



# **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: 10 June 2012**

**Case No. 34/08**

**Desanka STANIŠIĆ and Zoran STANIŠIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 10 June 2012,  
with the following members present:

Mr Paul LEMMENS, Presiding member  
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 noted Mr Marek Nowicki's withdrawal from sitting in the case, pursuant to Rule 12 of the Panel's Rules of Procedure,

Having deliberated, decides as follows:

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

1. The complaint was introduced on 21 August 2008 and registered on 17 September 2008.
2. On 17 November 2008, the Panel requested the complainants' representative to submit additional information. The representative responded on 4 December 2008.

3. On 20 April 2009, the case was communicated to the Special Representative of the Secretary-General (SRSG), for comments on admissibility of the complaint. The SRSG submitted UNMIK's response on 11 May 2009.
4. On 23 September 2009, the Panel requested information from the Kosovo Property Agency (KPA). The KPA responded on 28 September 2009.
5. On 8 December 2009, the Panel communicated UNMIK's response to the complainants, inviting them to comment and to provide additional information. The complainants submitted their response on 23 June 2010.
6. On 23 June 2010, 3 October 2010, 14 October 2010, 5 November 2010 and 15 November 2010, the complainants sent a number of documents to the Panel.
7. On 24 February 2011, the Panel requested information from the President of the District Court of Prishtinë/Priština and from the President of the Municipal Court of Prishtinë/Priština.
8. The complainants sent additional documents to the Panel on 8 March 2011, 11 March 2011, 14 March 2011, 19 March 2011 and 22 March 2011.
9. On 23 March 2011, the President of the Municipal Court of Prishtinë/Priština responded to the Panel's request for information. On 31 May 2011, the Panel requested additional information. The President responded on 14 June 2011.
10. On 31 May 2011, the Panel sent a reminder to the President of the District Court of Prishtinë/Priština. The President responded on 25 July 2011.
11. On 1 June 2011, the Panel requested additional information from the complainants. The complainants replied on 11 June 2011. They sent additional documents on 29 June 2011.
12. On 18 January 2012, the Panel requested information from the Supreme Court. It received its response on 19 January 2012.
13. On 9 March 2012, the Panel requested additional information from the KPA. The KPA responded the same day.
14. The complainants sent additional documents on 7 May 2012.
15. On 28 May 2012, the Panel requested additional information from the complainants. The complainants responded on 5 June 2012.

## **II. THE FACTS**

### **A. Events of 1999**

16. The complainants, Mrs Desanka Stanišić and her son, Mr Zoran Stanišić, are Kosovo residents, who lived in Prishtinë/Priština, on a piece of land that was situated between Miladin Popović street and Mariborska street. Two buildings were erected on that piece of land: on the side of Miladin Popović street, there was a building used for the

business of the “Sigmakomerc Priština” company (“Sigma commerce”), owned by Mr Stanišić; on the side of Mariborska street (but technically with the same address as the business premises, namely Miladin Popović street), there was the complainants’ family house.

17. At the end of June 1999, Mr Stanišić left for Serbia proper, for security reasons. Mrs Stanišić stayed in the family house.
18. According to Mrs Stanišić, after Mr Stanišić’s departure, she noticed that a former employee of Sigma commerce (Mr A) started acting as the director, assisted by two other men. She noticed them stealing items from the company premises.
19. Sometime later, Mrs Stanišić was visited by Mr A and two members of the Kosovo Liberation Army (KLA). They destroyed the landline telephone connection in the house, threatened her and ordered her not to leave the house. After about two weeks during which she had remained in the house, Mr A, another man and the same two KLA members came again and forced her out of the house, put her in a vehicle, drove her to the city market and threw her out of the vehicle. She was subsequently driven by a friend of the family to the Merdare boundary crossing point to Serbia proper, where Mr Stanišić picked her up.
20. According to Mr Stanišić, during the two weeks when his mother was not allowed to leave the house, he was contacted a number of times by Mr A and other persons, who pressured him to sell the business at a low price, threatening that his mother would otherwise be killed. He however refused to sell the business.
21. Mr A, together with other persons, started a new business, of the same type as Sigma commerce, at another location. According to the complainants, they “stole” the customers from Sigma. The business premises of Sigma commerce were illegally occupied by various persons and eventually by Mr B, who also occupied the house.

## **B. Proceedings before the Housing and Property Directorate**

22. On 31 December 2001, Mrs Stanišić filed a claim for repossession of the house at Mariborska Street with the Housing and Property Directorate (HPD).
23. On 27 June 2003, the Housing and Property Claims Commission (HPCC) decided the claim in her favour and ordered the respondent, Mr B, to vacate the property. Mrs Stanišić received the HPCC decision on 10 February 2004.
24. Since Mr B had allegedly threatened to burn and demolish the property, Mrs Stanišić was unable to repossess it. On 17 August 2004, she requested the HPD to take the property in question under its administration. While administering the property, the HPD allowed Mr B to remain in the property.
25. On 23 February 2005, Mrs Stanišić requested the HPD to evict Mr B from her property. She sent a reminder on 28 April 2005. On 10 May 2005, she signed the HPD form requesting an eviction.
26. The day before the eviction was to take place, Mr B vacated the property and returned the keys to the HPD. On 27 June 2005, Mrs Stanišić collected the keys to the property.

27. On 10 November 2005, the complainants returned to their property, which they found seriously damaged and looted. They stayed there for about six months, during which period they cleaned the house and fixed the basic necessities. According to the complainants, the Sigma commerce premises were in a deplorable condition and they estimated the necessary repair costs at approximately 100,000 euros.
28. As they were unable to find the financial means to repair the commercial premises and to resume the activities of Sigma commerce, the complainants eventually left their properties and returned to Serbia proper.
29. It seems that since then none of the properties has been occupied by the complainants or by any other person.

### **C. End of UNMIK's responsibility with regard to the judiciary**

30. 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.

### **D. Civil and criminal proceedings initiated before 9 December 2008**

#### *1. Civil claim against the Municipality of Prishtinë/Priština, the Kosovo Provisional Institutions of Self-Government and UNMIK*

31. On 15 July 2004, Mrs Stanišić filed a claim for compensation for the damage caused to the house and the commercial building with the Municipal Court of Prishtinë/Priština, against the Municipality of Prishtinë/Priština and the Kosovo Provisional Institutions of Self-Government (PISG).<sup>1</sup> She claimed an amount of 295,000 euros. During the proceedings the claim was modified, so as to include Mr Stanišić as an additional claimant and UNMIK and KFOR as additional respondents.
32. On 23 November 2006, the Municipal Court of Prishtinë/Priština found that UNMIK enjoyed immunity from local jurisdiction, and declared the claim against UNMIK inadmissible.
33. On 19 December 2006, the complainants appealed this judgment to the District Court of Prishtinë/Priština.
34. Insofar as the claim was directed against the Municipality of Prishtinë/Priština and the PISG, the Municipal Court of Prishtinë/Priština found on 22 January 2007 that both respondents lacked "passive legitimacy", and declared the claim against them likewise inadmissible.
35. On 13 February 2007, the complainants filed an appeal against this judgment with the District Court of Prishtinë/Priština.<sup>2</sup> According to the complainants, the file was transferred to the District Court on 25 June 2007.

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<sup>1</sup> Case no. 2553/04.

<sup>2</sup> Case no. Ac. 519/2007.

36. Deciding on this appeal, the District Court on 11 September 2008 reversed the judgment of the Municipal Court of 22 January 2007, and sent the case back to that Court for reconsideration. The District Court held that the question of the capacity to be sued was a matter relating to the merits of the claim, not to its admissibility. The District Court specifically instructed the Municipal Court to invite the complainants to specify the responding parties and then to decide the case on the merits. It seems that this judgment of 11 September 2008 had the effect of also disposing of the appeal against the judgment of the Municipal Court of 23 November 2006.
37. In the proceedings on remittal before the Municipal Court of Prishtinë/Priština<sup>3</sup>, the complainants indicated the responding parties to be the Municipality of Prishtinë/Priština, the Government of Kosovo and UNMIK.
38. On 12 January 2009, the Municipal Court held that the Municipality of Prishtinë/Priština and the Government of Kosovo lacked “passive legitimacy”, and declared the claim unfounded in this respect. Insofar as the claim was directed against UNMIK, the Court held that it had no jurisdiction, given UNMIK’s immunity from legal process.
39. The complainants appealed against this judgment to the District Court of Prishtinë/Priština.<sup>4</sup> On 18 November 2010, the District Court rejected the appeal and upheld the above decision of the Municipal Court.
40. On 10 January 2011, the complainants filed an application for review with the Supreme Court.<sup>5</sup> On 19 January 2012, the Panel was informed by the Supreme Court that the case of the complainants was still pending.

*2. Criminal report with regard to the kidnapping of Mrs Stanišić and other offences*

41. In June 2006 the complainants filed a criminal report against Mr A, Mr B and Mr C (the father of Mr A) with the Prishtinë/Priština District Public Prosecutor’s Office, alleging theft (in 1999), kidnapping (of Mrs Stanišić in 1999), and with respect to the sale of their property, in 2005 or 2006). The case was assigned to an International Public Prosecutor.<sup>6</sup>
42. Having examined the allegations and conducted a number of investigative actions, on 15 February 2007 the International Public Prosecutor dismissed the criminal report. Insofar as the allegations related to theft and threats, she decided that because of lack of evidence the allegations did not warrant prosecution. Insofar as the allegations related to kidnapping, she re-qualified the offence as illegal detention (Article 63 of the Criminal Law of Serbia), and concluded that such an offence was time-barred. The decision advised the complainants of their right to undertake further proceedings as subsidiary prosecutors, within eight days of the receipt of the decision. That decision was served on the complainants shortly thereafter.
43. By a letter erroneously dated “3 February 2007”, which was received at the UNMIK Department of Justice on 1 March 2007, the complainants protested against that

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<sup>3</sup> Case no. 1728/08.

<sup>4</sup> Case no. Ac. 393/09.

<sup>5</sup> Case no. 159/2011.

<sup>6</sup> Case no. PC 118/07.

decision, and informed the International Public Prosecutor about their wish to undertake further proceedings as subsidiary prosecutors. In the same letter they requested an original, or a certified copy of the complete investigation file. There seems to have been no reaction to this request.

*3. Criminal report against Mr B, relating to illegal occupation of property and other offences*

44. On 20 October 2008, Mr Stanišić filed a criminal report with the Public Prosecutor's Office in Prishtinë/Priština against Mr B, for illegal occupation of immovable property, fraud and violation of the equal status of residents of Kosovo.<sup>7</sup>

45. On 20 January 2009, the Prishtinë/Priština Municipal Public Prosecutor dismissed the complaint, on the basis that all the acts complained of had taken place in July 1999 and that criminal prosecution was time-barred. The decision advised Mr Stanišić of his right to undertake further proceedings as a subsidiary prosecutor, within eight days of the receipt of the decision. Mr Stanišić's lawyer received a copy of the decision on 23 January 2009.

46. It seems that Mr Stanišić did not act upon this advice.

*4. Civil claim against Mr B*

47. On 4 November 2008, the complainants filed a claim against Mr B with the Municipal Court of Prishtinë/Priština, for compensation for damage caused to their property.<sup>8</sup>

48. On a number of occasions, the complainants wrote to the President of the Court about the Court's inactivity in their case. The Panel is not aware of any reply to these complaints.

49. On 14 June 2011, the President of the Municipal Court confirmed to the Panel that the case was still pending before the Court.

**E. Criminal proceedings initiated after 9 December 2008**

50. On 12 January 2009, Mr Stanišić, as a subsidiary prosecutor, filed an indictment against Mr A, Mr B and Mr C, with the District Court of Prishtinë/Priština, for kidnapping Mrs Stanišić.

51. At a hearing on the confirmation of the indictment, the confirmation judge of the District Court of Prishtinë/Priština re-qualified the alleged criminal act from kidnapping (Article 159 § 1 of the Provisional Criminal Code of Kosovo) to unlawful deprivation of liberty (Article 162 of the Provisional Criminal Code of Kosovo). On 6 March 2009, the judge referred the matter for further action to the Municipal Court of Prishtinë/Priština, as the court having jurisdiction over the offence as re-qualified.<sup>9</sup>

52. On various occasions, Mr Stanišić inquired with the Municipal Court of Prishtinë/Priština about the state of the proceedings and complained about obstruction of justice.

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<sup>7</sup> Case no. KT 5154-11/2008.

<sup>8</sup> Case no. 2025/08.

<sup>9</sup> Case no. KA-96/09.

53. A first hearing on the confirmation of the indictment took place on 2 June 2010. Later, the complainants complained to the confirmation judge that they did not receive a translation in Serbian of the minutes of the hearing.
54. At a further hearing on the confirmation of the indictment, on 21 June 2010, Mr Stanišić modified the indictment, adding a charge of kidnapping (Article 159 § 1 of the Provisional Criminal Code of Kosovo) against the same accused. Another hearing took place on 6 September 2010, at which two of the three defendants were present. The confirmation judge decided to adjourn the hearing, but without setting a new date. On 22 September 2010 and 30 October 2010, Mr Stanišić complained to the Municipal Court about the way in which the confirmation judge had handled the case.
55. On 22 November 2010 the confirmation judge of the Municipal Court delivered a ruling dismissing the indictment in its entirety, in accordance with Article 316 (1), point 3, of the Provisional Criminal Procedure Code of Kosovo, as both charges (unlawful deprivation of liberty and kidnapping) were time-barred, the first on 30 June 2005, the second on 30 June 2009. According to the complainant, his lawyer received a copy of the judgment on 2 February 2011.
56. On 7 February 2011, Mr Stanišić filed an appeal against this ruling with the District Court of Prishtinë/Priština.<sup>10</sup>
57. On 22 February 2011, a three-judge panel of the District Court rejected the appeal as unfounded. The Court was of the opinion that the criminal offence with which the accused was charged was unlawful deprivation of liberty, not kidnapping. It found that the confirmation judge had correctly considered that that offence was time-barred.

#### **F. Complaints to various bodies regarding the above mentioned court proceedings**

58. The complainants provided the Panel with copies of various complaints relating to the above mentioned court proceedings, which were sent to, among others, the presidents of the relevant courts, the Judicial Inspection Unit of UNMIK's Department of Justice, the Minister of Justice of Kosovo, the Office of the Disciplinary Counsel of the Kosovo Judicial Council, the Head of Justice of EULEX, the Ombudsperson, and the President of Kosovo.
59. In these complaints the complainants accuse the judicial authorities of obstruction of justice, by not proceeding diligently with their claims and complaints and by protecting the persons who illegally occupied their property and damaged it when they had to leave. According to the complainants, in so doing the courts collaborate with the protectors of the said individuals, who allegedly occupy high positions in the Kosovo institutions.
60. The Office of the Disciplinary Counsel of the Kosovo Judicial Council informed Mr Stanisić of the rejection of three of his complaints. On 22 March 2012, the Office informed him that the disciplinary investigation of a fourth complaint had resulted in the finding of unprofessional conduct of one of the judges of the Municipal Court of Prishtinë/Priština.

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<sup>10</sup> Case no. Kv.br. 45/11.

### III. THE COMPLAINT

61. In their original application to the Panel, the complainants complain about the lack of protection against the usurpation of their property. In particular, they complain about the fact that while the property was under HPD administration, the HPD allowed the usurper, Mr B, to continue to occupy and use the property. They further argue that, when Mr B was finally evicted, the HPD did not prevent him from seriously damaging and looting the property. As the complainants were unable to reopen Sigma commerce, they invoke a violation of their right to work, guaranteed by Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), alone and in combination with the prohibition of discrimination, guaranteed by Article 2 § 2 of the ICESCR. The Panel considers that the complainants must furthermore be deemed to invoke a violation of the right to respect for their property, guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR), and of the right to execution of a judgment handed down in their favour, guaranteed by Article 6 § 1 of the ECHR.
62. In their original application to the Panel and in their submissions of 4 December 2008 and 23 June 2010, the complainants also complain about the delay in the proceedings relating to their claim against the Municipality of Prishtinë/Priština, the PISG and UNMIK. In this respect, they invoke a violation of their right to a decision within a reasonable time, guaranteed by Article 6 § 1 of the ECHR.
63. In their submission of 4 December 2008, the complainants further complain about the ruling of the International Public Prosecutor on their criminal report against unknown perpetrators. They argue that, because of the incorrect and biased re-qualification of one of the offences as unlawful detention rather than as kidnapping, leading to the conclusion that that offence was time-barred, the investigation of that offence was ineffective. The complainants invoke a violation of their right to an impartial and effective investigation, guaranteed by Article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and by Article 2 of the ECHR. The Panel considers that the complainants must furthermore be deemed to invoke a violation of Mrs Stanišić's right to an effective remedy, guaranteed by Article 13 of the ECHR, in combination with the right to freedom from inhuman or degrading treatment, guaranteed by Article 3 of the ECHR, and with the right to respect for her liberty, guaranteed by Article 5 of the ECHR.
64. In their submission of 23 June 2010, the complainants complain about the difficulties encountered in the proceedings relating to their civil claim against Mr B. According to the complainants, until then no action had been taken by the Municipal Court of Prishtinë/Priština. They can be deemed to invoke a violation of their right to a decision within a reasonable time, guaranteed by Article 6 § 1 of the ECHR.
65. In their submission of 23 June 2010, the complainants also complain about the difficulties encountered in the proceedings relating to the indictment against Messrs A, B and C. According to the complainants, there have been unjustifiable delays and procedural irregularities. They can be deemed to invoke a violation of their right to a fair trial and a decision within a reasonable time, guaranteed by Article 6 § 1 of the ECHR.



66. In all their submissions to the Panel, starting with the initial application, the complainants generally complain about collusion between the judicial authorities and former leaders of the KLA, now occupying important positions in the Kosovo institutions, in order to prevent the complainants and other powerful Serbian families from returning to their property and resuming their business. The complainants can be deemed to invoke a violation of their right to an independent and impartial tribunal, guaranteed by Article 6 § 1 of the ECHR, alone and in combination with the prohibition of discrimination, guaranteed by Article 14 of the ECHR.

#### **IV. THE LAW**

67. 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 on the Establishment of the Human Rights Advisory Panel.

#### **A. Complaint relating to the lack of protection by the Housing and Property Directorate against the usurpation and the damage of their property**

##### *a) Submissions of the parties*

68. Insofar as the complaint concerns the lack of protection against the usurpation of and the damage to their property, the complainants complain in particular about the ineffective implementation by the HPD of the decision of the HPCC in their favour. In this respect, they complain about the fact that, while the property was under HPD administration, the HPD allowed the usurper, Mr B, to continue to occupy and use the property (see § 24 above), and that, when Mr B was finally evicted, the HPD did not prevent him from seriously damaging and looting the property (see §§ 25-27 above).

69. As the complainants were unable to reopen Sigma commerce, they invoke a violation of their right to work, guaranteed by Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), alone and in combination with the prohibition of discrimination, guaranteed by Article 2 § 2 of the ICESCR. As indicated above (§ 61), the Panel considers that the complainants must furthermore be deemed to invoke a violation of the right to respect for their property, guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR), and of the right to execution of a judgment handed down in their favour, guaranteed by Article 6 § 1 of the ECHR.

70. The SRSG, noting that the decision of the HPCC has not been communicated to him, reserves his right to comment on the admissibility and the merits of this part of the complaint.

##### *b) The Panel's assessment*

71. The Panel considers that a distinction has to be made between the period in which the complainants' property was not under the administration of the HPD and the period during which it was under such administration. Mrs Stanišić requested the HPD on 17 August 2004 to take the property under its administration; it remained under the HPD's administration until the complainants took repossession of their property, on 27 June 2005.

72. As for the period before the HPD administration, the Panel recalls that Section 2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel provides that the Panel shall have jurisdiction 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”. It follows that events that took place before 23 April 2005 generally fall outside the jurisdiction *ratione temporis* of the Panel. To the extent that such events gave rise to a continuing situation, the Panel has jurisdiction to examine complaints relating to that situation, but only insofar as the situation continued after 23 April 2005.
73. It follows that the situation before the HPD took up administration over the complainants’ property falls entirely outside the Panel’s jurisdiction *ratione temporis*.
74. As for the period during the HPD administration, the Panel notes that the HPD allowed Mr B to stay in the property. This decision had its legal basis in Sections 12.4 and 12.5 of UNMIK Regulation No. 2000/60 of 31 October 2000 on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission, which read as follows:
- “12.4 The Directorate may grant temporary permits to occupy property under its administration, subject to such terms and conditions as it sees fit. Temporary permits shall be granted for a limited period of time, but may be renewed upon application.
- 12.5 The Directorate shall establish criteria for the allocation of properties under administration on a temporary humanitarian basis.”
75. Insofar as this situation was before 23 April 2005, it falls outside the Panel’s jurisdiction *ratione temporis* (see §§ 72-73 above).
76. Insofar as the permission granted to Mr B to stay in the property extended from 23 April 2005 until the date when he left the property, *i.e.* somewhere in June 2005, the Panel considers that this permission amounted to an interference with the complainants’ right to respect for their property, guaranteed by Article 1 of Protocol No. 1 to the ECHR. However, the Panel does not consider that this interference placed a disproportionate burden on the complainants, having regard to the fact that they could at any time, once they became aware of the situation, have requested the HPD to end that situation and to implement the decision of the HPCC by evicting Mr B. Mrs Stanišić had indeed requested the HPD on 23 February 2005 to evict Mr B. After she signed the relevant form for such a request, on 10 May 2005, the HPD ordered Mr B to vacate the property, and the complainants were able to take repossession of their property on 27 June 2005. In this respect, the Panel does not see any appearance of a violation of the complainants’ right to respect for their property. Accordingly, this part of the complaint must be rejected as being manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
77. The complainants further complain about the fact that the HPD did not prevent Mr B from damaging and looting their property when he had to leave it. However, as provided by Section 12.8 of UNMIK Regulation No. 2000/60, the HPD is not liable for any loss or damage to the property under its administration, attributable to occupants of the property:

“The Directorate shall make reasonable efforts to minimise the risk of damage to any property under its administration. The Directorate shall bear no responsibility for any damage to property under administration or loss of or damage to its contents.”

78. Accordingly, the Panel considers that there is no basis for finding that the complainants’ right to protection of property has been violated as a result of the failure of the HPD to prevent the damages inflicted to their property (compare Human Rights Advisory Panel (HRAP), *Živković*, no. 29/08, decision of 26 November 2010, §§ 40-41). The Panel notes in this respect that the complainants could take action against Mr B, which they did, by filing a criminal report and a civil claim against him (see §§ 44-49 above and, with respect to the civil claim, §§ 99-103 below).
79. An examination of this part of the complaint from the point of view of Article 6 of the ICESCR, alone and in combination with Article 2 § 2 of the ICESCR, and from the point of view of Article 6 § 1 of the ECHR, does not lead to different conclusions.
80. Therefore, the Panel is of the view that this part of the complaint must also be rejected as being manifestly ill-founded.

**B. Complaint with regard to the proceedings relating to the civil claim against the Municipality of Prishtinë/Priština, the PISG and UNMIK**

*a) Submissions of the parties*

81. Insofar as the complaint concerns the delay in the proceedings relating to their claim against the Municipality of Prishtinë/Priština, the PISG and UNMIK, the complainants refer to various delays in the proceedings before the Municipal Court of Prishtinë/Priština, the District Court of Prishtinë/Priština and the Supreme Court (see §§ 31-40).
82. In this respect, they invoke a violation of their right to a decision within a reasonable time, guaranteed by Article 6 § 1 of the ECHR.
83. The SRSG argues that the complainants’ claim is still pending before the courts. The complainants have not exhausted all available avenues for redress and this part of the complaint should therefore be declared inadmissible.

*b) The Panel’s assessment*

84. Section 3.1 of UNMIK Regulation No. 2006/12 provides that the Panel may only deal with a matter after it has determined that all other available avenues for review of the alleged violation have been pursued.
85. The Panel notes that the complaint is about the length of the proceedings. Such complaint can be brought before it, even before the termination of the proceedings in question (see, with respect to applications to the European Court of Human Rights (ECtHR), *e.g.*, ECtHR, *Biçer v. Turkey*, no. 19441/04, judgment of 20 July 2010, § 20). The Panel indeed fails to see how the fact that the proceedings are still pending can remedy the alleged violation of Article 6 § 1 of the ECHR stemming from the duration

of the proceedings (see ECtHR, *Todorov v. Bulgaria*, no. 39832/98, decision of 6 November 2003).

86. The SRSG has not indicated any specific legal remedy available to the complainant with regard to the duration of the proceedings. For its part, the Panel does not see any such remedy.
87. The Panel therefore concludes that this part of the complaint cannot be rejected for non-exhaustion of available avenues within the meaning of Section 3.1 of UNMIK Regulation No. 2006/12 (see HRAP, *Mladenović*, no. 61/10, decision of 6 April 2012, §§ 13-15). It dismisses the objection of the SRSG.
88. The Panel considers that the complaint relating to the duration of the proceedings 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 part of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
89. No other ground for declaring this part of the complaint inadmissible has been established.

### **C. Complaint with regard to the ruling of the International Public Prosecutor of Pristinë/Priština on the criminal report by the complainants**

#### *a) Submissions of the parties*

90. Insofar as the complaint concerns the ruling of the International Public Prosecutor, dated 15 February 2007, on the complainants' criminal report against Mr A, Mr B and Mr C (see § 42 above), the complainants point to the fact that the International Public Prosecutor re-qualified one of the offences as unlawful detention rather than as kidnapping. As a result, the International Public Prosecutor decided that this offence was time-barred, and on that basis dismissed the criminal report with respect to that offence. The complainants argue that the re-qualification had the effect of making the investigation into the matter ineffective.
91. The complainants invoke a violation of their right to an impartial and effective investigation, guaranteed by Article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and by Article 2 of the ECHR. As indicated above (§ 63), the Panel considers that the complainants must furthermore be deemed to invoke a violation of Mrs Stanišić's right to an effective remedy, guaranteed by Article 13 of the ECHR, in combination with the right to freedom from inhuman or degrading treatment, guaranteed by Article 3 of the ECHR, and with the right to respect for her liberty, guaranteed by Article 5 of the ECHR.
92. The SRSG, noting that the ruling of the International Public Prosecutor has not been communicated to him, reserves his right to comment on the admissibility and the merits of this part of the complaint.

*b) The Panel's assessment*

93. As a preliminary issue, the Panel notes that, while Article 2 of the ECHR places an obligation on the public authorities to investigate certain crimes, that provision relates only to interferences with the right to life, *i.e.* to killings and forced disappearances. In the present case, that provision is not applicable. However, a similar obligation may also result from Article 3 of the ECHR, which guarantees freedom from inhuman or degrading treatment. The Panel therefore considers that, insofar as the complainants invoke a violation of the right to an impartial and effective investigation, they should be deemed to rely on Article 3, not Article 2, of the ECHR, as well as on the corresponding Article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
94. The question arises whether the ruling of the International Public Prosecutor constitutes a “final decision” against which a complaint can immediately be lodged with the Panel, or whether it is subject to further avenues of review, which the complainants, in accordance with Section 3.1 of UNMIK Regulation No. 2006/12 (see § 84 above), have to exhaust before lodging a complaint with the Panel.
95. Since Article 62 (2) of the Provisional Criminal Procedure Code of Kosovo provides that the injured party has the right to undertake or to continue prosecution within eight days of the date of receipt of the notification of a ruling by a public prosecutor that there are no grounds to undertake an investigation or prosecution of a criminal offence, there is reason to consider that ruling as a decision that is not “final”, for the purpose of the requirement of exhaustion of available avenues.
96. The Panel considers, however, that it is not necessary to resolve this issue.
97. Indeed, assuming that in this case the ruling of the public prosecutor constitutes a “final decision”, against which a complaint to the Panel lies open (compare HRAP, *Xhaka*, no. 55/08, decision of 15 September 2011, §§ 26-27), it is to be noted that according to Section 3.1 of UNMIK Regulation No. 2006/12, a complaint is to be addressed to the Panel “within a period of six months from the date on which the final decision was taken”. In the present case, the ruling was adopted by the International Public Prosecutor on 15 February 2007 and, as is demonstrated by the complainants’ reaction to it by a letter received at the UNMIK Department of Justice on 1 March 2007 (see § 43 above), notified to them shortly after the date of adoption. The complainants complained about the ruling in their submission of 4 December 2008 (see § 63 above), which is clearly outside the six-month time limit (see HRAP, *N.P. and others*, no. 341/09, decision of 15 September 2011, §§ 16-19).
98. It follows that this part of the complaint is inadmissible, either because of non-exhaustion of available avenues or because of being filed outside the six-month time limit.

**D. Complaint with regard to the proceedings relating to the civil claim against Mr B**

*a) Submissions of the parties*

99. Insofar as the complaint concerns the proceedings relating to their civil claim against Mr B for compensation for damages caused to their property (see §§ 47-49 above),

the complainants argue that no action has been taken by the Municipal Court of Prishtinë/Priština.

100. As indicated above (§ 64), the complainants can be deemed to invoke a violation of their right to a decision within a reasonable time, guaranteed by Article 6 § 1 of the ECHR.
101. As this part of the complaint has not been communicated to the SRSG, he did not comment on the admissibility thereof.

*b) The Panel's assessment*

102. The Panel notes that this part of the complaint has been raised for the first time in the complainants' submission of 23 June 2010 (see § 64 above). The Panel has to recall Section 5 of Administrative Direction No. 2009/1 of 17 October 2009 Implementing UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel, according to which "no complaint to the Advisory Panel shall be admissible if received by the Secretariat of the Advisory Panel later than 31 March 2010". It follows that this part of the complaint must be declared inadmissible *ratione temporis*.
103. Moreover, the Panel notes that the complainants filed their claim with the Municipal Court of Prishtinë/Priština on 4 November 2008. Less than two months after the claim was filed, on 8 December 2008, EULEX assumed full operational control in the area of the rule of law (see § 30 above). For the short period during which UNMIK was still responsible for the operation of the courts, the duration of the proceedings cannot be considered unreasonably long, and this part of the complaint would therefore in any event have to be declared manifestly ill-founded. As for the period from 9 December 2008, this part of the complaint would in any event fall outside the Panel's jurisdiction *ratione personae* (compare HRAP, *Adančić*, no. 310/09, decision of 16 December 2011, §§ 32-34).

**E. Complaint with regard to the proceedings relating to the indictment filed by Mr Stanišić with the relevant courts**

*a) Submissions of the parties*

104. Insofar as the complaint concerns the difficulties encountered in the proceedings relating to the indictment against Messrs A, B and C (see §§ 50-57 above), the complainants argue that there have been unjustifiable delays and procedural irregularities.
105. As indicated above (§ 65), the complainants can be deemed to invoke a violation of their right to a fair trial and a decision within a reasonable time, guaranteed by Article 6 § 1 of the ECHR.
106. As this part of the complaint has not been communicated to the SRSG, he did not comment on the admissibility thereof.

*b) The Panel's assessment*

107. The Panel notes that this part of the complaint has been raised for the first time in the complainants' submission of 23 June 2010 (see § 65 above). For the reason indicated with respect to the previous part of the complaint (§ 102), this part of the complaint must be declared inadmissible *ratione temporis*.
108. Moreover, the Panel notes that Mr Stanišić filed the indictment with the District Court of Prishtinë/Priština on 12 January 2009. At that moment, EULEX had already assumed full operational control in the area of the rule of law (see § 30 above). It follows that this part of the complaint would in any event fall entirely outside the Panel's jurisdiction *ratione personae*.

**F. General complaint about collusion between the courts and criminal elements**

*a) Submissions of the parties*

109. Insofar as the complaint concerns the alleged collusion between the judicial authorities and former leaders of the KLA, now occupying important positions in the Kosovo institutions, the complainants argue that the judicial authorities pursue the aim of preventing them and other powerful Serbian families from returning to their property and resuming their business.
110. As indicated above (§ 0), the complainants can be deemed to invoke a violation of their right to an independent and impartial tribunal, guaranteed by Article 6 § 1 of the ECHR, alone and in combination with the prohibition of discrimination, guaranteed by Article 14 of the ECHR.
111. As this part of the complaint has not been communicated to the SRSG, he did not comment on the admissibility thereof.

*b) The Panel's assessment*

112. The Panel takes note of the complainants' apprehensions as to the independence of the judiciary in Kosovo, in particular the Municipal Court and the District Court of Prishtinë/Priština in their cases. However, in order for a complaint to be declared admissible, it must be supported by *prima facie* evidence.
113. In the present case, the complainants base their general complaint exclusively on the way in which the judicial authorities dealt and continue to deal with their cases. While questions can undoubtedly be raised, the Panel considers that the procedural events and the decisions taken do not suffice to indicate that the judicial authorities lack the requisite independence.
114. On the basis of the elements presented by the complainants, the Panel can come to no other conclusion than that there is no sufficient basis for a finding of a violation of the rights invoked by the complainants.

115. It follows that this part of the complaint must be declared inadmissible as being manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.

**FOR THESE REASONS,**

The Panel, unanimously,

**- DECLARES ADMISSIBLE THE COMPLAINT RELATING TO 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 INITIATED IN 2004 AT THE MUNICIPAL COURT OF PRISHTINË/PRIŠTINA;**

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

Andrey ANTONOV  
Executive Officer

Paul LEMMENS  
Presiding Member