



# *The Human Rights Advisory Panel*

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## **OPINION**

**Date of adoption: 15 May 2010**

**Case No. 08/07**

**Nadica KUŠIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel sitting on 15 May 2010  
with the following members present:

Mr. Paul LEMMENS, Presiding Member  
Ms. Christine CHINKIN

Assisted by  
Mr. Rajesh TALWAR, Executive Officer

Having noted Mr. Marek NOWICKI's withdrawal from sitting in the case pursuant to Rule 12 of the Rules of Procedure,

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, as amended,

Having deliberated, makes the following findings and recommendations:

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

1. The complaint was introduced on 15 September 2007 and registered on 18 October 2007. During the proceedings before the Panel, the complainant was represented by Praxis, a non-governmental organization based in Belgrade, Serbia.
2. The Panel communicated the case to the Special Representative of the Secretary-General (SRSG) on 7 February 2008 giving him the opportunity to provide comments on behalf of UNMIK on the admissibility and the merits pursuant to Rule 30 of the Panel's Rules of Procedure. The SRSG did not avail himself of this opportunity.
3. On 8 May 2008 the Panel requested further information from the complainant. The response was received on 15 May 2008.
4. On 5 June 2008 the Panel declared the complaint admissible.
5. On 9 June 2008, the Panel communicated the case to the SRSG pursuant to Section 11.3 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the establishment of the Human Rights Advisory Panel (UNMIK Regulation No. 2006/12) to obtain UNMIK's response on the merits of the complaint.
6. On 16 September 2008 the SRSG invited the Panel to seek information directly from the KPA.
7. On 17 November 2008, in response to a request from the Panel, the KPA provided the full case file on the two claims decided by the HPCC.
8. On 16 December 2008, the Panel wrote to the KPA again seeking additional information. The KPA provided the additional clarifications on 22 December 2008.
9. In a letter of 20 January 2009 the SRSG referred to the explanations given by the KPA in its letter dated 22 December 2008. The SRSG saw no need to comment further on the alleged human rights violations raised in this case, and requested that the Panel address any further queries in relation to this case or any other case concerning the HPD, the HPCC or the KPA to the KPA.
10. The Panel invited the complainant to provide additional observations in light of the information received from the KPA and the SRSG's comments on 29 January 2009. The complainant provided his response on 12 February 2009.

## **II. THE FACTS**

11. The complainant is a resident of Kosovo currently displaced and residing in Jagodina, Serbia. She resided in a flat in Rahovec/Orahovac between 1992 and 1999, when she left Kosovo.
12. Mr. S.A., a resident of Kosovo, resided in the same flat in Rahovec/Orahovac from 1990 until 1992. The allocation right holder of the property issued a decision dated 31

December 1990 granting Mr. S.A. an occupancy right over the flat. Mr. S.A. concluded a contract on use on 4 January 1991.

13. On 4 September 1991, the allocation right holder filed a request for eviction before the Municipality of Rahovec/Orahovac. The Municipality granted the eviction request on 7 September 1991. Mr. S.A. appealed the decision to the Regional Secretariat for Urbanism, Residential and Communal Affairs in Prishtinë/Priština, but his appeal was rejected.
14. Mr. S.A. then initiated court proceedings before the Municipal Court of Rahovec/Orahovac. The court acknowledged Mr. S.A.'s right of occupancy in a decision dated 4 November 1991. The allocation right holder then appealed the decision to the District Court of Prizren. The District Court eventually ruled in favour of the allocation right holder on 11 January 1993.
15. In the meantime, Mr. S.A. was evicted from the property on 12 February 1992.
16. The allocation right holder issued a decision allocating the same flat to the complainant on 4 February 1992. On 20 February 1992, the complainant and the allocation right holder concluded a contract on use. Then, on 4 June 1996, a settlement was reached on the purchase price for the apartment. The complainant paid the price on 10 June 1996, by which she became the owner of the flat.
17. Mr. S.A. also filed another claim before the Municipal Court of Rahovec/Orahovac dated 24 November 1997, seeking recognition of his property right, which was dismissed by a decision dated 3 March 1998.
18. Following the outbreak of hostilities, the complainant and her family fled Kosovo in 1999. Sometime later, Mr. S.A. reoccupied the disputed property.
19. After the arrival of UNMIK in Kosovo, the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC) were established by UNMIK Regulation No. 1999/23 of 15 November 1999 on the establishment of the Housing and Property Directorate and the Housing and Property Claims Commission. The mandate of the HPD was to regularize housing and property rights in Kosovo and to resolve disputes regarding residential property until the SRSG determined that the local courts were able to carry out those functions. The purpose was to provide overall direction on property rights in Kosovo for the purpose of achieving efficient and effective resolution of claims concerning residential property. UNMIK Regulation No. 1999/23 established the HPCC as an independent organ of the HPD responsible for settling non-commercial disputes concerning residential property referred to it by the HPD.
20. The HPCC had jurisdiction over three categories of residential property claims: claims by individuals whose ownership, possession or occupancy rights to residential property were revoked subsequent to 23 March 1989 on the basis of legislation which was discriminatory in its application or intent ("category A" claims); claims by individuals who entered into informal property transactions after 23 March 1989

(“category B” claims); and claims by individuals who involuntarily lost ownership, possession or right of occupancy to their properties after 24 March 1999 (“category C” claims).

21. On 21 February 2002, the complainant filed a “category C” claim with the HPD (DS304820) seeking repossession of the flat in Rahovec/Orahovac.
22. The HPCC issued a decision on 22 October 2004 granting the complainant the right to repossess the flat.
23. However, Mr. S.A. had filed a “category A” claim (DS007352) seeking recognition of his property right to the same flat on 22 November 2002.
24. According to records provided by the KPA, the HPCC failed to join the claims together for processing due to a technical error. The decision of 22 October 2004, by which the HPCC decided in favour of the complainant, was taken without considering the competing “category A” claim for the same flat that was pending before the HPCC.
25. The HPD discovered the pending “category A” claim in June 2005. On 18 June 2005 the HPCC issued “Resolution No. 23” in which it overturned its decision of 22 October 2004 and held that the two claims were to be considered together.
26. In a decision dated 22 October 2005 the HPCC decided that Mr. S.A. had a valid right of occupancy and the complainant had a right of ownership in relation to the property. In accordance with UNMIK Regulation No. 2000/60 on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission, the HPCC granted Mr. S.A. the right to occupy the flat, provided that he would pay a sum for it. The amount of that sum would be determined by the HPD. Once Mr. S.A. was notified of the amount, he would have 120 days to pay it to the HPD, and in that case the complainant would be compensated by the HPD for the amount she paid for the purchase of the flat, plus a percentage of its current market value, as well as for the costs of any improvements she may have made to the flat. If Mr. S.A. would not pay the sum, the complainant would be able to occupy the property.
27. The complainant filed a request for reconsideration against the 22 October 2005 decision on 13 February 2006 stating that any property right Mr. S.A. had in relation to the flat was nullified by the 1991 through 1993 court proceedings, which were non-discriminatory. She also provided the 3 March 1998 judgment dismissing Mr. S.A.’s claim to the property. Mr. S.A. responded that all of these documents were submitted in the first instance and that there was nothing further to consider.
28. The HPCC issued a decision on 31 March 2006 rejecting the request for reconsideration, noting that although the 3 March 1998 judgment was in fact new evidence, it did not constitute a valid challenge to its previous decision. Specifically, the HPCC stated that the 3 March 1998 judgment only dealt with procedural issues and did not deal with the substance of the claim.

29. UNMIK Regulation No. 2006/10 of 4 March 2006 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property set up the Kosovo Property Agency (KPA) as the successor body to the HPD. However, UNMIK Regulation No. 2006/10 was shortly thereafter “provisionally suspended” by UNMIK Regulation No. 2006/50 of 16 October 2006 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property. The KPA was maintained as an independent body. Section 22 of UNMIK Regulation No. 2006/50 stated that that regulation would remain in force until 31 December 2008, unless extended by the SRSG or the “competent successor authority”.
30. According to information provided by the KPA at the end of 2008, the 31 March 2006 decision had not been implemented because the rules to regulate compensation had not yet been issued by the KPA. According to the Annual Report 2009 of the KPA<sup>1</sup>, the issue of the compensation scheme was still under discussion by the end of 2009.

### III. COMPLAINT

31. The complainant alleges that her right to a fair trial enshrined in Article 6 § 1 of the European Convention on Human Rights (ECHR) has been violated on a number of grounds, namely, that the HPCC failed to properly consider its jurisdictional limits when considering her request for reconsideration, that it failed to deliver a reasoned decision on her request, and that the tribunal hearing her case was not impartial. Further, the complainant alleges that the lack of fair trial guarantees and the allegedly insufficiently substantiated decision of the HPCC give rise to a violation of the right to respect for home and private life under Article 8 of the ECHR. In a similar vein, the complainant argues that the alleged lack of independence of the HPCC itself and the inability to appeal the decisions of the HPCC to a separate, higher judicial authority, rendered the HPCC ineffective as a remedy in violation of Article 13 of the ECHR. Finally, the complainant alleges that the HPCC decision violated her right to the peaceful enjoyment of her property under Article 1 of Protocol No. 1 to the ECHR since the HPCC decision prioritized the rights of the other party to the property over the complainant’s rights, resulting in a *de facto* expropriation.
32. The complainant also alleges that her right to a fair trial under Article 6 § 1 of the ECHR and her right to the peaceful enjoyment of her property under Article 1 of Protocol No. 1 to the ECHR have been violated by the failure to execute the decision in her favour by the HPCC, insofar as that decision made Mr. S.A.’s right to occupy the flat dependent on the payment of a compensation to the complainant. She further alleges that, since the remedy granted by the HPCC remains non-executable and therefore non-existent, UNMIK failed to provide an effective remedy in violation of Article 13 of the ECHR.

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<sup>1</sup> KPA Annual Report 2009, point 5.6, available at <http://www.kpaonline.org/PDFs/kpaYR2009.pdf>.

## **IV. THE LAW**

### **A. Preliminary admissibility issue**

33. On 17 October 2009 the SRSG promulgated UNMIK Administrative Direction No. 2009/1 implementing UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel. UNMIK Administrative Direction No. 2009/1 introduced new admissibility criteria in Section 2, under the heading “Issues of Admissibility”.
34. Section 2.1 of UNMIK Administrative Direction No. 2009/1 states that, “At any stage of the proceedings of a human rights complaint before it, the Advisory Panel shall examine all issues of admissibility of the complaint before examining the merits”.
35. Section 2.3 of UNMIK Administrative Direction No. 2009/1 states, in relevant part:
- If issues of admissibility of a complaint are addressed at any time after the Advisory Panel had made a determination on admissibility of a complaint and commenced its considerations of the merits, the Advisory Panel shall suspend its deliberation on the merits until such time as the admissibility of the complaints is fully re-assessed and determined anew.
36. Rule 33 of the Panel’s Rules of Procedure, as amended on 12 February 2010, states:
1. In the event that a new admissibility issue is raised or arises after the complaint has been declared admissible, the Panel shall, in accordance with Section 2.3 of Administrative Direction No. 2009/1, suspend its deliberation on the merits and determine the admissibility issue by a separate decision.
2. However, where it is clear that the Special Representative of the Secretary-General has already fully discussed the merits of the complaint, the Panel may at once adopt its opinion on the merits, in which it then includes its determination of the admissibility issue.
37. During the examination of the merits of the complaint, a new admissibility issue has arisen. This issue must be addressed first.
38. Section 3.1 of UNMIK Regulation No. 2006/12 states that the Panel may only deal with a matter after it determines that, amongst other requirements, the complaint was filed “within six months from the date on which the final decision was taken”.
39. The Panel notes that the HPCC issued its decision on reconsideration on 31 March 2006 and that the complainant received it in June 2006. The complainant filed her complaint before the HRAP on 15 September 2007. The complaint was therefore filed more than one year after she received the final decision. As a result, the Panel must declare the complaint inadmissible insofar as it concerns the alleged failure of

the HPCC to consider jurisdictional limits and to deliver a reasoned decision, the HPCC's alleged lack of impartiality, the complainant's inability to appeal the decisions of the HPCC to a separate, higher judicial authority, and the alleged *de facto* expropriation of the complainant's property. All these complaints are directed at the HPCC decision itself, which was final as of June 2006. Therefore the allegations mentioned in § 31 above, are inadmissible as filed out of time.

40. This determination does not affect the remaining aspects of the complaint, mentioned in § 32 above. As the Panel determined in its admissibility decision of 5 June 2008, they concern allegedly ongoing violations of the complainant's rights.
41. Since the SRSG has already fully discussed both the admissibility and the merits of the complaint, the Panel, in accordance with Rule 33 of its Rules of Procedure, includes its determination on admissibility in its opinion on the merits.

## **B. Alleged violation of Article 6 § 1 of the ECHR**

42. The complainant complains about the excessive delay in the execution of the decision of the HPCC, insofar as that decision is in her favour.

### *i. Arguments of the parties*

43. In his comments of 12 February 2009 the complainant argues that more than three years have passed since the HPCC issued its final decision in the matter and that she has been living as a displaced person without her housing issue resolved since 1999. The complainant further argues that although the SRSG states in his comments of 20 January 2009 that the compensation scheme should soon be available, the KPA in its letter of 22 December 2008 only indicates that the preparations for establishing the mechanism are underway, noting that the preparations themselves have lasted for more than five years to that date. She alleges that she has inquired regarding the delay on various occasions, but has only been informed that the compensation scheme will be established soon.
44. The complainant further argues that the method of calculating the compensation is referenced in Section 4.4 of UNMIK Regulation no. 2000/60, which states that the HPD shall establish a formula for determining these amounts. Since UNMIK Regulation no. 2000/60 was promulgated on 31 October 2000, the complainant contends that the compensation scheme has actually been pending completion for approximately nine years. This inaction on the part of the HPD therefore prevented the HPCC decision from being implemented.
45. UNMIK responds to the delay by asserting that, at the time of the decision in the complainant's case, the mathematical formula to calculate the amount of compensation payable by Mr S.A. was not available to the HPD. UNMIK states that a project was implemented by an independent consultant in 2004 to prepare a mathematical formula that would determine the amount of compensation that a

successful claimant, who the HPCC determined had been discriminated against, would have been required to pay to purchase a property, had that claimant not been discriminated against.

46. This formula must take into account a range of considerations, including hyperinflation in the former Yugoslavia at the relevant time, the value of the property under the old law on housing, and the current market value of the property.
47. This formula was supposed to be used to propose a methodology to the KPA Supervisory Board for the resolution of the issues, including the funding mechanism for the compensation scheme. This proposal has recently undergone revisions and is being processed using a database programme provided by the consultant. The revised methodology is meant to provide the Government of Kosovo with adequate information for the drafting of a law on the subject. The law will have to set out whether, and if so, how much the payment may be discounted for persons determined to have suffered discrimination to gain ownership of the apartment in question. This amount must then be benchmarked in the legislation against the amount due to the current owner should the person who suffered discrimination exercise the right to purchase. The amount of compensation must be equivalent to the current market value of the property.
48. Another benchmarking process must be undertaken to determine the amount of compensation payable to the person who was discriminated against should that person decide not to purchase the property, which would be equal to the current market value of the property, minus the amount that person would have been required to pay under the law on housing. Finally, provisions must be made to ensure that any shortfall in the amount of money paid in to the compensation scheme versus the amounts paid out to the claimants is covered by funds from the Kosovo Consolidated Budget and/or donor assistance.
49. UNMIK relies on statements made by the KPA in its letter to justify the delay in enforcement. It points to the lack of the necessary legislation, which in turn is due to the complicated legislative process in Kosovo, the relationship between the KPA and the Government of Kosovo, the difficult policy choices required and apparently the scarcity of donor funds. UNMIK also notes that the legislative process should be completed soon and decisions such as the complainant's will then be enforceable.

## ***ii. The Panel's assessment***

### **a. The Panel's jurisdiction *ratione temporis***

50. In the present matter, the Panel recalls that UNMIK Regulation No. 2006/10 of 4 March 2006 created the KPA, the successor body to the HPD. UNMIK Regulation No. 2006/10 was shortly thereafter superseded by UNMIK Regulation No. 2006/50 on 16 October 2006. Section 22 of UNMIK Regulation No. 2006/50 stated that that regulation would remain in force until 31 December 2008, unless extended by the



SRSB or the “competent successor authority”. In the meantime, the Kosovo authorities adopted Assembly Law No. 03/L-079 of 13 June 2008 amending UNMIK Regulation 2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property, based on the Constitution of Kosovo.

51. UNMIK’s response to this situation is detailed in the Report of the Secretary-General to the United Nations Security Council on the United Nations Interim Administration Mission in Kosovo (S/2009/149), dated 17 March 2009, paragraph 24 of which states:

UNMIK Regulation No. 2006/50 concerning the Kosovo Property Agency expired on 31 December 2008. My Special Representative was asked by Belgrade to consider extending the mandate of the Agency, and he engaged in a series of discussions with all the relevant stakeholders, including the Kosovo authorities. However, the signals coming from Kosovo authorities, as well as from international stakeholders engaged in the Agency process, have so far been negative. At the same time, the Kosovo authorities and an international director appointed by the International Civilian Representative/European Union Special Representative assumed full administrative control of the Agency, which is currently operating in accordance with legislation adopted by the Assembly of Kosovo.

52. Therefore, the Panel considers that the period under its review ended on 31 December 2008, when UNMIK Regulation No. 2006/50 expired.

**b. Whether Article 6 § 1 of the ECHR is applicable in the present case**

53. As a threshold question, the Panel must determine whether Article 6 § 1 of the ECHR applies in the present case. Article 6 § 1 of the ECHR states, in relevant part:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law [...].

54. Article 6 § 1 ECHR applies to determinations of one’s “civil rights and obligations”. The Panel notes that the dispute between the parties before the HPCC related to their rights with respect to a particular residential property. The dispute therefore related to the determination of the complainant’s property right, a right which is clearly of a “civil” nature (see European Court of Human Rights (ECtHR), *Zander v. Sweden*, judgment of 25 November 1993, *Publications of the Court*, Series A, No. 279-B, p. 40, § 27).
55. Article 6 § 1 ECHR in principle only applies to proceedings before a “tribunal”. The ECtHR has stated that a tribunal “is characterised in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on

the basis of rules of law and after proceedings conducted in a prescribed manner” (ECtHR, *Cyprus v. Turkey* [Grand Chamber], no. 25781/09, judgment of 10 May 2001, *ECHR*, 2001-IV, § 233). Additionally, the tribunal in question must have jurisdiction to examine all questions of fact and law relevant to the dispute before it (see ECtHR, *Olujić v. Croatia*, no. 22330/05, judgment of 5 February 2009, § 38). However, in order for a body to qualify as a “tribunal”, Article 6 § 1 of the ECHR does not require it to be “a court of law of the classic kind, integrated within the standard judicial machinery of the country” (ECtHR, *Campbell and Fell v. United Kingdom*, judgment of 28 June 1984, *Publications of the Court*, Series A, No. 80, p. 39, § 76).

56. In this context, the Panel notes that the HPCC was not a court of the classic kind. It was a mass claims processing body which issued binding and enforceable decisions (see UNMIK Regulation No. 1999/23, cited above). The rules of procedure for proceedings before the HPCC were set forth in UNMIK Regulation No. 2000/60, mentioned above (§ 26), and the HPCC determined claims in an adversarial process on the basis of rules of law. These decisions were final and were executed by an administrative body, the HPD. The HPCC was therefore judicial in function and Article 6 of the ECHR applies to proceedings before the HPCC (see HRAP, *Vučković*, no. 03/07, opinion of 13 March 2010, § 34).

### **c. Whether there has been an undue delay in the execution of the decision of the HPCC**

#### **1. General Principles**

57. The right of access to a tribunal guaranteed by Article 6 § 1 of the ECHR would be illusory if the relevant domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party (ECtHR (Grand Chamber), *Immobiliare Saffi v. Italy*, no. 22774/93, judgment of 28 July 1999, § 66, *ECHR*, 1999-V). Execution of a decision issued by a “tribunal” in the sense of Article 6 of the ECHR must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 of the ECHR (see, among many others, ECtHR, *Burdov v. Russia (No. 2)*, no. 33509/04, judgment of 15 January 2009, § 65).

58. An unreasonably long delay in enforcement of a binding judgment may therefore be a breach of the ECHR (see ECtHR, *Burdov v. Russia (No. 2)*, cited above, § 66). However, the reasonableness of such a delay is to be determined in light of the complexity of the enforcement proceedings, the behaviour of the complainant and the competent authorities, and the amount and nature of the award in question (ECtHR, *Cvijetić v. Croatia*, no. 71549/01, judgment of 26 February 2004, § 37).

59. The complexity of an enforcement procedure or of the budgetary system cannot relieve the relevant authorities of its obligation under the ECHR to guarantee to everyone the right to have a binding and enforceable decision enforced within a reasonable time (compare ECtHR, *Burdov v. Russia (No. 2)*, cited above, § 70). It is for such authorities to organize their legal systems in such a way that the competent

authorities can ensure the execution of judgments within a reasonable time (see ECtHR, *Burdov v. Russia (No. 2)*, cited above, § 70; *mutatis mutandis*, ECtHR (Grand Chamber), *Comingersoll S.A. v. Portugal*, no. 35382/97, judgment of 6 April 2000, §24, *ECHR*, 2000-IV).

60. The ECtHR has found that delays of more than one year in the execution of judicial decisions are *prima facie* incompatible with the ECHR without circumstances to justify such delays (ECtHR, *Burdov v. Russia (No. 2)*, cited above, § 74). The ECtHR has likewise noted that the lack of general regulations or procedures cannot on their face justify delays of up to one year in compliance with a binding and enforceable decision (see ECtHR, *Burdov v. Russia (No. 2)*, cited above, § 81).

## **2. Application to the present case**

61. The Panel notes that it is undisputed that the complainant and Mr S.A. both obtained decisions granting them different rights in relation to the disputed apartment. While the complainant's ownership right was recognized, Mr S.A. was awarded occupancy of the apartment in question pending the finalization of the compensation scheme. Once the compensation scheme would be finalized, Mr S.A. would have the option of either purchasing the apartment or moving out but obtaining compensation for his inability to have purchased the apartment due to his prior discrimination. UNMIK Regulation no. 2000/60 stipulates that persons in Mr S.A.'s situation are obliged to pay the required amount within 120 days of the HPD's decision. That deadline may be extended by up to 120 days if not extending the deadline would result in undue hardship to the claimant.
62. However, the formula to determine the amounts actually payable has not yet been devised. The result is that the complainant is left with a decision granting her either the right to repossess the property or compensation, which on 31 December 2008 had already not been executed for one year and nine months. When on that day UNMIK's responsibility for the KPA lapsed, the complainant still could not foresee when the decision would be executed.
63. The Panel notes that the behaviour of the complainant has no bearing on the enforcement proceedings in this particular case. The complexity of the enforcement proceedings likewise is not in dispute as there are no such proceedings to speak of at the present time. The Panel must therefore review the behaviour of the competent authorities and the amount and nature of the award in question to determine whether a delay in execution of at least one year and nine months is reasonable in the circumstances.
64. The respondent's arguments rely primarily on the complicated legal and political situation in Kosovo to defend the delay surrounding the promulgation of legislation necessary for the functioning of the compensation scheme, noting that it will be completed soon. The Russian Federation relied on a similar argument in *Burdov v. Russia (No. 2)*, cited above, noting that the Russian Constitutional Court held that Parliament should legislate to remedy the lack of a compensation scheme in lengthy enforcement proceedings (see ECtHR, *Burdov v. Russia (No. 2)*, cited above, § 113).

However, like the ECtHR in that case, the Panel notes that the legislation required to remedy this situation was not enacted prior to the expiration of UNMIK Regulation No. 2006/50 on 31 December 2008. Indeed, the need for a formula to provide adequate compensation was envisaged in October 2000 with the promulgation of UNMIK Regulation 2000/60.

65. The Panel accepts that the relevant authorities enjoy a rather wide discretion and especially so in the unique context in which UNMIK operates. However, in the present situation, the formula for determining the amount of compensation due was still pending adoption after nine years. While positive steps began with the retention of a consultant to work on the formula for compensation in 2004, UNMIK has not put forward any convincing arguments as to why the necessary formula remained unimplemented four years later in December 2008, when it ceased to be responsible for the functioning of the KPA. The complainant was therefore faced with the uncertainty of an indeterminate wait.
66. Furthermore, given that upon the determination of the sum to be paid, Mr S.A. will have the choice between paying the sum (in which case he will be entitled to possession of the apartment, while the complainant will receive compensation) or not paying the sum (in which case he will not be entitled to possession of the apartment, while the complainant will be entitled to possession) (see above, § 26), the Panel concludes that the nature of the award itself is not trivial. The difference between the two possible outcomes of this process is significant and will have a substantial impact on the complainant. This divergence in possible outcomes leads the Panel to conclude that the nature of the award is an important factor to be taken into account in the present case.
67. Having regard to all the elements mentioned above, the Panel concludes that the delay in the execution of the decision of the HPCC is unreasonably long.
68. There has therefore been a violation of Article 6 § 1 of the ECHR.

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

69. The Panel notes that the binding and enforceable decision of the HPCC of 31 March 2006 created a right to either compensation or repossession of the apartment. This is not disputed by the parties. The ECtHR has held that such judicially created rights, in this case either the right to compensation or the right to full enjoyment of the property, should be considered a “possession” within the meaning of Article 1 of Protocol No. 1 to the ECHR (see ECtHR, *Vasilopoulou v. Greece*, no. 47541/99, judgment of 21 March 2002, § 22).
70. As such, the authorities’ prolonged failure to enforce the HPCC decision in favour of the applicant violated the complainant’s right to peaceful enjoyment of her possessions in violation of Article 1 of Protocol No. 1 to the ECHR (see, *mutatis mutandis*, ECtHR, *Burdov v. Russia (No. 2)*, cited above, §§ 86-87).

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

71. The Panel finds that the complaint under Article 13 of the ECHR (right to an effective remedy) concerns essentially the same issue as the one discussed under Article 6 § 1. In these circumstances, the Panel finds that no separate issues arise under Article 13 of the ECHR (see HRAP, *Milogorić et al.*, nos. 38/08, 58/08, 61/08, 63/08 and 69/08, opinion of 24 March 2010, § 49).

#### **V. RECOMMENDATIONS**

72. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.

73. Following the Panel's findings, it would normally be for UNMIK to take the appropriate measures in order to put an end to the violation found and to redress as far as possible the effects thereof. UNMIK would in particular, through appropriate legal and administrative measures, have to secure the effective and expeditious realisation of the complainant's entitlement to compensation, as well as that of all other persons in a similar situation, in accordance with the principles for the protection of property rights laid down in Article 1 of Protocol No. 1 (consult ECtHR (Grand Chamber), *Broniowski v. Poland*, no. 31443/96, judgment of 22 June 2004, §§ 192 and 194, *ECHR*, 2004-V). However, as the Panel found above, UNMIK's responsibility with regard to the HPD, HPCC and the KPA in Kosovo ended on 31 December 2008, with the expiration of UNMIK Regulation No. 2006/50. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the promulgation of the legislation necessary for the HPCC decision in the complainant's case to be executed.

74. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violation for which it is responsible. In line with the case law of the ECtHR 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 legislation necessary for the execution of such HPCC decisions will be promulgated without delay (compare ECtHR (Grand Chamber), *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 333; ECtHR, *Al-Saadoon and Mfudhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; see also HRAP, *Milogorić et al.*, opinion cited above, §52).

75. The Panel further considers that UNMIK should award adequate compensation to the complainant for non-pecuniary damage suffered as a result of the lack of execution of the HPCC decision until 31 December 2008.

#### **FOR THESE REASONS,**

The Panel, unanimously,

1. **FINDS THAT THE COMPLAINT IS INADMISSIBLE IN RELATION TO THOSE ALLEGED VIOLATIONS OF THE COMPLAINANT'S RIGHTS UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS AS DESCRIBED IN PARAGRAPH 31;**
2. **FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS DUE TO THE NON-EXECUTION OF THE DECISION OF THE HPCC;**
3. **FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS DUE TO THE NON-EXECUTION OF THE DECISION OF THE HPCC;**
4. **FINDS THAT THERE IS NO NEED TO EXAMINE THE COMPLAINT UNDER ARTICLE 13 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
5. **RECOMMENDS THAT UNMIK TAKE THE FOLLOWING MEASURES:**
  - A. **URGE THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE ADMINISTRATIVE MEASURES NECESSARY FOR THE EXECUTION OF SUCH HPCC DECISIONS WILL BE ADOPTED WITHOUT DELAY**
  - B. **AWARD ADEQUATE COMPENSATION TO THE COMPLAINANT 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.**

Rajesh TALWAR  
Executive Officer

Paul LEMMENS  
Presiding Member