



## OPINION

**Date of adoption: 15 February 2013**

**Case No. 88/10**

**T. P.**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 15 February 2013,  
with the following members taking part:

Mr Marek NOWICKI, Presiding Member  
Ms Christine CHINKIN  
Ms Françoise TULKENS

Assisted by  
Mr Andrey ANTONOV, Executive Officer

Having considered the aforementioned complaints, introduced pursuant to Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel,

Having deliberated, including through electronic means, in accordance with Rule 13 § 2 of its Rules of Procedure, makes the following findings and recommendations:

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

1. The complaint was introduced on 31 March 2010 and registered on 1 April 2010.
2. On 4 October 2010, the complainant submitted additional information to the Panel.
3. On 14 March 2012, the Panel requested the complainant to provide additional information. The complainant's response was received on 5 April 2012.
4. On 14 June 2012, the Panel obtained further clarifications from the complainant by telephone.

5. On 31 July 2012 and on 2 August 2012, the Panel submitted a request for information in relation to the complaint to the District Court in Prishtinë/Priština and the Municipal Court in Ferizaj/Uroševac. The former did not respond. The latter responded on 3 August 2012.
6. On 27 September 2012, the Panel declared the complaint admissible in part.
7. On 18 October 2012, the SRSG submitted UNMIK's response to the Panel's decision of 27 September 2012.

## II. THE FACTS

8. The complainant is a former resident of Kosovo, currently residing in Serbia proper.
9. The complainant states that her mother was the owner of a house, including a backyard and orchard, in Ferizaj/Uroševac. The complainant also lived there with her husband and children. She submits that in June 1999, after the arrival of KFOR and UNMIK in Kosovo, they had to depart from Kosovo due to security reasons. The complainant states that they learned from neighbours that on 14 June 1999, the family house was looted and burned down.
10. On 24 August 2004, the complainant's mother filed a lawsuit with the Municipal Court of Ferizaj/Uroševac against the Provisional Institutions of Self-Government (PISG) of Kosovo, the Municipality of Ferizaj/Uroševac, UNMIK and KFOR for compensation for damages sustained in the destruction of the above-mentioned property, in the amount of 136,000 euros.
11. Approximately 17,000 compensation claims were lodged in 2004 before Kosovo courts, the vast majority of which by Kosovo Serbs who, because of 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 generally directed against some combination of UNMIK, KFOR, the PISG and the relevant municipality (see Human Rights Advisory Panel (HRAP), *Milogorić and Others*, cases nos. 38/08, 58/08, 61/08, 63/08 and 69/08, opinion of 24 March 2010, § 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 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 Kosovo courts to begin processing claims for damages caused by identified natural persons and for damages caused after October 2000, considering that the "obstacles to the efficient processing of these cases" did not exist any longer. Claims related to events arising before October 2000 were not affected by this letter.

14. On 28 September 2008, the Director of the DOJ advised the courts that cases which had not been scheduled according to the 26 August 2004 request should now be processed.
15. On 9 December 2008, UNMIK's responsibility with regard to the judiciary in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX) assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.
16. By the end of December 2008, the Municipal Court of Ferizaj/Uroševac had not contacted the complainant's mother and no hearing had been scheduled concerning the aforementioned lawsuit. On 12 February 2009, the complainant's mother wrote to the President of the Municipal Court of Ferizaj/Uroševac requesting that the examination of the case be expedited.
17. On 3 March 2011, the Municipal Court of Ferizaj/Uroševac rendered a first instance ruling on the matter, rejecting the claim for compensation. There is no indication that the complainant appealed the aforementioned decision.

### **III. THE COMPLAINT**

18. Insofar as the complaint has been declared admissible, the complainant in substance alleges that the proceedings concerning the claim for damages for the destroyed property were stayed, thus making it impossible to obtain the determination of the claim, in breach of the right of access to a court under Article 6 § 1 of the European Convention on Human Rights (ECHR). She also complains that, as a result of the stay, the proceedings have not been concluded within a reasonable time, in breach of Article 6 § 1 of the ECHR. Finally, she alleges that for the same reason the right to an effective remedy under Article 13 of the ECHR has been violated as well.

### **IV. THE LAW**

#### ***Alleged violations of Article 6 § 1 of the ECHR***

19. The Panel notes that the case of this complainant raises issues the substance of which has already been submitted to the Panel by other complainants. The Panel recalls that in, for instance, the joined cases of *Milogorić and Others* (cited in § 11 above), it examined complaints by five complainants who were also owners of real property in Kosovo. In 1999, fearing hostilities, they too left their homes in Kosovo. Their property was damaged or destroyed during the second half of 1999, after the entry into Kosovo of UNMIK and KFOR. These complainants also filed claims in 2004 before the competent municipal courts against UNMIK, KFOR, the PISG and the relevant municipalities, seeking compensation for the damage caused to their property. They too had not been contacted by the courts and no hearings had been scheduled, due to the above mentioned intervention by the DOJ which halted the judicial proceedings from August 2004 to September 2008. In these cases, the Panel concluded that the complainants' right to have their claim determined by the courts had been violated.

20. In his response the SRSG maintains and repeats the arguments, based on the jurisprudence of the European Court of Human Rights, that he has given on the merits of the earlier, similar cases. The SRSG argues among other things that UNMIK's request that the proceedings be stayed must be considered to have had a legitimate aim, and that in the circumstances of post-conflict Kosovo and its burgeoning judicial system, the temporary stay was the only way for UNMIK to deal with the exceptional situation with which the Kosovo judicial system was faced, caused by the influx of compensation claims. The SRSG also argues that there was a reasonable proportionality between the means employed and the aim sought to be achieved, because a fair balance was struck between the demands of the general interest of society and the requirements for the protection of the individuals' fundamental rights. According to the SRSG, the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, and the European Court applies three criteria in particular: the conduct of the judicial authorities, the complexity of the case, and the conduct of the applicant. Only delays attributable to the State cause a violation of the reasonable time requirement. The SRSG analyses in detail the application of the above three criteria in the context of Kosovo.
21. The Panel recalls that it already considered and rejected all of these arguments in *Milogorić and Others* (cited in § 11 above), in *Berisha and Others* (HRAP, cases nos. 27/08 and others, opinion of 23 February 2011, § 24), *Lalić and Others* (HRAP, cases nos. 30/08 and others, opinion of 13 May 2011, § 21), *Felegi and others* (HRAP, cases nos. 32/08 and others, opinion of 17 August 2012 § 24). Concerning the argument that the circumstances in Kosovo must be taken into account, the Panel found that it is true that UNMIK's interim character and related difficulties must be duly taken into account with regard to a number of situations, but under no circumstances could these elements be taken as a justification for diminishing standards of respect for human rights, which were duly incorporated into UNMIK's mandate (*Milogorić and Others*, § 44; *Berisha and Others*, § 25; *Lalić and Others*, § 22; *Felegi and Others*, § 24).
22. The Panel sees no reason to depart from these findings.
23. The Panel now reflects on the additional argument presented by the SRSG in this case that the above referenced opinions of the Panel, do not address the fact that UNMIK had to adopt a "policy of balancing competent case management priorities" to reduce the risk of delays for other court users, while at the same time seeking other options to address the "17,000 cases". The SRSG notes that, according to the United Nations Secretary-General Report to the Security Council dated 1 September 2006, the civil court backlog in Kosovo stood at 45,053 cases. According to the SRSG, the stay in the "17,000 cases", and subsequent efforts to enable their consideration, even if outside of the judicial process, enabled the developing judicial system to focus on the huge number of other civil claims also before the courts. The SRSG argues that this situation is relevant to the proportionality assessment.
24. The Panel considers that this argument in essence does not differ from the arguments previously raised by the SRSG that the stay of proceedings concerning the "17,000 cases" must be considered appropriate in view of the circumstances, as it was the only way to ensure the normal functioning of the court system in Kosovo at that time (see, for example, HRAP, *Milogorić and Others*, cited in § 11 above, at §§ 25-29). In this respect, the Panel accepts the necessity to take into account the needs of other court users, but nevertheless, as it has already found, considers that UNMIK did not manage to achieve a proportionate relationship between the means employed and the aim sought to be

achieved. In particular, the Panel notes that, in the four years following the DOJ's order to stay proceedings, no new legislation was adopted nor were any mechanisms provided to assist the courts to enable these complainants to have their claims determined. In sum, instead of ensuring access to justice to plaintiffs, the majority of whom were vulnerable and displaced persons, UNMIK in fact denied them this access (see HRAP, *Milogorić and Others*, cited in § 11 above, at §§ 42-43).

25. The Panel sees no reason to depart from these findings.
26. Finally, the SRSG argues that the complainant's case was examined in a "timely manner" after the stay on proceedings was lifted by the DOJ on 28 September 2008 as a first instance decision on the case was issued on 3 May 2011. In this regard, the Panel considers this argument irrelevant, since the situation after December 2008 falls in any event outside UNMIK's responsibility (see HRAP, *Lalić and Others*, cited in § 21 above, at § 26).
27. In the light of the foregoing, the Panel finds that there has been a violation of Article 6 § 1 of the ECHR in respect of the inability of the complainant to have her claim determined by the courts, and that it is not necessary to examine the issue of the length of the proceedings.

#### ***Alleged violation of Article 13 of the ECHR***

28. The Panel finds that the complaint under Article 13 of the ECHR (right to an effective remedy) concern essentially the same issues as those discussed under Article 6 § 1. In these circumstances, it finds that no separate issues arise under Article 13 of the ECHR (HRAP, *Milogorić and Others*, cited in § 11 above, at § 49).

#### **V. RECOMMENDATIONS**

29. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.
30. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted above (see § 15) UNMIK's responsibility with regard to the judiciary in Kosovo ended on 9 December 2008, with EULEX assuming full operational control in the area of rule of law. UNMIK therefore is no longer in a position to take measures that will have a direct impact on proceedings pending before the municipal courts.
31. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible. In line with the case law of the European Court of Human Rights on situations of reduced State jurisdiction, the Panel is of the opinion that UNMIK must endeavour, with all the diplomatic means available to it *vis-à-vis* the Kosovo authorities, to obtain assurances that the case filed by the complainant will be duly processed (see HRAP, *Milogorić and Others* cited in § 11 above, at § 49, and *Lalić and Others*, cited in cited in § 21 above, at § 32, cited above; compare European Court of Human Rights (ECtHR) Grand Chamber [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 333; ECtHR, *Al-Saadoon and Mufdhi v.*

*United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171, ECHR 2010 (extracts).

32. The Panel further considers that UNMIK should take appropriate steps towards adequate compensation for the complainant's family for non-pecuniary damage suffered as a result of the prolonged stay of the proceedings instituted by them.

**FOR THESE REASONS,**

The Panel, unanimously,

- 1. FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN RESPECT OF THE INABILITY OF THE COMPLAINANT TO HAVE THE CLAIM DETERMINED BY THE COURTS;**
- 2. FINDS THAT THERE IS NO NEED TO EXAMINE THE COMPLAINT UNDER ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AS TO THE LENGTH OF THE PROCEEDINGS;**
- 3. FINDS THAT THERE IS NO NEED TO EXAMINE THE COMPLAINT UNDER ARTICLE 13 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
- 4. RECOMMENDS THAT UNMIK:**
  - a. URGE THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ASSURE THAT THE COMPLAINANT'S CASE WILL BE DECIDED WITHOUT ANY FURTHER DELAY;**
  - b. TAKE APPROPRIATE STEPS TOWARDS ADEQUATE COMPENSATION FOR THE COMPLAINANT'S FAMILY FOR NON-PECUNIARY DAMAGE;**
  - c. TAKE IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND INFORM THE COMPLAINANT AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

Andrey ANTONOV  
Executive Officer

Marek NOWICKI  
Presiding Member