



The Human Rights Advisory Panel

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DECISION

Date of adoption: 9 September 2010

Cases Nos. 59/08, Tomo PETROVIĆ; 60/08, Obrad ĐOSOVIĆ; 64/08, Dragan PETKOVIĆ; 67/08, Miodrag MILOSAVLJEVIĆ; 07/09, Ćedo RALEVIĆ; 08/09, Miljko RALEVIĆ; 09/09, Dragomir RALEVIĆ; 10/09, Milenko RALEVIĆ; 11/09, Simo RALEVIĆ; 16/09 and 17/09 Muharem IBRAJ; 22/09 Musa IBRAJ

against

UNMIK

The Human Rights Advisory Panel sitting on 9 September 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 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, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaints of Messrs Petrović (case no. 59/08), Đosović (case no. 60/08), Petković (case no. 64/08) and Milosavljević (case no. 67/08) were lodged on 15 December 2008 and registered on the same date. In the proceedings before the Panel, these complainants were initially represented by the Danish Refugee Council (DRC). However, the DRC withdrew from participation in the proceedings before the Panel in December 2009. The complaints of the Messrs Ralević (cases nos. 07/09, 08/09, 09/09, 10/09 and 11/09) were lodged and registered on 21 January 2009, as well as the complaints of the Messrs Ibraj (16/09, 17/09 and 22/09).
2. On 12 September 2009 the Panel, pursuant to Rule 20 of its Rules of Procedure, joined the complaints of the Messrs Ralević. On the same date, it also joined the complaints of the Messrs Ibraj.

II. THE FACTS

3. All the complainants, except Mr Musa Ibraj who died in the course of the proceedings before the Panel, are residents of Kosovo currently living as displaced persons in Serbia. They were owners of real property in Kosovo, where they lived until 1999 when, fearing hostilities, they left Kosovo. Later on they became aware that their property had been damaged or destroyed during the second half of 1999.
4. All complainants lodged claims in 2004 seeking compensation for the damage caused to their property with the competent courts against UNMIK, KFOR, the Kosovo Provisional Institutions of Self-Government (PISG) and the relevant municipalities, with the exception of Messrs Petković and Milosavljević who directed their claim only against the Municipality and the PISG.
5. By the end of 2008, the courts had not contacted the complainants, and no hearings had been scheduled.
6. The complainants' claims belong to a group of approximately 17,000 compensation claims, the vast majority of which were filed 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).
7. 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 § 6 above, at § 6).

8. 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.
9. 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.
10. 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.
11. The circumstances of the individual cases at issue are outlined in the annex to this decision.

III. COMPLAINTS

12. The complainants in substance allege that the relevant courts have stayed the proceedings concerning their claims for damages for destroyed property 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). They allege that for the same reason their right to an effective remedy under Article 13 of the ECHR has been violated as well.
13. The complainants further complain that by the devastation of their property and by the refusal of the competent courts to decide their claims for damages, their right to property (Article 1 of Protocol No. 1 to the ECHR) has been violated. They allege also a violation of the right to family life and home (Article 8 of the ECHR), as they are prevented from returning to their homes.

IV. JOINDER OF THE COMPLAINTS AND APPLICATION OF RULE 29BIS OF THE PANEL’S RULES OF PROCEDURE

14. The Panel decides, pursuant to Rule 20 of its Rules of Procedure, to join the present complaints.
15. The Panel further notes that the complaints at issue raise questions which are substantially the same as those that have been raised, among others, in the cases nos. 38/08, *Milogorić*, 58/08, *Živaljević*, 61/08, *Gojković*, 63/08, *Ćukić*, and 69/08, *Bogićević*, which have already been examined by the Panel. Moreover, it appears

from the elements of the file that no new admissibility issue arises with regard to the present cases. Therefore, pursuant to Rule 29bis of the Panel's Rules of Procedure, the Panel finds that it is not necessary to communicate the present complaints to UNMIK and that it can examine the admissibility of the complaints without so doing.

V. 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 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel.

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

17. The Panel considers that, insofar as the complainants invoke a violation of Articles 6 § 1 and 13 of the ECHR, they in fact raise 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, they complain about the fact that due to the stay of the proceedings in the competent courts, they have been unable to obtain the determination of their claims for damages for destroyed property. The Panel considers that this complaint may raise an issue of their right of access to a court under Article 6 § 1 of the ECHR and of their right to an effective remedy under Article 13 of the ECHR. On the other hand, they complain about the length of the proceedings before the competent courts, due to the fact that the proceedings were instituted in 2004 and that their claims have not been examined since then. This complaint may raise an issue of their right to a judicial decision within a reasonable time, in the sense of Article 6 § 1 of the ECHR.
18. The Panel further recalls its decision in the case of *Milogorić* that the complaints under 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 these complaints are not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12 (HRAP, *Milogorić*, cited in § 7 above, at § 18).
19. No other ground for declaring these complaints inadmissible has been established.

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

20. The complainants all complain about a violation of their right to property (Article 1 of Protocol No.1). They generally complain about the fact that their property has been damaged or destroyed and about the failure by the competent courts to decide on their claims for damages.
21. 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 damaging or the 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 complaints lies outside the Panel's jurisdiction *ratione temporis*.

22. With respect to the complaint that, due to the stay of the proceedings instituted by the complainants, 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), *Blečić v. Croatia*, no. 59532/00, judgment of 8 March 2006, § 77, *ECHR*, 2006-III).

23. It follows that this part of the complaints also lies outside the Panel's jurisdiction *ratione temporis* (see HRAP, *Gojković*, no. 63/08, decision of 4 June 2009, §§ 24-25).

Alleged violation of Article 8 of the ECHR

24. The complainants allege that their right to family life and home has been violated (Article 8 of the ECHR).
25. As noted above, the complainants' property was destroyed sometime in the second half of 1999. For the above-mentioned reason, any complaint relating to the destruction of the complainants' homes lies outside the Panel's jurisdiction *ratione temporis* (see §§ 22-23).
26. In addition, this part of the complaints is not substantiated.

FOR THESE REASONS,

The Panel, unanimously,

- DECLARES ADMISSIBLE THE COMPLAINTS RELATING TO THE RIGHT OF ACCESS TO A COURT AND THE RIGHT TO AN EFFECTIVE REMEDY (ARTICLES 6 § 1 AND 13 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS) AND THE RIGHT TO A JUDICIAL DECISION WITHIN A REASONABLE TIME (ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS);

- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINTS.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member

Annex

Case No. 59/08, Tomo Petrović

1. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
2. He is the owner of a trailer which was located in the Municipality of Pejë/Peć, where he lived until June 1999. He has been informed by his neighbours that his property had been devastated and demolished during the second half of 1999.
3. In June 2004 the complainant lodged a compensation lawsuit before the Municipal Court of Pejë/Peć against the Municipality of Pejë/Peć, the PISG, UNMIK and KFOR seeking compensation for the destruction of his property. He claims 42,000 euros in compensation for this damage.
4. By the end of 2008, the Municipal Court had not contacted the complainant, and no hearing had been scheduled.

Case No. 60/08, Obrad Đosović

5. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
6. The complainant is the owner of an apartment located in the Municipality of Pejë/Peć, where he lived until June 1999. He has been informed by his neighbours that his apartment had been squatted in and his property demolished and stolen during the second half of 1999.
7. In June 2004 the complainant lodged a compensation lawsuit before the Municipal Court of Pejë/Peć against the Municipality of Pejë/Peć, the PISG, UNMIK and KFOR seeking compensation for the destruction of his property. He claims 151,000 euros in compensation for this damage.
8. By the end of 2008, the Municipal Court had not contacted the complainant, and no hearing had been scheduled.

Case No. 64/08, Dragan Petković

9. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
10. He is the owner of a residential house located in Ferizaj/Uroševac where he lived until June 1999. He has been informed by his neighbours that his property had been destroyed during the second half of 1999.
11. In June 2004 the complainant lodged a compensation lawsuit before the Municipal Court of Ferizaj/Uroševac against the Municipality of Ferizaj/Uroševac and the

PISG seeking compensation for the destruction of his property. He claims 510,000 euros in compensation for this damage.

12. By the end of 2008, the Municipal Court had not contacted the complainant, and no hearing had been scheduled.

Case No. 67/08, Miodrag Milosavljević

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

14. The complainant is the owner of three houses located in the Municipality of Istog/Istok, where he lived until June 1999. He has been informed by his neighbours that his apartment had been squatted in and his property demolished and stolen during the second half of 1999.

15. In June 2004 the complainant lodged a compensation lawsuit before the Municipal Court of Istog/Istok against the Municipality of Istog/Istok and the PISG seeking compensation for the destruction of his property. He claims 87,000 euros in compensation for this damage.

16. By the end of 2008, the Municipal Court had not contacted the complainant, and no hearing had been scheduled.

Case No. 07/09, Ćedo Ralević

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

18. He is the owner of a residential house located in the Municipality of Pejë/Peć, where he lived until June 1999. He has been informed by his neighbours that his property had been devastated and demolished during the second half of 1999.

19. In June 2004 the complainant lodged a compensation lawsuit before the District Court of Prishtinë/Priština against the Municipality of Pejë/Peć, the PISG, UNMIK and KFOR seeking compensation for the destruction of his property. He claims 370,000 euros in compensation for this damage.

20. By the end of 2008, the District Court had not contacted the complainant, and no hearing had been scheduled.

Case No. 08/09, Miljko Ralević

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

22. He is the owner of a residential house located in the Municipality of Pejë/Peć, where he lived until June 1999. He has been informed by his neighbours that his property had been devastated and demolished during the second half of 1999.

23. In June 2004 the complainant lodged a compensation lawsuit before the District Court of Prishtinë/Priština against the Municipality of Pejë/Peć, the PISG, UNMIK and KFOR seeking compensation for the destruction of his property. He claims 650,000 euros in compensation for this damage.

24. By the end of 2008, the District Court had not contacted the complainant, and no hearing had been scheduled.

Case No. 09/09, Dragomir Ralević

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

26. He is the owner of a residential house located in the Municipality of Pejë/Peć, where he lived until June 1999. He has been informed by his neighbours that his property had been devastated and demolished during the second half of 1999.

27. On 5 November 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. He claims 600,000 euros in compensation for this damage.

28. By the end of 2008, the Municipal Court had not contacted the complainant, and no hearing had been scheduled.

Case No. 10/09, Milenko Ralević

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

30. He is the owner of a residential house located in the Municipality of Pejë/Peć, where he lived until June 1999. He has been informed by his neighbours that his property had been devastated and demolished during the second half of 1999.

31. On 5 November 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. He claims 200,000 euros in compensation for this damage.

32. By the end of 2008, the Municipal Court had not contacted the complainant, and no hearing had been scheduled.

Case No. 11/09, Simo Ralević

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

34. He is the owner of a residential house located in the Municipality of Pejë/Peć, where he lived until June 1999. He has been informed by his neighbours that his property had been devastated and demolished during the second half of 1999.

35. In June 2004 the complainant lodged a compensation lawsuit before the District Court of Prishtinë/Priština against the Municipality of Pejë/Peć, the PISG, UNMIK and KFOR seeking compensation for the destruction of his property. He claims 1,340,000 euros in compensation for this damage.
36. By the end of 2008, the District Court had not contacted the complainant, and no hearing had been scheduled.

Cases Nos. 16/09 and 17/09, Muharem Ibraj; Case No. 22/09, Musa Ibraj

37. The complainant Muharem Ibraj is a resident of Kosovo currently living as a displaced person in Serbia. He also represents, in the proceedings before the Panel, his late father Musa who died in April 2009.
38. The Messrs Ibraj are the owners of a residential houses located in the Municipality of Gjakovë/Đakovica, where they lived until June 1999. They had been informed by their neighbours that their property had been devastated and demolished during the second half of 1999.
39. In the course of 2004 the complainants lodged three separate compensation lawsuits before the District Court of Prishtinë/Priština against the Municipality of Gjakovë/Đakovica, the PISG, UNMIK and KFOR seeking compensation for the destruction of their property. They claim a total of 416,000 euros in compensation for this damage.
40. By the end of 2008, the District Court had not contacted the complainants, and no hearing had been scheduled.