



The Human Rights Advisory Panel

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OPINION

Date of adoption: 16 December 2011

Cases nos. 172/09, Nenad MLADENOVIĆ; 182/09, Lidija MILENKOVIĆ; 190/09, Bogoljub KOSTIĆ; 207/09, Blagica NIĆIĆ; 299/09, Momir KRASIĆ; 315/09, Šadik NUKA; 317/09, Miodrag MALIŠIĆ; 318/09, Miodrag MALIŠIĆ; 321/09, Živorad RADIĆ; 353/09, Vuksan BULATOVIĆ; 16/10 and 17/10, R.V.

against

UNMIK

The Human Rights Advisory Panel sitting on 16 December 2011,
with the following members present:

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

Assisted by
Mr Andrey ANTONOV, 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 Momir Krasić (case no. 299/09) was lodged with the Panel on 6 March 2009 and registered on 2 July 2009; the complaints of Mr Nenad Mladenović (case no. 172/09), Ms Lidija Milenković (case no. 182/09), Mr. Bogoljub Kostić (case no. 190/09), Ms. Blagica Nićić (case no. 207/09), and Mr Vuksan Bulatović (case no. 353/09), were lodged and registered on 30 April 2009; the complaint of Mr Sadik Nuka (case no. 315/09) and the complaints of Mr Miodrag Mališić (cases nos. 317/09 and 318/09) were lodged and registered on 11

November 2009; the complaint of Mr Živorad Radić (case no. 321/09) was lodged on 6 November 2009 and registered on 25 November 2009; the complaint of Mr Nebojša Miladinović (case no. 331/09) was lodged and registered on 4 December 2009; and the complaints of R.V. (cases nos. 16/10 and 17/10) were lodged and registered on 18 March 2010.

2. By decision of 21 January 2011, the Panel declared the complaint in the case of Mr Momir Krasić (case no. 299/09) admissible in part.
3. On 26 July 2011, the SRSG submitted his comments on the merits of that complaint.
4. By decision of 9 June 2011, the Panel joined the two complaints by R.V. (cases nos. 16/10 and 17/10) and declared them admissible in part.
5. On 11 July 2011, the SRSG submitted his comments on the merits of those complaints.
6. By decision of 15 September 2011, the Panel joined ten other complaints (cases nos. 172/09 and others) and declared them admissible in part.
7. On 28 October 2011, the SRSG submitted his comments on the merits of those complaints.
8. The cases joined by the decision of 15 September 2011 included case no. 331/09, Mr Nebojša Miladinović. By decision of 16 December 2011, the Panel decided to disjoin that case from the other cases.

II. THE FACTS

9. All the complainants 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.
10. All the complainants lodged claims 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 Ms Milenković, and Mr Mališić who directed their claims only against the Municipality and the PISG. All claims were lodged in 2004, with the exceptions of Mr Radić, who submitted his claims in 2005, and Mr Krasić, whose claim was registered on 19 September 2006.
11. Approximately 17,000 compensation claims were lodged in 2004 before Kosovo courts, the vast majority of which by Kosovo 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 (HRAP), *Milogorić and Others*, cases nos. 38/08, 58/08, 61/08, 63/08 and 69/08,

opinion of 24 March 2010, at § 1; for the legal basis upon which the claimants based their claim, see the same opinion, at § 5).

12. 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 § 11 above, at § 6).
13. 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.
14. On 28 September 2008, the Director of the DOJ advised the courts that cases which had not been scheduled according to the 26 August 2004 request should now be processed.
15. 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.
16. By the end of 2008, the courts had not contacted the complainants and no hearings had been scheduled.
17. The circumstances of the individual cases at issue are outlined in the annex to this opinion.

III. THE COMPLAINTS

18. 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, 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

19. The Panel decides, pursuant to Rule 20 of its Rules of Procedure, to join the complaint in the case of Mr Momir Krasić (case no. 299/09) and the two complaints in the case of R.V. (cases nos. 16/10 and 17/10) to the other complaints previously joined in the cases of Mladenović and Others (cases nos. 172/09 and others).

V. THE LAW

Alleged violations of Article 6 § 1 of the ECHR

20. The Panel notes that the cases of the complainants raise issues 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 § 11 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 hearings had been scheduled, due to the above mentioned intervention by the DOJ which halted the judicial proceedings from August 2004 to September 2008.
21. 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 in § 11, at § 46). The Panel further found that “it [was] not necessary to examine separately the issue of the length of the proceedings” (same opinion, at § 48).
22. In his response to these cases the SRSJ provides detailed arguments, based on the jurisprudence of the European Court of Human Rights (ECtHR). The SRSJ 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 with which the Kosovo judicial system was faced, caused by the influx of compensation claims. The SRSJ 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 for the protection of the individuals’ fundamental rights. According to the SRSJ, 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 SRSJ analyses in detail the application

of the above three criteria in the context of Kosovo and as they relate to the complainants.

23. As regards the conduct of the complainants, the SRSG argues that the majority of them have not presented any evidence to show that they in any way ever enquired as to the progress of their cases, or complained that their cases were not progressing and should progress within either the local courts in Kosovo, or the DOJ or any other UNMIK or PISG organ, including the Court Liaison Offices. Nor have the complainants complained to EULEX subsequent to its deployment in Kosovo in December 2008. The SRSG also argues that some of the complainants have not shown that they took any steps to repossess their property following the decisions of the Housing and Property Claims Commission (HPCC) made between June 2003 and October 2008.
24. The Panel recalls that it already considered and rejected all of these arguments in *Milogorić and Others* (cited in § 11 above), in *Berisha and Others* (HRAP, cases nos. 27/08 and others, opinion of 23 February 2011, § 24) and in *Lalić and Others* (HRAP, cases nos. 30/08 and others, opinion of 13 May 2011, § 21). 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 a justification for diminishing standards of respect for human rights, which were duly incorporated into UNMIK's mandate (*Milogorić and Others*, § 44; *Berisha and Others*, § 25; *Lalić and Others*, § 22).
25. The Panel sees no reason to depart from these findings in the cases of *Milogorić and Others*, *Berisha and Others*, and *Lalić and Others*.
26. Concerning the argument of the SRSG that the complainants did not enquire about the progress of their cases with the relevant courts, either before EULEX's deployment in December 2008 or thereafter, the Panel has already rejected these arguments in *Lalić and Others* (cited in § 24 above). It found that the complainants could not be blamed for not having enquired with the relevant courts as to the progress of their cases (*Lalić and Others*, § 25). Moreover, as to the argument that the complainants did not enquire with EULEX about the progress of their cases, the Panel has found that this issue was irrelevant for the examination of the complaints, since the situation after December 2008 falls in any event outside UNMIK's responsibility (see § 15 above; *Lalić and Others*, § 26).
27. Finally, the Panel has also already rejected the SRSG's arguments concerning any claims the complainants might have lodged with the HPCC. Since these were claims of a different nature, a decision taken by the HPCC could not have any bearing on the processing of the compensation claims by the courts (*Lalić and Others*, § 27).
28. The Panel sees no reason to depart from these findings in the case of *Lalić and Others*.
29. In the light of the foregoing, the Panel 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

30. 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).

VI. RECOMMENDATIONS

31. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.
32. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted 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.
33. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations 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* § 49, and *Lalić and Others* § 32, cited above; 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).
34. 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.**

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member

Annex**Case no. 172/09, Nenad MLADENOVIC**

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, auxiliary buildings and land, located in the Municipality of Viti/Vitina, where he lived until 1999. He was informed by friends that his property had been destroyed during the second half of 1999.
3. In May 2004 the complainant lodged a compensation lawsuit before the District Court of Gjilan/Gnjilane against the Municipality of Viti/Vitina, the PISG, UNMIK and KFOR seeking compensation for the destruction of his property. He claims 131,000 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. 182/09, Lidija MILENKOVIC

5. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
6. The complainant is the owner of a residential house, auxiliary buildings and land located in the Municipality of Deçan/Dečani, where she lived until June 1999. She was informed by a friend that her property had been destroyed during the second half of 1999.
7. On 2 July 2004 the complainant lodged a compensation lawsuit before the Municipal Court of Deçan/Dečani against the Municipality of Deçan/Dečani and the PISG, seeking compensation for the destruction of her property. She claims 300,000 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. 190/09, Bogoljub KOSTIC

9. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
10. The complainant is the owner of two residential houses, auxiliary buildings and land located in the Municipality of Rahovec/Orahovac, where he lived until June 1999. He was informed by his neighbours and friends that his property had been destroyed during the second half of 1999.
11. On 1 July 2004 the complainant lodged a compensation lawsuit before the Municipal Court of Rahovec/Orahovac against the Municipality of Rahovec/Orahovac, the PISG, UNMIK and KFOR seeking compensation for the

destruction of his property. He claims 187,000 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. 207/09, Blagica NIĆIĆ

13. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
14. The complainant is the owner of two residential houses, auxiliary buildings and land located in the Municipality of Kačanik/Kaçanik, where she lived until June 1999. She was informed by her neighbours and friends that her property had been destroyed during the second half of 1999.
15. In June 2004 the complainant lodged a compensation lawsuit before the District Court of Gjilan/Gnjilane against the Municipality of Ferizaj/Uroševac, the PISG, UNMIK and KFOR seeking compensation for the destruction of her property. She claims 275,000 euros in compensation for this damage.
16. By the end of 2008, the District Court had not contacted the complainant, and no hearing had been scheduled.

Case no. 299/09, Momir KRASIĆ

17. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
18. The complainant is the owner of two houses and other property located in the Municipality of Klinë/Klina, where he lived until June 1999. He found out that the possessions in his flat were destroyed during the second half of 1999.
19. On 19 September 2006, the complainant lodged a compensation lawsuit before the Municipal Court of Prishtinë/Priština against the Municipality of Klinë/Klina, the PISG, UNMIK and KFOR seeking compensation for the destruction of his property. He claims 460,000 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. 315/09, Sadik NUKA

21. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
22. The complainant is the owner of a residential house, auxiliary buildings and land located in the Municipality of Vushtrri/Vučitrn, where he lived until June 1999. He was informed by a friend that his property had been destroyed during the second half of 1999.

23. On 17 June 2004 the complainant lodged a compensation lawsuit before the District Court of Vushtrri/Vučitrn against the Municipality of Vushtrri/Vučitrn, the PISG, UNMIK and KFOR seeking compensation for the destruction of his property. He claims 99,000 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. 317/09, Miodrag MALIŠIĆ

25. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
26. The complainant is the owner of a flat located in the Municipality of Prishtinë/Priština, where he lived until June 1999. He found out that the possessions in his flat were destroyed during the second half of 1999.
27. In May 2004 the complainant lodged a compensation lawsuit before the Municipal Court of Prishtinë/Priština against the Municipality of Prishtinë/Priština and the PISG, seeking compensation for the destruction of his property. He claims 33,970 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. 318/09, Miodrag MALIŠIĆ

29. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
30. The complainant is the owner of a residential house and land located in the Municipality of Istog/Istok, where he lived until June 1999. He found out that his property had been destroyed during the second half of 1999.
31. 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 his property. He claims 42,470 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. 321/09, Živorad RADIĆ

33. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
34. He is the owner of two residential houses and land located in the Municipality of Lipjan/Lipljan, and of a house and land located in the Municipality of Prishtinë/Priština. He found out that his properties had been destroyed during the second half of 1999, after he had left Kosovo.

35. On 16 August 2005 the complainant lodged a compensation lawsuit before the Municipal Court of Prishtinë/Priština against the Municipality of Prishtinë/Priština, the PISG, UNMIK and KFOR seeking compensation for the destruction of his property in Prishtinë/Priština. He claims 30,000 euros in compensation for this damage.
36. On 5 September 2005, the complainant lodged a compensation lawsuit before the Municipal Court of Lipjan/Lipljan against the Municipality of Lipjan/Lipljan, the PISG, UNMIK and KFOR seeking compensation for the destruction of his property in Lipjan/Lipljan. He claims 160,000 euros in compensation for this damage.
37. By the end of 2008, the Municipal Courts had not contacted the complainant, and no hearings had been scheduled.

Case no. 331/09, Nebojša MILADINOVIĆ

38. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
39. The complainant is the owner of two residential houses, auxiliary buildings and land located in the Municipality of Vushtrri/Vučitrn, where he lived until June 1999. He was informed by his friends that his property had been destroyed during the second half of 1999.
40. On 1 August 2004 the complainant lodged a compensation lawsuit before the Municipal Court of Vushtrri/Vučitrn against the Municipality of Vushtrri/Vučitrn, the PISG, UNMIK and KFOR seeking compensation for the destruction of his property. He claims 152,800 euros in compensation for this damage.
41. By the end of 2008, the Municipal Court had not contacted the complainant, and no hearing had been scheduled.

Case no. 353/09, Vuksan BULATOVIĆ

42. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
43. He is the owner of a residential house, auxiliary buildings and land located in the Municipality of Pejë/Peć, where he lived until June 1999. He was informed by his friends that his property had been destroyed during the second half of 1999.
44. On 24 September 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 150,000 euros in compensation for this damage.
45. By the end of 2008, the Municipal Court had not contacted the complainant, and no hearing had been scheduled.

Cases nos. 16/10 and 17/10, R.V.

46. The complainant is a resident of Kosovo currently living as a displaced person in Serbia.
47. He and his late mother were the respective owners of two flats in Gjilan/Gnjilane, where they lived until 1999. He found out that the possessions in his flat were destroyed during the second half of 1999.
48. In June 2004, the complainant and his late mother lodged compensation lawsuits with the Municipal Court in Gjilan/Gnjilane, against the Municipality of Gjilan/Gnjilane and the PISG seeking compensation for the destruction of their property. He claimed 15,000 euros and his late mother claimed 20,000 euros in compensation for this damage.
49. By the end of 2008, the Municipal Court had not contacted the complainant or his late mother, and no hearings had been scheduled.