



## DECISION

**Date of adoption: 21 January 2011**

**Case No. 316/09**

**Ruža SIMIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel on 21 January 2011,  
with the following members taking part:

Mr Marek NOWICKI, Presiding Member  
Mr Paul LEMMENS

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 11 November 2009 and registered on the same date.
2. In accordance with Rule 29*bis* of its Rules of Procedure, the Panel finds that it is not necessary to communicate the complaint to UNMIK and that it can examine the admissibility of the complaint without so doing.

## II. THE FACTS

3. The complainant is a resident of Kosovo currently living as a displaced person in Serbia. She is the owner of a flat located in Rahovec/Orahovac. She lived there with her family until October 1999 when they left Kosovo. Later on, in 2003, the complainant became aware that her flat was occupied and the movable property in it was destroyed.
4. The complainant also states that while she was trying to leave Kosovo in October 1999, in her family's car, she was stopped and attacked in Pejë/Peć, and the car and all the personal belongings in it, including electronic appliances, clothes, documents, money and gold, were set on fire by the attackers.
5. In July 2004, the complainant lodged a claim seeking compensation for the damage caused to her flat, with the Municipal Court of Rahovec/Orahovac against UNMIK, KFOR, the Kosovo Provisional Institutions of Self-Government (PISG), and the Municipality of Rahovec/Orahovac.
6. 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).
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, § 6).
8. 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.
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.

### **III. COMPLAINT**

11. The complainant in substance alleges that the Municipal Court of Rahovec/Orahovac has stayed the proceedings concerning her claims for compensation for damage to her flat and its contents, 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). She also complains that by the damage to her flat and its contents and by the refusal of the Municipal Court in Rahovec/Orahovac to decide her claim for damages, her right to property (Article 1 of Protocol No.1 to the ECHR) has been violated.
12. The complainant further alleges that as a result of the burning down of her family car and the belongings inside it in October 1999, her right to property (Article 1 of Protocol No. 1 to the ECHR) has been violated.

### **IV. THE LAW**

13. 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**

14. The Panel considers that, insofar as the complainant invokes a violation of Article 6 § 1 of the ECHR, she 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, she complains about the fact that due to the stay of the proceedings in the competent courts, she has been unable to obtain the determination of her claims for damages for destroyed property. The Panel considers that this complaint may raise an issue of her right of access to a court under Article 6 § 1 of the ECHR. On the other hand, she complains about the length of the proceedings before the competent courts, due to the fact that the proceedings were instituted in 2004, and that her claim has not been examined since then. This complaint may raise an issue of her right to a judicial decision within a reasonable time, in the sense of Article 6 § 1 of the ECHR.
15. 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 § 14 above, at § 18).
16. No other ground for declaring these complaints inadmissible has been established.

#### **Alleged violations of Article 1 of Protocol No. 1 to the ECHR**

17. The complainant complains about a violation of her right to property (Article 1 of Protocol No.1). She complains about the fact that her flat and its contents were damaged after she left Kosovo in 1999 and about the refusal of the Municipal Court in

Rahovec/Orahovac to decide her claim for damages. She also complains about the fact that her other property was destroyed as a result of the setting on fire of her family car and her belongings inside it, in October 1999.

18. 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”. Damage to her flat was caused after she left Kosovo in 1999, and in any case, before she submitted a claim for damages at the Municipal Court in 2004. Damage to her family car and the belongings inside the car was caused in 1999. The damaging and 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 these parts of the complaint lie outside the Panel’s jurisdiction *ratione temporis*.
19. With respect to the complaint that, due to the stay of the proceedings instituted by the complainant she has 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).
20. It follows that this part of the complaint also lies outside the Panel’s jurisdiction *ratione temporis* (see HRAP, *Gojković*, no. 63/08, decision of 4 June 2009, §§ 24-25).

**FOR THESE REASONS,**

The Panel, unanimously,

**- DECLARES ADMISSIBLE THE COMPLAINTS 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 EUROPEAN CONVENTION ON HUMAN RIGHTS)**

**- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.**

Rajesh TALWAR  
Executive Officer

Marek NOWICKI  
Presiding Member