



# *The Human Rights Advisory Panel*

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## **DECISION**

**Date of adoption: 9 June 2011**

**Cases Nos. 16/10 and 17/10**

**R.V.**

**against**

**UNMIK**

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

### **I. PROCEEDINGS BEFORE THE PANEL**

1. The complaints in cases nos. 16/10 and 17/10 were lodged on 18 March 2010 and registered on the same date.
2. On 26 April 2011 the Panel requested some information from the Kosovo Property Agency (KPA). On 28 April 2011 the KPA provided its response.

## II. THE FACTS

3. The complainant is a resident of Kosovo currently living as a displaced person in Serbia. He and his late mother were the respective owners of two flats in Gjilan/Gnjilane, where they lived until 1999 when they left Kosovo. The complainant's flat is the object of complaint no. 16/10; the flat belonging to his mother is the object of complaint no. 17/10.
4. The complainant subsequently became aware that the flats had been damaged and looted during the second half of 1999.
5. The complainant's mother passed away in 2005.
6. According to the complainant, both flats have been illegally occupied a few times and they are still usurped.
7. According to the complainant, with respect to the flat that is the object of complaint no. 16/10, he informed the police station in Gjilan/Gnjilane about its illegal occupation in 2006. The police responded quickly by securing eviction of the occupants. In 2009 the complainant noticed that the doors to his flat had been changed. He informed the police about the new occupation of his flat. He went to the flat accompanied by a police patrol. Apparently no action was taken, as there was nobody to open the door.
8. Previously, in June 2004, the complainant and his late mother had filed claims with respect to both properties with the Municipal Court of Gjilan/Gnjilane and the Kosovo Provisional Institutions of Self-Government (PISG), seeking compensation for the damage caused to their flats.
9. At the time the complaint was filed, the courts had not contacted the complainant nor, before her death, his late mother, and no hearings had been scheduled.
10. Approximately 17,000 compensation claims were lodged in 2004 before Kosovo courts, the vast majority 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 HRAP, *Milogorić and Others*, cases nos. 38/08 and others, opinion of 24 March 2010, § 1; for the legal basis upon which the claimants based their claim, see the same opinion, § 5).
11. 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 § 10 above, at § 6).

12. 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.
13. On 28 September 2008 the Director of DOJ advised the courts that cases which had not been scheduled in accordance with the 26 August 2004 request should now be processed.
14. 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. THE COMPLAINTS**

15. In both complaints, the complainant in substance alleges that the Municipal Court of Gjilan/Gnjilane has stayed the proceedings concerning his and his mother’s 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). He alleges that for the same reason his right to an effective remedy under Article 13 of the ECHR has been violated as well.
16. The complainant further complains that by the damage to the two flats and property and by the refusal of the competent courts to decide the claims for damages, his right of property (Article 1 of Protocol No. 1 to the ECHR) has been violated.
17. Finally, he alleges a violation of his right of property (Article 1 of Protocol No. 1 to the ECHR), as well as a violation of his right to an effective remedy (Article 13 of the ECHR), with respect to the unsuccessful evictions of unlawful occupants of the complainant’s property.

### **IV. JOINDER OF THE COMPLAINTS**

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

### **V. APPLICATION OF RULE 29BIS OF THE PANEL’S RULES OF PROCEDURE**

19. In accordance with 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.

## **VI. THE LAW**

20. Before considering the cases on the merits the Panel has to decide whether to accept the cases, 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.

### **A. Proceedings before the Municipal Court**

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

21. The Panel considers that, insofar as the complainant invokes a violation of Articles 6 § 1 and 13 of the ECHR, he 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, he complains about the fact that due to the stay of the proceedings in the Municipal Court, he has been unable to obtain the determination of his claims for damages for destroyed property. The Panel considers that this complaint may raise an issue of his right of access to a court under Article 6 § 1 of the ECHR and of his right to an effective remedy under Article 13 of the ECHR. On the other hand, he complains about the length of the proceedings before the Municipal Court, due to the fact that the proceedings were instituted in 2004 and that his claims have not been examined since then. This complaint may raise an issue of his right to a judicial decision within a reasonable time, in the sense of Article 6 § 1 of the ECHR.
22. The Panel 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 § 18 above, at § 18).
23. No other ground for declaring these complaints inadmissible has been established.

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

24. The complainant complains about a violation of his right of property (Article 1 of Protocol No.1 to the ECHR). He generally complains about the fact that his property has been damaged or destroyed and about the failure by the competent courts to decide on his claims for damages.
25. 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 damage to 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*.

26. With respect to the complaint that, due to the stay of the proceedings instituted by the complainant and his late mother, he has been unable thus far to obtain compensation for the damage to his property, 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).

27. 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).

#### **B. The eviction issue**

28. In case no. 16/10 the complainant complains about the unsuccessful evictions of unlawful occupants of his flat. He states that on two occasions, in 2006 and in 2009, he personally informed the Kosovo police about the illegal occupation of his flat. A police patrol accompanied him during both visits to his flat. The first time, in 2006, the occupants were successfully evicted, although only temporarily. In 2009 there was no successful eviction.

29. On 9 December 2008, UNMIK’s responsibility with regard to police and justice 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.

30. Thus, at the moment when the unsuccessful eviction attempt was undertaken in 2009, UNMIK was no longer exercising executive authority over the Kosovo police, and had no responsibility for any violation of human rights allegedly committed by them.

31. For this reason, the Panel considers that this part of the complaint is outside of its jurisdiction *ratione personae*, and must therefore be declared inadmissible.

#### **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.**

Anila PREMTI  
Acting Executive Officer

Marek NOWICKI  
Presiding Member