



# *The Human Rights Advisory Panel*

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## **DECISION**

**Date of adoption: 22 August 2012**

**Case No. 10/08**

**Zvonimir RISTIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 22 August 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 10 June 2008, the Panel communicated the complaint to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on the admissibility and the merits of the complaint. The SRSG provided UNMIK's response on 3 October 2008.
3. On 6 October 2008 the Panel forwarded UNMIK's comments to the complainant and invited him to provide his comments. The complainant did not avail himself of this opportunity.

4. On 15 May 2009, the Panel requested further information from the complainant. On 11 November 2009, the Panel received the complainant's response.
5. On 8 February 2012, the Panel re-communicated the complaint to the SRSG for additional comments on its admissibility. The SRSG provided UNMIK's response on 19 March 2012.

## II. THE FACTS

6. The complainant is a former resident of Kosovo currently living in Serbia proper. He is the owner of an apartment in Prishtinë/Priština, where he and his family lived until 20 November 1999 when they had to leave Kosovo for security reasons. Later the complainant became aware that his apartment had been looted and damaged by unknown perpetrators.
7. On 23 August 2004, the complainant lodged a claim seeking compensation for the damage caused to his property with the Municipal Court of Prishtinë/Priština, against the Municipality of Prishtinë/Priština and the Kosovo Provisional Institutions of Self-Government (PISG).
8. 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*, 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, at § 5).
9. 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 § 8 above, at § 6).
10. 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.
11. On 22 February 2007, the Municipal Court of Prishtinë/Priština, citing UNMIK Regulation No. 2006/10 of 16 October 2006 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property, held that the Kosovo Property Agency (KPA) had competence to decide on the complainant's claim. The Court declared itself without jurisdiction over the dispute. According to information received from the Municipal Court, that court sent the case file to the KPA on the same date.

12. On 9 July 2007, the complainant received notification of the judgment of the Municipal Court. The Panel cannot determine at this point whether the notification was delivered by the Court or by the KPA. The complainant states that he duly appealed that judgment to the District Court of Prishtinë/Priština, as the court of second instance, within the prescribed 15-day time limit, sending the appeal letter by registered mail to the Municipal Court, as required by the relevant provisions of procedural law. However, as of 17 January 2012 he has not heard anything regarding his appeal. According to information received from the District Court, the case has never been registered with that Court.
13. According to information received from the KPA, the latter is in possession of the complainant's claim, as it was referred to it by the Municipal Court of Prishtinë/Priština. The KPA explains that it has not undertaken any action with respect to the case, as it has never received notice from the District Court either that the decision of the Municipal Court referring the case to the KPA has been confirmed or that that decision has been quashed and the case sent back to the Municipal Court.
14. On 9 December 2008, UNMIK's responsibility with regard to the judiciary in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX) assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.

### **III. THE COMPLAINT**

15. The complainant in substance alleges that the Municipal Court of Prishtinë/Priština declared itself without jurisdiction and that his appeal against that decision has not been processed by the District Court of Prishtinë/Priština. The result is that he has not been able to obtain a decision on the merits of his claim for damages for destroyed property. In this respect, he can be deemed to invoke a violation of his right of access to a court and his right to a judicial determination of the dispute, guaranteed by Article 6 § 1 of the European Convention on Human Rights (ECHR), as well as a violation of his right to an effective remedy, guaranteed by Article 13 of the ECHR.
16. The complainant further alleges that the proceedings before the courts have not been concluded within a reasonable time. In this respect, he can be deemed to invoke a violation of Article 6 § 1 of the ECHR.
17. He finally complains that by the destruction of his property and by the failure of the competent courts to decide his claim for damages, his right to property has been violated. In this respect he can be deemed to invoke a violation of Article 1 of Protocol No. 1 to the ECHR.

### **IV. THE LAW**

18. 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.

### **A. Jurisdiction *ratione personae* of the Panel**

19. According to Section 1.2 of UNMIK Regulation No. 2006/12, the Panel has jurisdiction over complaints relating to alleged violations of human rights by UNMIK.
20. In his initial comments on the admissibility of the complaint, the SRSG asserts that complaints against Kosovo courts fall outside of the Panel's jurisdiction, as the courts were defined as Provisional Institutions of Self-Government (PISG), and as such were not a component of UNMIK. The SRSG also states that "the SRSG retained the authority to oversee the PISG, its officials and agencies" and that it would be inappropriate for the SRSG to intervene in court matters, "unless exceptional circumstances like the breakdown of the court system or a general dysfunction of the courts could warrant an intervention". The SRSG is of the opinion that such grounds for an intervention in relation to this complaint were not present.
21. The Panel refers to its previous jurisprudence, in which it held that UNMIK had jurisdiction to oversee the actions of the PISG, its officials and agencies, and to take appropriate measures whenever their actions were inconsistent with United Nations Security Council Resolution 1244 (1999) or with the Constitutional Framework for Provisional Self-Government in Kosovo, set up by UNMIK Regulation No. 2001/9 of 15 May 2001. UNMIK therefore remained responsible, from a human rights perspective, for any act or omission imputable to the PISG (see Human Rights Advisory Panel (HRAP), *Spahiu*, no. 02/08, partial opinion of 20 March 2009, §§ 24-29).
22. In accordance with Section 1.5 of UNMIK Regulation No. 2001/9, the Kosovo courts were part of the PISG.
23. It follows that the Panel has jurisdiction to examine complaints about alleged violations of human rights by the courts (see HRAP, *Milogorić and Others* opinion, cited in § 8 above, at § 18). The objection raised by the SRSG is accordingly rejected.
24. It should be noted, however, that UNMIK's responsibility with regard to the courts ended on 9 December 2008 (see § 14 above). It follows that insofar as the complaint relates to acts or omissions by the courts after 9 December 2008, it falls outside the jurisdiction *ratione personae* of the Panel.

### **B. Complaint with regard to the proceedings before the Municipal Court of Prishtinë/Priština and the District Court of Prishtinë/Priština**

25. The Panel recalls that the procedural aspects of the complainant concern, on the one hand, the alleged inability to obtain a judicial decision on the merits of the complainant's claim, and on the other hand, the allegedly unreasonable duration of the proceedings (see §§ 15-16).

#### *1. Exhaustion of available avenues*

26. The SRSG raises an objection based on the non-exhaustion of all available avenues. He argues in the first place that UNMIK has been informed by the KPA that the matter is open with the KPA, but cannot be considered by the latter as it is unable to contact the complainant. The SRSG further argues that there is a possibility of the matter being returned to the courts for determination, as the case is still awaiting a decision by the District Court on the issue of jurisdiction of the courts. He concludes that the complaint is inadmissible under Section 3.1 of UNMIK Regulation No. 2006/12.

27. 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.
28. Under Section 3.1 of Regulation No. 2006/12 normal recourse should be had by a complainant to avenues which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the avenues in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (HRAP, *Balaj and Others*, no. 04/07, decision of 31 March 2010, § 45; HRAP, *N.M. and Others*, no. 26/08, decision of 31 March 2010, § 35; compare, with respect to the requirement of exhaustion of domestic remedies under Article 35 § 1 of the ECHR, European Court of Human Rights (ECtHR) (Grand Chamber), *Paksas v. Lithuania*, no. 34932/04, judgment of 6 January 2011, § 75).
29. The question whether the avenues indicated by the SRSG are to be exhausted by the complainant before he can file a complaint with the Panel, has to be examined taking into account the specific features of each part of the complaint.
  - a. *Complaint with regard to the alleged inability for the complainant to obtain a judicial decision on the merits of his claim*
30. The SRSG refers in the first place to the fact that the claim of the complainant is still pending before the KPA.
31. In this respect, the Panel emphasises that the complainant complains about the impossibility to obtain a judicial decision on the merits of his claim. Assuming that he could theoretically obtain a judicial decision from the KPA, through the Kosovo Property Claims Commission, it results from the elements before the Panel that the KPA is not dealing with the case until District Court of Prishtinë/Priština takes a decision on the appeal filed by the complainant against the judgment of the Municipal Court of Prishtinë/Priština. In the given circumstances, the proceedings before the KPA cannot be considered an effective remedy.
32. The SRSG further argues that the appeal filed by the complainant is still pending before the District Court of Prishtinë/Priština.
33. The Panel notes that the complainant complains that he is unable to obtain a decision from the District Court. As indicated above, the Panel considers that in this respect he can be deemed to invoke, among other things, a violation of his right to an effective remedy, guaranteed by Article 13 of the ECHR (see § 15).
34. The decision on the objection to admissibility thus appears to depend on the outcome of the examination of the merits of this aspect of the complaint. The Panel recalls that where an admissibility issue is closely linked to the merits of the complaint, it may, pursuant to Rule 31*bis* of its Rules of Procedure, join the issue to the merits, provided that there is no other obstacle to admissibility (see HRAP, *R.P.*, nos. 120/09 and 121/09, decision of 26 November 2010; HRAP, *Morina*, no. 36/08, decision of 16 December 2010, § 46).

*b. Complaint with regard to the duration of the proceedings before the Municipal Court of Prishtinë/Priština and the District Court of Prishtinë/Priština*

35. The Panel recalls that when the complaint is about the length of the proceedings, it can be brought before it, even before the termination of the proceedings in question (see, with respect to applications to the 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).
36. 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.
37. 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; HRAP, *Stanisić*, no. 34/08, §§ 85-87). It dismisses the objection of the SRSG with regard to this part of the complaint.

*2. Other grounds of inadmissibility*

*a. Complaint with regard to the alleged inability for the complainant to obtain a judicial decision on the merits of his claim*

38. The complainant states that he brought his claim for damages before the Municipal Court of Prishtinë/Priština, which declared itself without jurisdiction and referred the matter to the KPA. The complainant further states that he appealed against this decision to the District Court of Prishtinë/Priština, but that his case has not been processed on appeal. He complains that as a result he is unable to obtain a decision on the merits of his claim.
39. Whatever the exact situation of the appeal may be, it seems to result from the information obtained from the Municipal Court, the District Court and the KPA that the Municipal Court has declared itself without jurisdiction, that the KPA is not taking any action until the District Court has decided on the appeal, and that the District Court does not proceed with the case since no appeal has been registered with it. As a consequence, there seems to be a stalemate, in which for several years nothing has happened.
40. The Panel considers that this part of the complaint 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.

41. No other ground for declaring this part of the complaint inadmissible has been established.

*b. Complaint with regard to the duration of the proceedings before the Municipal Court of Prishtinë/Priština and the District Court of Prishtinë/Priština*

42. The complainant complains about the duration of the proceedings before the Municipal Court of Prishtinë/Priština and the District Court of Prishtinë/Priština. These proceedings started on 23 August 2004, when the complainant's claim was filed with the Municipal Court. The proceedings were subsequently stayed during a certain time. On 22 February

2007, the Municipal Court handed down its judgment, by which it declared itself without jurisdiction. The complainant further states that he filed an appeal against that decision and that the proceedings on appeal are still pending before the District Court.

43. The Panel considers that this part of the complaint 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.
44. No other ground for declaring this part of the complaint inadmissible has been established.

### **C. Complaint with regard to the right to property**

45. The complainant complains about a violation of his right to property (Article 1 of Protocol No. 1 to the ECHR). He generally complains about the fact that his property has been looted and damaged. He also complains about the failure by the competent courts to decide on his claims for damages.
46. Insofar as the complainant complains about the destruction of his property, 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”.
47. The Panel considers that the damage 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; HRAP, *M.S. and others*, nos 122/09 and others, decision of 5 April 2012, § 21).
48. The exact date of the alleged damage to the complainant’s property is not known. However, it is clear that it occurred before 23 August 2004, since the complainant’s claim for compensation was filed on that date (see § 7 above).
49. It follows that this part of the complaint lies outside the Panel’s jurisdiction *ratione temporis*.
50. Insofar as the complainant complains about the fact that, due to the decision by the Municipal Court that it has no jurisdiction and to the alleged failure by the District Court of Prishtinë/Priština to decide on his appeal, he has been unable thus far to obtain compensation for the damage to his property, the Panel notes that the court proceedings are in this respect referred to from the point of view of the right of property. For the purpose of examining the Panel’s jurisdiction *ratione temporis*, these proceedings cannot be detached from the acts upon which the claim before the court is 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).

51. It follows that this part of the complaint also lies outside the Panel's jurisdiction *ratione temporis* (see, among others, HRAP, *Gojković*, no. 63/08, decision of 4 June 2009, §§ 24-25; HRAP, *M.S. and others*, cited above, §§ 22-23).

**FOR THESE REASONS,**

The Panel, unanimously,

**- DECLARES ADMISSIBLE THE COMPLAINT RELATING TO THE ALLEGED INABILITY FOR THE COMPLAINANT TO OBTAIN A JUDICIAL DECISION ON THE MERITS OF HIS CLAIM (ARTICLES 6 § 1 AND 13 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS);**

**- DECLARES ADMISSIBLE THE COMPLAINT RELATING TO THE DURATION OF THE PROCEEDINGS (ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS);**

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

Andrey ANTONOV  
Executive Officer

Marek NOWICKI  
Presiding Member