



# The Human Rights Advisory Panel

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## DECISION

Date of adoption: 5 April 2012

Cases nos. 122/09 M.S.; 157/09 Radivoje RADISAVLJEVIĆ; 184/09 Olivera ČUPIĆ; 192/09 Bogoljub ŠMIGIĆ; 193/09 Milijana VUKSANOVIĆ; 202/09 Milorad PEJČINOVIC; 204/09 Milan PETROVIĆ; 337/09 Vinka POPOVIĆ; 347/09 Predrag MIRIĆ; 348/09 Zoran LJUŠIĆ; 66/10 Slobodan PILIŠER

against

UNMIK

The Human Rights Advisory Panel sitting on 5 April 2012,  
with the following members taking part:

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

Assisted by  
Ms 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, including through electronic means, in accordance with Rule 13 § 2 of its Rules of Procedure, decides as follows:

### I. PROCEEDINGS BEFORE THE PANEL

1. The complaint of M.S. (case no. 122/09) was introduced on 23 April 2009 and registered on 30 April 2009; the complaint of Mr Radivoje Radisavljević (case no. 157/09) was introduced on 10 April 2009 and registered on 30 April 2009; the complaint of Ms Olivera Čupić (case no. 184/09) was introduced and registered on 30 April 2009; the complaint of Mr Bogoljub Šmigić (case no. 192/09) was introduced on 9 April 2009 and registered on 30 April 2009; the complaint of Ms Milijana Vuksanović (case no. 193/09) was introduced on 14 April 2009 and registered on 30 April 2009; the complaints of Messrs Milorad Pejčinović (case no.

202/09) and Milan Petrović (case no. 204/09) were introduced on 8 April 2009 and registered on 30 April 2009; the complaint of Ms Vinka Popović (337/09) was introduced on 10 April 2009 and registered on 14 December 2009; the complaint of Mr Predrag Mirić (347/09) was introduced and registered on 15 December 2009; the complaint of Mr Zoran Ljušić (348/09) was introduced on 23 April 2009 and registered on 30 April 2009, and the complaint of Mr Slobodan Pilišer (66/10) was introduced on 1 April 2010 and registered on 14 April 2010.

2. The complainant Mr Pilišer died in March 2012. On 4 April 2012, Mrs Snežana Pilišer, his widow, informed the Panel of her intention to pursue the complaint. For practical reasons, the Panel will continue to name Mr Slobodan Pilišer as the complainant, even though that capacity should now be attributed to Mrs Snežana Pilišer.

## **II. THE FACTS**

3. All the complainants are former residents of Kosovo currently living in Serbia, with the exception of Mr Pejčinović and Mr Petrović who continue to live in Kosovo. All the complainants were owners of real property in Kosovo. They lived there until 1999 when, with the exception of Mr Pejčinović and Mr Petrović, they left Kosovo. Later on, they became aware that their property had been damaged or destroyed during the second half of 1999.
4. The complainants M.S., Mr Pejčinović and Mr Mirić lodged claims seeking compensation for the damage caused to their properties with the competent courts against UNMIK, KFOR, the Kosovo Provisional Institutions of Self-Government (PISG) and the relevant municipalities. The other complainants directed their claims only against the relevant municipalities and the PISG. All claims were lodged in 2004.
5. By the end of 2008, the courts had not contacted the complainants and no hearings had been scheduled.
6. 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 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, on 26 August 2004, 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. 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, at § 6).

8. 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.
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.
11. The circumstances of the individual cases at issue are outlined in the annex to this decision.

### **III. COMPLAINTS**

12. The complainants in substance allege that the relevant courts have stayed the proceedings concerning their 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). They allege that for the same reason their right to an effective remedy under Article 13 of the ECHR has been violated as well.
13. The complainants further complain that by the destruction of their property and by the refusal of the competent courts to decide their claims for damages, their right to property (Article 1 of Protocol No. 1 to the ECHR) has been violated.

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

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

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

15. The Panel further notes that the complaints at issue raise 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, *Ćukić*, and 69/08, *Bogićević*, which have already been examined by the Panel. Moreover, it appears from the files that no new admissibility issue arises with regard to the present cases. Therefore, pursuant to 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**

16. Before considering the cases on their 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.

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

17. The Panel considers that, insofar as the complainants invoke a violation of Articles 6 § 1 and 13 of the ECHR, they in fact raise two complaints (see the approach adopted, among others, 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, they complain about the fact that due to the stay of the proceedings in the competent courts, they have been unable to obtain the determination of their claims for damages for destroyed property. The Panel considers that this complaint may raise an issue of their right of access to a court under Article 6 § 1 of the ECHR and of their right to an effective remedy under Article 13 of the ECHR. On the other hand, they complain about the length of the proceedings before the competent courts, due to the fact that the proceedings have been instituted in 2004 and that their claims have not been examined since then. This complaint may raise an issue of their right to a judicial decision within a reasonable time, in the sense of Article 6 § 1 of the ECHR.
18. The Panel considers 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 (see, among others, HRAP, *Milogorić*, cited in § 17 above, at § 18).
19. No other ground for declaring these complaints inadmissible has been established.

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

20. The complainants all complain about a violation of their right to property (Article 1 of Protocol No. 1). They generally complain about the fact that their property has been damaged or destroyed during the second half of 1999 and about the failure by the competent courts to decide on their claims for damages.
21. 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 and 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*.

22. With respect to the complaint that, due to the stay of the proceedings instituted by the DOJ, they have 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).

23. It follows that this part of the complaints also lies outside the Panel’s jurisdiction *ratione temporis* (see, among others, HRAP, *Goković*, 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 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.**

Andrey ANTONOV  
Executive Officer

Marek NOWICKI  
Presiding Member

## **Annex**

### **Case no. 122/09, M.S**

1. The complainant is a former resident of Kosovo currently living in Serbia.
2. He is the owner an apartment, located in the Municipality of Kačanik/Kačanik, where he lived until 1999. He discovered the usurpation and damage of his property when he inspected it sometime prior to July 2004. He asserts that his property had been usurped during the second half of 1999.
3. On 7 July 2004, the complainant lodged a compensation lawsuit before the Municipal Court of Kačanik/Kačanik against the Municipality of Kačanik/Kačanik, the PISG, UNMIK and KFOR seeking compensation for the destruction of his property. He claims 11,600 euros in compensation for this damage.
4. By the end of 2008, the Municipal Court had not contacted the complainant and no hearing had been scheduled.

### **Case no. 157/09, Radivoje RADISAVLJEVIĆ**

5. The complainant is a former resident of Kosovo currently living in Serbia.
6. The complainant is a co-owner of a residential house, auxiliary buildings, farmland, livestock, an orchard and a forest located in the Municipality of Podujevë/Podujevo, where he lived until April 1999. He was informed by friends in December 2003 that his property had been destroyed during the second half of 1999.
7. On 8 June 2004, the complainant lodged a compensation lawsuit before the Municipal Court of Podujevë/Podujevo against the Municipality of Podujevë/Podujevo and the PISG seeking compensation for the destruction of his property. He claims 755,000 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. 184/09, Olivera ČUPIĆ**

9. The complainant is a former resident of Kosovo currently living in Serbia.
10. The complainant is the owner an apartment, located in the Municipality of Pejë/Peć, where she lived with her family until 1999. She was informed in 2003 that her property had been previously looted and usurped.
11. On 26 May 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 her property. She claims 20,000 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. 192/09, Bogoljub ŠMIGIĆ**

13. The complainant is a former resident of Kosovo currently living in Serbia.
14. The complainant is a co-owner of a residential house, auxiliary buildings, an orchard, a forest, and land located in the Municipality of Skenderaj/Srbica, where he lived with his family until June 1999. He was informed by his friends in 2000 that his property had been destroyed during the second half of 1999.
15. On 20 May 2004, the complainant's brother lodged a compensation lawsuit before the Municipal Court of Skenderaj/Srbica against the Municipality of Skenderaj/Srbica and the PISG seeking compensation for the destruction of his property. He claims 500,000 euros in compensation for this damage.
16. By the end of 2008, the Municipal Court had not contacted the complainant's brother, and no hearing had been scheduled.
17. In 2011, the complainant's brother died and the complainant has continued to represent the other co-owners regarding the claim.

### **Case no. 193/09, Milijana VUKSANOVIC**

18. The complainant is a former resident of Kosovo currently living in Serbia.
19. The complainant is a co-owner of two residential houses, auxiliary buildings, an orchard, a car, and land located in the Municipality of Pejë/Peć, where she lived with her family until June 1999. She was informed in 2003 that her property had been destroyed during the second half of 1999.
20. On 13 December 2004 the complainant's mother 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 her property. The complainant's mother claims 170,000 euros in compensation for this damage.
21. By the end of 2008, the Municipal Court had not contacted the claimant or the complainant and no hearing had been scheduled.

### **Case no. 202/09, Milorad PEJČINOVIĆ**

22. The complainant is a resident of Kosovo currently living in Kosovo.
23. The complainant is the owner of residential houses, auxiliary buildings and land located in the Municipality of Pejë/Peć, where he and his family lived until June 1999. He was informed in 2003 that the property was destroyed during the second half of 1999.
24. On 29 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 324,958 euros in compensation for this damage.
25. By the end of 2008, the Municipal Court had not contacted the complainant and no hearing had been scheduled.

**Case no. 204/09, Milan PETROVIĆ**

26. The complainant is a resident of Kosovo currently living in Kosovo.
27. The complainant is the owner of a residential house and an apartment located in the Municipality of Prizren/Prizren, where he lived until June 1999. He found out that his property had been destroyed during the second half of 1999.
28. On 9 June 2004 the complainant lodged a compensation lawsuit before the Municipal Court of Prizren/Prizren against the Municipality of Prizren/Prizren and the PISG seeking compensation for the destruction of his property. He claims 69,120 euros in compensation for this damage.
29. By the end of 2008, the Municipal Court had not contacted the complainant and no hearing had been scheduled.

**Case no. 337/09, Vinka POPOVIĆ**

30. The complainant is a former resident of Kosovo currently living in Serbia.
31. The complainant is the owner of an apartment in the Municipality of Pejë/Peć, where she and her family lived until June 1999. She was informed in 2003 that the property was usurped during the second half of 1999.
32. On 1 December 2004, the complainant lodged a compensation lawsuit before the Municipal Court of Pejë/Peć against the Municipality Pejë/Peć and the PISG, seeking compensation for the theft of valuables inside the apartment and the usurpation of her property. She claims 27,000 euros in compensation for this damage.
33. By the end of 2008, the Municipal Court had not contacted the complainant and no hearing had been scheduled.

**Case 347/09, Predrag MIRIĆ**

34. The complainant is a former resident of Kosovo currently living in Serbia.
35. The complainant is the owner of a residential house and another property used for business located in the Municipality of Prishtinë/Priština, where he lived with his family until June 1999. He was informed by his neighbours that the property was usurped during the second half of 1999.
36. On 2 August 2004, 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 usurpation of his property and physical damage he suffered allegedly from KLA members. He claims 1,500,000 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. 348/09, Zoran LJUŠIĆ**

38. The complainant is a former resident of Kosovo currently living in Serbia.
39. He is the owner of a residential house and land located in the Municipality of Istog/Istok where he lived until 1999. He found out that his properties had been destroyed during the second half of 1999.
40. On 25 May 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 200,000 euros in compensation for this damage.
41. By the end of 2008, the Municipal Courts had not contacted the complainant and no hearings had been scheduled.

### **Case no. 66/10, Slobodan PILIŠER**

42. The complainant was a former resident of Kosovo who lived in Serbia until his death in March 2012. Mrs Snezana Pilišer, his widow, informed the Panel of her intention to pursue the complaint.
43. The complainant owned an apartment located in the Municipality of Prishtinë/Priština, where he lived with his family until June 1999. He was informed in 2000 that all of the movable property in his apartment had been taken during the second half of 1999.
44. On 29 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 43,950 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.