



# *The Human Rights Advisory Panel*

Building D, UNMIK HQ Prishtinë/Priština, Kosovo | E-mail: hrap-unmik@un.org | Tel: +381 (0)38 504-604, ext. 5182

## **DECISION**

**Date of adoption: 19 February 2012**

**Case No. 09/08**

**Olga LAJOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel sitting on 19 February 2012,  
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 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 introduced on 5 May 2008 and registered on the same date.
2. On 16 July 2008, the Panel declared the complaint partly inadmissible and partly adjourned its further examination.
3. On 23 July 2008, the Panel notified the complainant of this decision. On 19 November 2008, the complainant submitted additional information in response to the Panel's decision.
4. On 10 April 2009, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility and the

merits of the complaint. On 15 April 2009, the SRSG commented on the admissibility and merits of the complaint.

5. On 6 July 2011, the Panel requested the complainant to submit additional information. On 31 October 2011, the Panel sent a second request to the complainant seeking additional information. On 23 November 2011, the Panel received the requested documentation from the complainant.

## **II. THE FACTS**

6. The complainant is a former resident of Kosovo currently residing in Serbia. She claims to be the owner of two properties in Kosovo, in the Municipality of Istog/Istok.

### **A. The situation of the complainant's properties**

7. The first property is located in the village of Gjurakoc/Djurakovac. The complainant states that it was her primary residence until she and her family were forced to leave it in June 1999 for security reasons. Besides the land, it contained a dwelling house and auxiliary buildings that have been subsequently plundered and destroyed, with most of the damage occurring in 1999, except for one structure which according to the complainant was destroyed on 17 March 2008. She states that the land has since been used by another family.
8. The complainant also claims to own a second property in the village of Zhaq/Žač, which contains arable land. That property allegedly has been usurped by another family.

### **B. Court proceedings**

9. On 10 June 2004, the complainant filed a lawsuit in the Municipal Court of Istog/Istok against the Municipality of Istog/Istok and the Provisional Institutions of Self-Government (PISG), seeking compensation for the damage to her house and the accompanying buildings, which were located on her property in the village of Gjurakoc/Djurakovac.
10. By the end of 2008, the Municipal Court of Istog/Istok had not contacted the complainant and no hearings had been scheduled concerning the aforementioned lawsuit.
11. Approximately 17,000 compensation claims were lodged in 2004 before Kosovo courts, the vast majority of these by Kosovo Serbs who, due to 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).

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 the 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.

### **C. Request to the Kosovo Property Agency**

16. In May 2011, the complainant’s representative also requested that the Kosovo Property Agency (KPA) prohibit the usurpation of the complainant’s properties.
17. Apparently, the KPA has not taken any action with respect to the complainant’s oral request concerning the usurped properties.

### **III. THE COMPLAINT**

18. The complainant in substance alleges that the Municipal Court of Istog/Istok has stayed the proceedings concerning the compensation claim lodged on 10 June 2004 against the Municipality of Istog/Istok and the PISG for the damage done to her property in Gjurakoc/Djurakovac (see further below, § 21) and that as a result these proceedings have not been concluded within a reasonable time, in violation of Article 6 § 1 of the European Convention on Human Rights (ECHR). She alleges that for the same reason her right to an effective remedy under Article 13 of the ECHR has also been violated.

19. The complainant also complains about the alleged failure by UNMIK to protect her property in Gjurakoc/Djurakovac against its destruction. In its decision of 16 July 2008, the Panel declared this complaint inadmissible insofar as it related to damage inflicted before December 2002. The complaint remains to be examined insofar as it relates to damage inflicted on 17 March 2008. The Panel considers that in this respect the complainant can be deemed to invoke a violation of her right to property, guaranteed by Article 1 of Protocol No.1 to the ECHR.
20. The complainant finally complains about the alleged failure by UNMIK to protect her properties both in Gjurakoc/Djurakovac and Zhaq/Žač against their usurpation. The Panel considers that in this respect the complainant can also be deemed to invoke a violation of her right to property, guaranteed by Article 1 of Protocol No.1 to the ECHR.

#### **IV. APPLICATION OF RULE 29BIS OF THE PANEL'S RULES OF PROCEDURE**

21. In its admissibility decision of 16 July 2008, the Panel did not mention any complaint relating to the complainant's claim of 10 June 2004, filed with the Municipal Court of Istog/Istok. However, upon a closer examination of the complaint, the Panel finds that the complainant indeed complains about the fact that her claim has not been examined by the Municipal Court.
22. The Panel notes that this part of the complaint raises questions which are substantially the same as those that have been raised, among others, in cases nos. 38/08, *Milogorić*, 58/08, *Živaljević*, 61/08, *Gojković*, 63/08, *Čukić*, and 69/08, *Bogičević*, which have already been examined by the Panel. Moreover, it appears from the file that no new admissibility issue arises with regard to that aspect of the present case. Therefore, pursuant to Rule 29bis of the Panel's Rules of Procedure, the Panel finds that it is not necessary to communicate this part of the complaint to UNMIK. In fact, in his comments of 15 April 2009, the SRSG spontaneously raised an objection to the admissibility of that part of the complaint.
23. The Panel considers that it can examine the admissibility of the whole complaint without re-communicating it to the SRSG.

#### **V. THE LAW**

24. 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.

##### **A. Complaint with regard to the proceedings before the Municipal Court**

25. The Panel considers that, insofar as the complainant invokes a violation of Articles 6 § 1 and 13 of the ECHR, she in fact raises two complaints (see the approach adopted, among others, in *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 court, she has been unable to obtain the determination of her claim for damages to her 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 and of her right to an effective remedy under Article 13 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.

26. The Panel considers that the complaint under Articles 6 § 1 and 13 of the ECHR raises serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that this complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12 (see, among others, HRAP, *Milogorić*, cited in § 25 above, at § 18).
27. No other ground for declaring this part of the complaint inadmissible has been established.

#### **B. Complaint with regard to the damage to the complainant's property in Gjurakoc/Djurakovac, inflicted in 2008**

28. The complainant also complains about a violation of her right to property with regard to the alleged failure by UNMIK to protect her property in Gjurakoc/Djurakovac against the damage that occurred on 17 March 2008. The complainant argues that UNMIK is accountable, as it cooperates with the local population, to the detriment of the displaced owners.
29. Insofar as the complainant suggests that UNMIK did not prevent the damage to her property, she does not specify her allegations concerning the cooperation by UNMIK against the displaced owners. The Panel considers that in this respect the complaint is unsubstantiated, and must therefore be declared manifestly ill-founded, within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
30. Insofar as the complainant complains about the absence of a proper reaction to the damage to her property, she fails to demonstrate that she has filed any complaint with the relevant judicial authorities or the police, which are the bodies having competence over such matters. She therefore did not give the competent authorities an opportunity to redress the alleged violation of her property rights. It follows that in this respect the complainant did not exhaust the available avenues for review, as is required by Section 3.1 of UNMIK Regulation No. 2006/12.

#### **C. Complaint with regard to the usurpation of the complainant's properties**

31. The complainant finally complains about the lack of protection against the usurpation of her properties both in Gjurakoc/Djurakovac and Zhaq/Žač.

32. The Panel notes that the complainant did not file a claim relating to her property rights over the said properties with the Housing and Property Directorate (HPD) or its successor, the KPA.
33. It is true that in May 2011, the complainant's representative allegedly met with KPA personnel and requested assistance in curtailing illegal occupants from continuing to usurp the complainant's properties. However, the complainant admits that she did not file a written claim with the KPA regarding this issue.
34. The Panel must conclude that the complainant fails to demonstrate that she has properly addressed the matter to the HPD or the KPA, the bodies having competence to decide over property disputes.
35. The Panel therefore considers that the complainant did not exhaust the available avenues for review, as is required by Section 3.1 of UNMIK Regulation No. 2006/12.

**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), WITH RESPECT TO THE PROCEEDINGS FILED IN 2004 WITH THE MUNICIPAL COURT OF ISTOG/ISTOK;**

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

Andrey ANTONOV  
Executive Officer

Marek NOWICKI  
Presiding Member