



The Human Rights Advisory Panel

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OPINION^[*]

Date of adoption: 23 February 2011

Cases nos: 27/08 Esat BERIŠA; 29/08 Milka ŽIVKOVIĆ; 42/08 M.R.; 44/08 Ž.S.; 59/08 Tomo PETROVIĆ; 60/08 Obrad DOŠOVIĆ; 64/08 Dragan PETKOVIĆ; 67/08 Miodrag MILOSAVLJEVIĆ; 07/09 Čedo 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; and 32/09 Slobodan AĆIMOVIĆ

against

UNMIK

The Human Rights Advisory Panel sitting on 23 February 2011,
with the following members present:

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

Assisted by
Ms Anila PREMTI, Acting 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, makes the following findings and recommendations:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint of Mr Beriša (case no. 27/08) was lodged on 18 July 2008 and registered on the same date; the complaint of Ms M.R. (case no. 42/08) was lodged and registered on 27 October 2008; the complaint of Ms Ž.S. (case no. 44/08) was lodged and registered on 28 October 2008; and the complaint of Mr Aćimović (case no. 32/09) was lodged and registered on 27 February 2009. In the

^[*] Editorially revised, pursuant to Rule 47.2 of the Rules of Procedures, on 15 April 2011
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proceedings before the Panel, Mr Aćimović was initially represented by the Danish Refugee Council (DRC). However, the DRC withdrew from participation in the proceedings before the Panel in December 2009.

2. By decision of 6 August 2010 the Panel joined these four complaints and declared them admissible in part.
3. On 26 August 2010 the SRSG submitted a response to the Panel's decision of 6 August 2010.
4. The complaints of Messrs Petrović (case no. 59/08), Došović (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 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 Messrs Ibraj (16/09, 17/09 and 22/09).
5. On 12 September 2009 the Panel, pursuant to Rule 20 of its Rules of Procedure, joined the complaints of Messrs Ralević. On the same date, it also joined the complaints of Messrs Ibraj.
6. By decision of 9 September 2010 the Panel joined the complaints in the cases of Petrović et al., Ralević and Ibraj and declared them admissible in part.
7. On 27 September 2010 the SRSG submitted a response to the Panel's decision of 9 September 2010.
8. The complaint of Ms Milka Živković (case no. 29/08) was lodged on 18 July 2008 and registered on the same date.
9. By decision of 26 November 2010 the Panel declared the complaint admissible in part.
10. On 6 January 2011 the SRSG submitted a response to the Panel's decision of 26 November 2010.

II. THE FACTS

11. 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. They lived there until 1999 when they left Kosovo. Later on they became aware that their property had been damaged or destroyed during the second half of 1999.
12. 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, Milosavljević and M.R. who directed their claim only against the Municipality and the PISG.

13. By the end of 2008, the courts had not contacted the complainants, and no hearings had been scheduled.
14. 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. The claims were directed against some combination of UNMIK, KFOR, the PISG and 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).
15. 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 § 14 above, at § 6).
16. 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.
17. 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.
18. 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.
19. The circumstances of the individual cases at issue are outlined in the annex to this opinion.

III. COMPLAINTS

20. Insofar as the complaints have been declared admissible, the complainants in substance allege that the proceedings concerning their claims for damages for destroyed property were stayed, thus making it impossible for them to obtain the determination of their claims, in breach of their right of access to a court under Article 6 § 1 of the European Convention on Human Rights (ECHR). They also complain that, as a result of the stay, the proceedings have not been concluded within a reasonable time, in breach of Article 6 § 1 of the ECHR. Finally, with the

exception of case no. 29/08, Milka Živković, they allege that for the same reason their right to an effective remedy under Article 13 of the ECHR has been violated as well.

IV. JOINDER OF THE COMPLAINTS

21. The Panel decides, pursuant to Rule 20 of its Rules of Procedure, to join the present complaints.

V. THE LAW

Alleged violations of Article 6 § 1 of the ECHR

22. The Panel notes that the case of the complainants raises an issue the substance of which has already been submitted to the Panel by other complainants. The Panel recalls that in, for instance, the joined cases of *Milogorić and Others* (cited in § 14 above), it examined complaints by five complainants who were also owners of real property in Kosovo. In 1999, fearing hostilities, they too left their homes in Kosovo. Their property was damaged or destroyed during the second half of 1999, after the entry into Kosovo of UNMIK and KFOR. These complainants also filed claims in 2004 before the competent municipal courts against UNMIK, KFOR, the PISG and the relevant municipalities, seeking compensation for the damage caused to their property. They too had not been contacted by the courts and no hearing had been scheduled, due to the above mentioned intervention by the DOJ which halted the judicial proceedings from August 2004 to September 2008.
23. In *Milogorić* the Panel found 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”, more specifically of their right of access to a court (HRAP, *Milogorić and Others*, cited above, § 46). The Panel further found that “it [was] not necessary to examine separately the issue of the length of the proceedings” (same opinion, § 48).
24. In his responses dated 26 August 2010 in cases nos. 27/08, Esat Beriša, and others, and 27 September 2010 in cases nos. 59/08, Tomo Petrović, and others, the SRSG states that he has no comments on the merits of the cases. However, he requests the Panel to re-evaluate its previous findings in view of the fact that UNMIK as an interim administration cannot be held to the same standards as an established State with a functioning judiciary. In his response of 6 January 2011 in case no. 29/08, Milka Živković, the SRSG provided detailed arguments, based on the jurisprudence of the European Court of Human Rights (ECtHR). The SRSG argues among other things that UNMIK’s request that the proceedings be stayed must be considered to have had a legitimate aim, and that in the circumstances of post-conflict Kosovo and its burgeoning judicial system, the temporary stay was the only way for UNMIK to deal with the exceptional situation the Kosovo judicial system was faced with caused by the influx of compensation claims. The SRSG also argues that there was a reasonable proportionality between the means employed and the aim sought to be achieved, because a fair balance was struck between the demands of the general interest of society and the requirements of the protection of the individuals’ fundamental rights. According to the SRSG, the reasonableness of the length of proceedings is to be assessed in the light of the

particular circumstances of the case, and the ECtHR applies three criteria in particular: the conduct of the judicial authorities, the complexity of the case, and the conduct of the applicant. Only delays attributable to the State cause a violation of the reasonable time requirement. The SRSB then analyses in detail the application of the above three criteria in the context of Kosovo, and as they relate to the complainant.

25. The Panel recalls that it already considered similar arguments in *Milogorić* and did not concur. It found that 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 (same opinion, § 44).
26. The Panel therefore sees no reason to depart from its findings in the joined cases of *Milogorić and Others*.
27. Accordingly, it finds that there has been a violation of Article 6 § 1 of the ECHR in respect of the inability of the complainants to have their claims determined by the courts, and that it is not necessary to examine separately the issue of the length of the proceedings.

Alleged violation of Article 13 of the ECHR

28. 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, it finds that no separate issues arise under Article 13 of the ECHR (HRAP, *Milogorić and Others*, cited above, § 49).

V. RECOMMENDATIONS

29. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.
30. 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. UNMIK therefore is no longer in a position to take measures that will have a direct impact on proceedings pending before the municipal courts.
31. 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 (see HRAP, *Milogorić and Others*, cited above, § 49, and 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).

32. The Panel further considers that UNMIK should take appropriate steps towards adequate compensation for 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:
 - 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. TAKE APPROPRIATE STEPS TOWARDS ADEQUATE COMPENSATION FOR 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.

Anila PREMTI
Acting Executive Officer

Marek NOWICKI
Presiding Member

Annex

Case no. 27/08, Esat Beriša

1. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
2. He is the owner of two residential houses located in Graçanicë/Gračanica, where he lived until August 1999. He was informed by his neighbours that his property had been destroyed during the second half of 1999.
3. In August 2004 the complainant lodged a compensation lawsuit before the District Court of Prishtinë/Priština against the Municipality of Prishtinë/Priština, the PISG, UNMIK and KFOR seeking compensation for the destruction of his property. He claims 220,000 euros in compensation for this damage.
4. By the end of 2008, the District Court had not contacted the complainant, and no hearing had been scheduled.

Case no. 29/08, Milka Živković

5. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
6. She is the owner of a flat and moveable property located in Prishtinë/Priština, where she lived until August 1999. In 2002, she became aware that her flat and its contents had been severely damaged.
7. In June 2004 the complainant lodged a compensation lawsuit before the District Court of Prishtinë/Priština against UNMIK, KFOR, the PISG, and the Municipality of Prishtinë/Priština, seeking compensation for the destruction of her property. She claims 22,000 euros in compensation for this damage.
8. By the end of 2008, the District Court had not contacted the complainant, and no hearing had been scheduled.

Case no. 42/08, M.R.

9. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
10. The complainant is the owner of a residential house located in the Municipality of Istog/Istok, where she lived until June 1999. She was informed by her neighbours that her property had been destroyed during the second half of 1999.
11. On 10 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 her property. She claims 158,000 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. 44/08, Ž.S.

13. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
14. She is the owner of a residential house located in Prizren where she lived until June 1999. She was informed by her friends that her property had been destroyed during the second half of 1999.
15. On 3 September 2004 the complainant lodged a compensation lawsuit before the Municipal Court of Prizren against the Municipality of Prizren, the PISG, UNMIK and KFOR seeking compensation for the destruction of her property. She claims 82,000 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. 59/08, Tomo Petrović

17. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
18. 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 destroyed during the second half of 1999.
19. 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.
20. By the end of 2008, the Municipal Court had not contacted the complainant, and no hearing had been scheduled.

Case no. 60/08, Obrad Došović

21. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
22. 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 destroyed and stolen during the second half of 1999.
23. 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.
24. 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

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 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.
27. 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.
28. 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

29. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
30. 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 destroyed and stolen during the second half of 1999.
31. 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.
32. By the end of 2008, the Municipal Court had not contacted the complainant, and no hearing had been scheduled.

Case no. 07/09, Čedo 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 destroyed 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 370,000 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.

Case no. 08/09, Miljko Ralević

37. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
38. 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 destroyed during the second half of 1999.
39. 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.
40. 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

41. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
42. 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 destroyed during the second half of 1999.
43. 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.
44. 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

45. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
46. 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 destroyed during the second half of 1999.
47. 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.
48. 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

49. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
50. 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 destroyed during the second half of 1999.
51. 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.
52. 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

53. 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.
54. The Messrs Ibraj are the owners of 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 destroyed during the second half of 1999.
55. 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.
56. By the end of 2008, the District Court had not contacted the complainants, and no hearing had been scheduled.

Case no. 32/09, Slobodan Aćimović

57. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
58. He is the owner of a residential house located in the Municipality of Ferizaj/Uroševac where he and his family lived until June 1999. He was informed by a friend that the house had been destroyed during the second half of 1999.
59. On 24 August 2004 the complainant lodged a compensation lawsuit before the Municipal Court of Ferizaj/Uroševac against the Municipality of Ferizaj/Uroševac, the PISG, UNMIK and KFOR seeking compensation for the destruction of his property. He claims 143,000 euros in compensation for this damage.
60. By the end of 2008, the Municipal Court had not contacted the complainant, and no hearing had been scheduled.