matter at stake in these cases involves important and complex questions on a number of points. Accordingly, it is clear that the local judiciary had to be properly prepared in order to ensure

that these cases would be addressed in a manner compatible with the exercise of reasonable justice.

31. In conclusion, UNMIK states that there was no violation of Article 6 § 1 of the ECHR in the cases at issue on any account.

The complainants' submission

32. The complainants submit that, by postponing the proceedings, UNMIK just set aside the problem and the DOJ did not take any action to address it. The subsequent instruction by the DOJ to the courts lifting the stay was issued without any new measures, legislation, or support to the courts. The only effects of the suspension and subsequent lifting of the suspension of the proceedings were to the detriment of the complainants - a delay of over four years in which the cases could have been processed, and the compensation claims assessed and eventually awarded.

33. The complainants further argue that UNMIK does not submit any evidence that compensation claims required the issuance of new legislation in this area and the establishment of additional institutional capacity in the Kosovo judicial system. All compensation claims were linked to legislation in force in Kosovo long before June 1999. Therefore, judges needed no additional trainings and preparations to be able to deal with these compensation cases. Also, with regard to support for the courts, at the time when the first of the 17,000 compensation claims were submitted, there were already four Court Liaison Offices in place and the only additional measures that were taken in response to the compensation claims were in relation to the delivery of the claims to courts, not to the actual processing of cases.

The Panel's assessment

1. General principles

34. The Panel recalls that the guarantees laid down in Article 6 § 1 of the ECHR secure to everyone, *inter alia*, the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see ECtHR, *Golder v. United Kingdom*, judgment of 21 February 1975, *Publications of the Court*, Series A, no. 18, pp. 13-18, §§ 28-36).

35. In this connection, the Panel notes that Article 6 § 1 of the ECHR guarantees the right of access to a court for the determination of civil disputes. The ECtHR considers that this right of access to a court includes not only the right to institute proceedings but also the right to obtain a "determination" of the dispute by a court. It would be illusory if a State's domestic legal system allowed an individual to bring a civil action before a court without ensuring that the case would be determined by a final decision in the judicial proceedings. It would be inconceivable for Article 6 § 1 to describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without guaranteeing the parties that their civil disputes will be finally determined (see*, mutatis mutandis*, ECtHR, *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions*, 1997-II, pp. 510-511, § 40).

36. The Panel notes, however, that this right is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the competent authorities. In this respect, the authorities enjoy a certain margin of appreciation. However, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 of the ECHR if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see ECtHR, *Stubbings and Others v. United Kingdom*, judgment of 22 October 1996, *Reports of Judgments and Decisions*, 1996-IV, p. 1502, § 50). This is especially so in cases where the public authorities are themselves parties to the proceedings (ECtHR, *Ećimović v. Croatia*, no. 61237/00, judgment of 9 January 2003, *ECHR*, 2003-XI, § 30).

37. With regard to the length of proceedings, the Panel recalls that the ECHR places a duty on the States to organize 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". Nonetheless, a temporary backlog of court business does not entail liability on the part of the authorities if they take appropriate remedial action with the requisite promptness (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. As to the right of access to a court

38. The Panel notes that the complainants in the present case, pursuant to the relevant legislation, enjoyed the possibility of bringing legal proceedings in their cases. They used this opportunity by lodging the lawsuits suing various authorities before the municipal courts for damages in respect of their destroyed property.

39. However, the complainants' civil cases were, at the very moment of lodging their lawsuits, directed to a standstill by virtue of the DOJ's request of 26 August 2004. Accordingly, no procedure at all was instituted or had taken place upon these lawsuits. The relevant courts did not issue any decision related to the standstill of proceedings in the complainants' cases. The rest of the 17,000 cases faced the same impasse. At best, the plaintiffs were served with a copy of the DOJ's August 2004 letter. It follows that the complainants' right of access to a court was restricted because of an initiative directly taken by an UNMIK organ. This situation ended on 28 September 2008, when the DOJ called the courts to process the cases at hand.

40. It appears that, faced with a tsunami of compensation lawsuits within months, UNMIK opted to temporarily prevent any proceedings in these cases. The Panel considers that, at the outset, insofar it was meant to last a very limited period of time, this measure would appear reasonable, having in mind the anticipated course of action by UNMIK as outlined in the DOJ's August 2004 letter, i.e. providing necessary logistical support and creating a database to record and track progress of these claims through the courts.

41. The Panel duly notes the circumstances outlined by UNMIK with regard to the influx of 17,000 cases. UNMIK rightly points that significant planning and organization was required to ensure access to justice to those who UNMIK acknowledged to be "vulnerable minority

plaintiffs". This has to be considered as a legitimate aim for UNMIK's involvement in the matter. The Panel recalls that a situation where a significant number of claims for large sums of money are lodged against a State may call for some further regulation by the State and that in this respect the States enjoy a certain margin of appreciation. However, the measures taken must still be compatible with Article 6 § 1 of the ECHR (see ECtHR, *Kutić v. Croatia*, no. 48778/99, judgment of 1 March 2002, *ECHR*, 2002-II, § 31).

42. In the present case the restriction – in fact a complete denial of access to a court for individuals who had brought this type of case before a court – lasted four years. UNMIK argued that it initially considered ways of handling the cases outside the court system, but then considered it best that such cases be dealt with by the courts. Although UNMIK recognised the need to issue new legislation and to establish additional institutional capacity, in fact no new legislation to regulate this matter was adopted, and it is not clear which steps, if any, taken in the capacity building area were relevant for the matter, as no attempts to re-organize the system were indicated by UNMIK. In fact, UNMIK rather hoped that the mass of claims would disappear, following negotiations on the status of Kosovo. While hoping for a fruitful outcome to the relevant political negotiations was certainly reasonable for at least some time, failing such agreement the issue should have been revitalised as a matter of urgency. In summary, in four years, no action capable of solving the issue was taken. It has not been argued or demonstrated that the courts were ready to handle these cases by September 2008, some two and a half months before the transfer of UNMIK's competence in the area of justice to EULEX, when the DOJ advised the courts to process the cases affected by its August 2004 intervention and offered whatever logistical support might be required.

43. The Panel finds that UNMIK did not manage to achieve a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. The four years of uncertainty experienced by the complainants over whether and when their cases would be processed by the courts was intensified during the relevant time by the fact that the August 2004 letter contained no time-frame to enable anyone to reasonably anticipate when the courts would start processing the cases, if at all. As noted already, no new legislation was adopted in the meantime nor were any mechanisms provided to assist the courts to enable the complainants to have their claims determined. In sum, instead of ensuring access to justice to vulnerable minority plaintiffs, UNMIK in fact denied them this access.

44. The Panel notes UNMIK's argument that the standards which are required from a State cannot be the same in the case of an interim administration that is tasked to build justice institutions. The Panel cannot concur with this reasoning. It is true that UNMIK's interim character and related difficulties must be duly taken into account with regard to a number of situations, but under no circumstances could these elements be taken as an excuse for diminishing standards of respect for human rights, which were duly incorporated into UNMIK's mandate.

45. The Panel recalls that the ECtHR, in the cases of *Kutić* (cited above), *Multiplex* (ECtHR, *Multiplex v. Croatia*, no. 58112/00, judgment of 10 July 2003) and *Aćimović* (cited above) found a violation of the complainants' right of access to a court under Article 6 § 1 of the ECHR insofar as the possibility to have their claim determined by a court was stayed for a long period of time as a result of the intervention of the legislature.

46. Accordingly, the Panel finds that the fact that, for a long period of time, the complainants were prevented from having their compensation claims determined by the courts

as a consequence of the interference by the DOJ, constituted a violation of Article 6 § 1 of the ECHR.

b. As to the length of the proceedings

47. With regard to the length of the proceedings, the Panel has already taken this aspect into account in its consideration of the complainants' right of access to a court above. Having regard to its findings on that point, it finds that the issue of the length of the proceedings must be regarded as having been absorbed by the issue of access to a court (see ECtHR, *Kutić v. Croatia*, cited above, §§ 34-35).

48. The Panel therefore finds that it is not necessary to examine separately the issue of the length of the proceedings.

C. Alleged violation of Article 13 of the ECHR

49. The Panel finds that the complaints under Article 13 of the ECHR (right to an effective remedy) concern essentially the same issues as those discussed under Article 6 § 1. In these circumstances, the Panel finds that no separate issues arise under Article 13 of the ECHR.

V. RECOMMENDATIONS

50. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.

51. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation found and to redress as far as possible the effects thereof. However, as the Panel found above, UNMIK's responsibility with regard to the judiciary in Kosovo ended on 9 December 2008, with EULEX assuming full operational control in the area of rule of law (para. 9). UNMIK therefore is no longer in a position to take measures that will have a direct impact on proceedings pending before the municipal courts.

52. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violation for which it is responsible. In line with the case law of the ECtHR on situations of reduced State jurisdiction, the Panel is of the opinion that UNMIK must endeavour, with all the diplomatic means available to it *vis-à-vis* the Kosovo authorities, to obtain assurances that the cases filed by the complainants will be duly processed (compare ECtHR (grand chamber), *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 333; ECtHR, *Al-Saadoon and Mfudhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171).

53. The Panel further considers that UNMIK should award adequate compensation to each of the complainants for non-pecuniary damage suffered as a result of the prolonged stay of the proceedings instituted by them.

FOR THESE REASONS,

The Panel, unanimously,

1. FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN RESPECT OF THE INABILITY OF THE COMPLAINANTS TO HAVE THEIR CLAIMS DETERMINED BY THE COURTS;

2. FINDS THAT THERE IS NO NEED TO EXAMINE THE COMPLAINTS UNDER ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AS TO THE LENGTH OF THE PROCEEDINGS;

3. FINDS THAT THERE IS NO NEED TO EXAMINE THE COMPLAINTS UNDER ARTICLE 13 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;

4. RECOMMENDS THAT UNMIK TAKE THE FOLLOWING MEASURES:

a. URGE THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ASSURE THAT THE COMPLAINANTS' CASES WILL BE DECIDED WITHOUT ANY FURTHER DELAY;

b. AWARD ADEQUATE COMPENSATION TO EACH OF THE COMPLAINANTS FOR NON-PECUNIARY DAMAGE;

c. TAKE IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND INFORM THE COMPLAINANTS AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member

Annex

Case No. 38/08, Petko Milogorić

1. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.

2. He is the owner of a residential house and a real estate located in the Municipality of Pejë/Peć, where he lived until the outbreak of hostilities in Kosovo. On 15 June 1999, fearing hostilities, the complainant moved, together with his family, to central Serbia proper leaving his property locked. Later on, the complainant has been informed by his neighbours that his property has been plundered and demolished during the second half of 1999.

3. On 13 December 2004 the complainant lodged a compensation lawsuit before the Municipal Court of Pejë/Peć against the Municipality of Pejë/Peć and the PISG seeking compensation for the destruction of his property. In his claim the complainant requested 197,154 euros in compensation for this damage.

4. Since the filing of his lawsuit in 2004 the complainant has not been contacted by the Municipal Court and no date for a hearing has been set. On 13 June 2008, the complainant addressed an urgent request to the President of the Municipal Court to initiate the trial procedure. There was no answer to this request.

Case No. 58/08, Milisav Živaljević

5. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.

6. He is the owner of an apartment in Pejë/Peć, where he lived until the outbreak of hostilities in Kosovo. In the course of 1999, fearing hostilities, the complainant moved, together with his family, to central Serbia proper leaving his apartment locked. The complainant was informed in 2000 by his neighbours that his property had been looted and demolished during the second half of 1999.

7. On 13 December 2004 the complainant lodged a compensation lawsuit before the Municipal Court of Pejë/Peć against the Municipality of Pejë/Peć and the PISG seeking compensation for the destruction of his property. In his claim the complainant requested 50,000 euros in compensation for this damage.

8. Since the filing of his lawsuit in 2004 the complainant has not been contacted by the Municipal Court and no date for a hearing has been set.

Case no. 61/08, Dragan Gojković

9. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.

10. He is the owner of two houses and an additional building located in the Municipality of Pejë/Peć, where he lived until the outbreak of hostilities in Kosovo. In the course of 1999, fearing hostilities, the complainant moved, together with his family, to central Serbia proper

leaving his property locked. The complainant was informed in 2000 by his neighbours that his property has been devastated and demolished during the second half of 1999.

11. The complainant lodged a compensation lawsuit before the Municipal Court of Pejë/Peć against the Municipality of Pejë/Peć and the PISG seeking compensation for the destruction of his property. The lawsuit was recorded at the Municipal Court on 13 December 2004. In his claim the complainant requested 200,000 euros in compensation for this damage.

12. Since the filing of his lawsuit in 2004 the complainant has not been contacted by the Municipal Court and no date for a hearing has been set. On 9 September 2008, the complainant addressed an urgent request to the President of the Municipal Court to initiate the trial procedure. There was no answer to this request.

Case no. 63/08, Danilo Ćukić

13. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.

14. He is the owner of two houses and a stable located in the Municipality of Zubin Potok, where he lived until the outbreak of hostilities in Kosovo. In the course of 1999, fearing hostilities, the complainant moved, together with his family, to central Serbia proper leaving his property locked. The complainant was informed in 2000 by his neighbours that his property has been demolished during the second half of 1999.

15. The complainant lodged a compensation lawsuit before the Municipal Court of Zubin Potok against the Municipality of Zubin Potok, the PISG, UNMIK and KFOR, seeking compensation for the destruction of his property. The lawsuit was recorded at the Municipal Court on 17 September 2004. In his claim the complainant requested 77,000 euros in compensation for this damage.

16. Since the filing of his lawsuit in 2004 the complainant has not been contacted by the Municipal Court and no date for a hearing has been set. On 8 September 2008, the complainant addressed an urgent request to the President of the Municipal Court to initiate the trial procedure. There was no answer to this request.

Case no. 69/08, Slavko Bogićević

17. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.

18. The complainant is the owner of a house (inherited from his late father through inheritance decision no. 1938/07, issued by the Municipal Court in Leskovac, Serbia, on 29 January 2008) located in the Municipality of Pejë/Peć, where he lived until the outbreak of hostilities in Kosovo. In the course of 1999, fearing hostilities, the complainant moved, together with his family, to central Serbia proper leaving his property locked. The complainant was informed in 2003 by his neighbours that the house was destroyed.

19. The complainant lodged a compensation lawsuit before the Municipal Court of Pejë/Peć against the Municipality of Pejë/Peć and the PISG seeking compensation for the destruction

of his property. The lawsuit was recorded at the Municipal Court on 24 September 2004. In his claim the complainant requested 218,000 euros in compensation for this damage.

20. Since the filing of his lawsuit in 2004 the complainant has not been contacted by the Municipal Court and no date for a hearing has been set.