



DECISION

Date of adoption: 5 June 2009

Case No. 26/08

N.M. and Others

against

UNMIK

The Human Rights Advisory Panel sitting on 5 June 2009,
with the following members present:

Mr. Marek NOWICKI, Presiding Member
Mr. Paul LEMMENS
Ms. Snezhana BOTUSHAROVA

Mr. John J. RYAN, 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. THE FACTS

1. The facts according to the original complaint are summarised below.
2. The complainants comprise 143 members of the Roma, Ashkali and Egyptian communities in Kosovo (referred to as the 'Roma' in this decision) who are, or have been, resident in five UNMIK administered camps for internally displaced persons (IDPs) throughout northern Mitrovica/Mitrovicë, as well as three non-governmental organization (NGO) employees working in the camps. All complainants claim to have suffered lead poisoning and other health problems on account of the soil contamination in the camp sites due to the proximity of the camps to the Trepca smelter and mining complex and/or

on account of the generally poor hygiene and living conditions in the camps. The Trepca smelter extracted metals, including lead, from the products of nearby mines from the 1930s until 1999. It currently operates on a limited basis.

3. During the 1999 conflict in Kosovo, many Roma who had formerly lived in the Roma Mahala (also known as the Fabrika or Mitrovica/Mitrovicë Mahala) settlement in south Mitrovica/Mitrovicë fled to north Mitrovica/Mitrovicë as a result of inter-ethnic violence and the destruction of their homes. Approximately 600 Roma were placed in IDP camps in northern Mitrovica/Mitrovicë. The Office of the UN High Commissioner for Refugees established the IDP camps Zitkovac/Zhikoc and Cesmin Lug/Cesminluke in 1999. The third camp, Kablare, was established in 2001. These three camps were located within 3 kilometres of the Trepca smelter and within 300 meters of two mine tailing sites. A further fourth camp was built at Lepasavić/Leopsaviq, approximately 45 kilometers from Trepca. The fifth camp, Osterode was used by French KFOR from 1999-2006 when it was converted into a camp for the IDPs.
4. The camps were built as a temporary measure, but because of the security situation and the lack of rehabilitation of the former homes of the Roma IDPs, the camps remained occupied for many years. The Zitkovac/Zhikoc camp was operational from 1999 until 2006, the Cesmin Lug/Cesminluke camp is operational from 1999 to date, the Kablare camp was operational from 2001 until 2006, the Osterode camp is operational from 2006 to date, and the Lepasavić/Leopsaviq camp is operational from 1999 to date. Many of the complainants continue to live in the Cesmin Lug/Cesminluke, Osterode and Lepasavić/Leopsaviq camps.
5. During 2000 UNMIK and KFOR contingents based in northern Mitrovica/Mitrovicë conducted assessments of the soil toxicity in and around the camps which indicated a high level of lead contamination in the camps. KFOR contingents implemented measures to protect their personnel, including removing personnel with high lead levels from the area. UNMIK did not provide information about the high levels of lead concentrations in the camp to the Roma residents of the camps.
6. The World Health Organisation (WHO) conducted assessments and prepared a number of reports on the levels of lead contamination in the camps between 2000 and 2005. In a November 2000 report the WHO found that all children and most adults living around the Trepca site, including in the surrounding camps, had blood lead concentrations exceeding the permissible levels. The report recommended retesting of local inhabitants for assessment of lead induced disease, further medical and neurological examinations and relocation of the Roma camp residents to lower risk areas. In July 2004 the WHO issued a second report stating that 88% of the area comprised by the Roma camps was considered unsafe for human habitation on account of the excessive and dangerous levels of lead contamination in the soil. A third report issued in October 2004 confirmed earlier results and requested immediate removal of the camp inhabitants. In particular urgent action was recommended for twelve children, including immediate diagnostic testing, aggressive environmental interventions and ongoing evaluation. The condition of one child was determined to represent a medical emergency requiring immediate hospitalisation. A fourth report issued by the WHO in November 2004 recommended that the camp population be moved away on an emergency basis. UNMIK did not take action to implement any of the recommendations made by the WHO.
7. In 2005 independent medical practitioners carried out further testing and subsequently informed the Roma about the dangers to their health posed by the lead poisoning in the camps.

8. In April 2006 the Roma residents of the Zitkovac/Zhikoc, Cesmin Lug/Cesminluke and Kablare camps began to be moved to the Osterode camp, which had by that time been vacated by French KFOR. Some Roma chose to remain in the Cesmin Lug/Cesminluke camp. The Zitkovac/Zhikoc and Kablare camps were bulldozed and closed.
9. In addition to the problems of lead contamination, living conditions in the Roma IDP camps were and are extremely poor. On account of the frequent lack of water and poor drainage, hygiene in the camps is described as appalling, resulting in frequent illnesses amongst residents. The camps often had no running water, electricity, heating, health care or access to food inside the camp. The conditions are particularly dangerous for pregnant women.
10. Medical literature indicates that lead can enter the body through inhalation or ingesting food or water from soil contaminated with lead. Health effects are severe and often permanent and include high blood pressure, reproductive abnormalities, stunted growth, hearing loss, damage to the neurological and nervous system, memory and concentration problems, seizures, muscle and joint pain and or/paralysis in the legs, loss of consciousness, increased aggression, stomach cramps, vomiting, digestive irregularities and a significant and irreversible effect on IQ levels. Children up to the age of six are most vulnerable on account of their primary developmental growth. Particular problems for children include behavioural and learning problems, slowed growth, hearing problems, headaches and damage to the brain and nervous system.
11. Medical records submitted by the complainants indicate a variety of serious medical conditions including the following: paralysis, encephalitis (inflammation of the brain), weakened immune systems, anemia, weight loss, behavioral disorders, hypertension, breathing difficulty, fainting, high blood pressure, muscle and joint pain and spasms, kidney problems, vomiting, stomach aches, impaired hearing and breathing, fatigue and headaches.
12. At least three persons are alleged to have died as a consequence of the harmful levels of lead in their bodies. Others are suspected to have died from lead-contamination related illnesses, but on account of the lack of proper medical testing and/or autopsies these claims have been difficult to verify. Lead poisoning has formally been diagnosed as a cause of illness in many of the complainants.
13. Medical conditions suffered by complainants and said to be attributable to the poor hygiene and living conditions in the camps include: rheumatism, high blood pressure, diabetes, hearing problems and breathing difficulties.

II. COMPLAINTS

14. The complainants contend that the respondent has a particular duty of care to them as a vulnerable displaced minority population subjected to historical discrimination and marginalization. This duty of care requires the respondent to take positive measures to protect the complainants and to desist from any actions that would violate the complainants' human rights.
15. As the complainants' former homes in south Mitrovica/Mitrovicë had been destroyed and the complainants did not have homes, identification documents or money to relocate themselves, they were essentially under the care and control of the respondent. The respondent was aware of this in settling them in the camps in question.
16. The complainants contend that their human rights have been violated under certain provisions of the European Convention on Human Rights (ECHR), namely: Article 2 (right

to life), Article 3 (prohibition of inhuman or degrading treatment), Article 6 § 1 (right to a fair hearing), Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy) and Article 14 (prohibition against discrimination). Breaches of the following human rights instruments are also alleged by the complainants: the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

17. Specific provisions of human rights instruments allegedly violated are set out in the Panel's consideration of the admissibility of the various aspects of the complaints. The Panel has examined each similar provision of the various human rights instruments together in the interest of a consistent and coherent consideration of the issues.

III. PROCEEDINGS BEFORE THE PANEL

18. The complaint was introduced on 4 July 2008 and registered on the same date.
19. The Panel communicated the case to the SRSG on 24 July 2008 giving him the opportunity to provide comments on behalf of UNMIK on the admissibility and merits pursuant to Section 11.3 of UNMIK Regulation No. 2006/12 and Rule 30 of the Panel's Rules of Procedure.
20. By letter dated 18 September 2008 the SRSG addressed the issue of admissibility in a response to the Panel.
21. The SRSG's response was provided to the complainants for comment on 7 October 2008 and a response was received on 8 October 2008.

IV. THE LAW

22. Before considering the complaint on its merits the Panel has to decide whether to accept the complaint, taking into account the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12 (the Regulation).

A. Admissibility of the complaint in general

23. The Panel observes that the complaint generally concerns the situation of all Roma residing in five camps for IDPs. The examination of the case will necessarily have to take into account this group aspect, including with respect to the respondent's obligations. Nevertheless, as to admissibility, the Panel has to look, as far as possible, at each complainant individually, in order to ascertain whether his or her complaint fulfils the conditions of admissibility.

1. Victim status

24. Whilst the complaint has been lodged on behalf of 143 Roma camp residents, former camp residents and NGO workers who assisted Roma camp residents, the Panel must first determine whether all persons included in the complaint can be properly characterised as complainants, or as victims of alleged human rights violations pursuant to section 1 of the Regulation.
25. The Panel notes that two persons listed in the initial complaint, namely complainants M.J. (no. 43) and S.G. (no. 101), died in 2006, before the complaint was lodged with the

Panel. A complaint cannot be brought in the name of a deceased person, since a deceased person is unable, even through a representative, to lodge a complaint with the Panel. Therefore, it follows that the above mentioned complainants cannot claim to have been a victim of a violation of their human rights, and that the complaint insofar as it relates to these two listed complainants must be declared inadmissible *ratione personae*, in accordance with Section 1.2 of the Regulation (consult European Court of Human Rights (ECtHR), *Gavrielidou v. Cyprus*, no. 73802/01, decision of 13 November 2003; ECtHR, *Gurlesen v. Turkey*, no. 15573/03, decision of 29 April 2008).

26. Three further complainants, namely complainants M.G. (no. 88), A.G. (no. 89) and B.D. (no. 90), are not Roma residents of any camp, but NGO workers who visited the Roma residents on a semi-regular basis to provide them with humanitarian assistance. The Panel has considered whether or not the complaints made by these persons are admissible *ratione personae*.
27. Section 1.2 of the Regulation permits the Panel to examine complaints from any person or group of individuals claiming to be victims of human rights violations by UNMIK. In order to qualify as victims, individuals must be directly affected by the act or omission in question (ECtHR, *Open Door and Dublin Well Woman v. Ireland*, nos. 14234/88 and 14235/88, judgment of 29 October 1992, *Publications of the Court*, Series A, no. 246-A, p. 22, § 44; ECtHR (Grand Chamber), *Ilhan v. Turkey*, no. 22277/93, judgment of 27 June 2000, § 52, *ECHR*, 2000-VII; ECtHR, *Siliadin v. France*, no. 73316/01, judgment of 26 July 2005, § 62, *ECHR*, 2005-VII; ECtHR (Grand Chamber), *Burden v. United Kingdom*, no. 13378/05, judgment of 29 April 2008, § 33). Victim status necessarily implies a degree of involuntary suffering or involuntary exposure to the human rights violation in issue (consult ECtHR, *Paşa and Erkan Erol v. Turkey*, no. 51358/99, judgment of 12 December 2006, §§ 21-22). It is reasonable to expect persons to take preventative measures to avoid being subjected to human rights violations where possible and where they are aware of likely risks. If they choose to place themselves in a situation of some quantifiable risk, they must be considered responsible for their own actions, even if they are well intentioned and act for humanitarian purposes, as appears to be the situation in this case.
28. The information provided in the complaint indicates that the NGO workers were aware of the potential risks of lead contamination in the camps. Indeed a part of their work involved the provision of information about the possible health risks to the Roma residents of the camps. The Panel considers that the three NGO workers voluntarily assumed the risks of working in the camps. It was open to them not to work in the camps and thus avoid any perceived harm to themselves. Consequently they cannot be said to be the involuntary victims of harm or suffering through acts or omissions by the respondent. The Panel finds the complaints made by the three NGO workers inadmissible *ratione personae* pursuant to section 1.2 of the Regulation.

2. Jurisdiction *ratione temporis*

29. According to Section 2 of the Regulation the Panel has jurisdiction over complaints relating to alleged violations of human rights that have 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.
30. In order for the Panel to determine whether or not the complaint is admissible *ratione temporis*, it is necessary first to ascertain the nature of the violations alleged. If a complaint alleges violations that are based on instantaneous acts, the Panel is in principle not competent to examine the complaint insofar as it is based on facts that have occurred before the critical date of 23 April 2005. The Panel can, however, examine

complaints based on facts that have occurred prior to that date inasmuch as they can be considered to have created a continuous situation extending beyond that date.

31. Continuing situations cover those situations where a past violation has consequences that continue to violate any of a person's protected rights (see for example, European Commission of Human Rights (ECommHR), *De Becker v. Belgium*, no. 214/56, decision of 9 June 1958, *Yearbook of the ECHR*, vol. 2, p. 215, at pp. 244-246). They can be distinguished from situations where the ongoing consequences of a past violation do not violate a presently protected right in and of themselves, but can be likened to the residual effects of the past violation. Alternatively, a past breach of a protected right may become a continuing violation when it is affirmed by the competent authorities, by act or by clear implication, after the relevant date. The effects of such affirmation must violate a protected right (Human Rights Committee (HRC), *Simunek et al. v. Czech Republic*, no. 516/1992, views of 19 July 1995, U.N. Doc. CCPR/C/54/D/516/1992, § 4.5; HRC, *Evan Drake and Carla Maria Drake v. New Zealand*, no. 601/1994, decision of 3 April 1997, U.N. Doc. CCPR/C/59/D/601/1994, § 8.2). A repeated failure by authorities to put a stop to breaches of a complainant's rights can amount to a human rights violation of a continuing nature (ECtHR, *Moldovan v. Romania*, nos. 41138/98 and 64320/00, judgment no. 2 of 12 July 2005, §§ 108-109, *ECHR*, 2005-VII).
32. The complainants allege a variety of human rights violations primarily relating to their exposure to lead contamination in the IDP camps, their dangerous living conditions in the camps, the lack of information about the health risks in the camps and the lack of an effective remedy to challenge their treatment by the respondent. The violations are alleged to have continued on a regular and continuing basis over a number of years.
33. Many of the alleged violations in this complaint can be characterised, in a general sense, as constituting an ongoing pattern of conduct and as an accumulation of circumstances giving rise to the alleged continuing violation of the complainants' human rights. It would be artificial and arbitrary to view the conditions in the camps as a series of self-contained and isolated instantaneous incidents, particularly where the cumulative health risks of exposure to lead are taken into account. It is the camp environment as a whole that is the subject of the present complaint and the Panel therefore considers it appropriate to deal with the issue of conditions in the camps as a continuing matter.
34. Other aspects of the complaint relate to acts or omissions which occurred whilst a complainant resided in the camp and allegedly continued to violate that complainant's protected right after he or she left the camp. Such complaints may be characterised as continuing violations depending upon the nature of the right and the circumstances of the alleged violation.
35. Whilst the general conditions in the camps give rise to allegations of continuing violations for camp residents, some specific acts complained of are more appropriately characterised as instantaneous acts. However, the complaint is not directed against any single measure or decision taken before 23 April 2005 without continuing effects.
36. On account of the different nature of the violations alleged by the complainants, the Panel's approach is to consider each of the alleged violations separately against the condition of jurisdiction *ratione temporis* (see, for an example of such approach, ECtHR, *Moldovan and Rostaş v. Romania*, nos. 41138/98 and 64320/001, decision of 13 March 2001).

3. Six-month time limit

37. Section 3.1 of the Regulation requires that complaints must be lodged within six months of the alleged violation or date on which the final decision was taken.
38. In order for the Panel to determine whether the complaint has been lodged within the requisite six-month time period, it is also necessary to distinguish between instantaneous acts and continuing situations. The Panel may only examine complaints which have been submitted within six months of the date of the final "decision" or of the end of a continuing situation of which the complainant complains. The complaint was introduced on 4 July 2008. To the extent that it relates to instantaneous acts, it will consequently be admissible only insofar as these acts fall within the six-month time limit occurring from 4 January 2008 onwards. To the extent that it relates to continuing situations, it will be admissible only insofar as these situations continue until 4 January 2008 or later.
39. A continuing situation lasts until an end is put to it. However, for the purpose of the six-month time limit, a continuing situation also comes to an end, with respect to a given complainant, when that complainant can no longer be considered to be adversely affected by the situation. This is relevant in the present case insofar as the complaint relates to the camp environment as a whole. As long as a complainant resides in a camp, the situation is continuing for him or for her; once a complainant leaves the camp, the situation comes to an end. Given that the complaint was lodged on 4 July 2008, this means that, insofar as it relates to continuing situations, it will normally be admissible only for those complainants who still reside in a camp on 4 July 2008 or who resided in a camp at least until 4 January 2008.
40. However, as indicated above, some aspects of the complaint relate to acts or omissions which occurred whilst a complainant resided in the camp and allegedly continued to violate that complainant's protected right after he or she left the camp. Such complaints may be characterised as relating to violations continuing after the date of departure, depending upon the nature of the right and the circumstances of the alleged violation (see § 34).
41. On account of the different nature of the violations alleged by the complainants, the Panel's approach is to consider each of the alleged violations separately against the six-month time limit condition. This can generally be done together with the examination of the condition relating to the *ratione temporis* jurisdiction of the Panel.

4. Exhaustion of available remedies

42. Section 3.1 of the Regulation states that the Panel may only deal with a matter after it determines that all other available avenues for review of the alleged violations have been exhausted.
43. The respondent contends that as there are pending third-party claims for personal injury or death with the United Nations in New York in relation to this matter, the available avenues for review have not yet been exhausted.
44. The complainants contend that all avenues for review of the alleged violations have been exhausted in the sense that there were no existing or effective remedies available to the complainants. The complainants note that the United Nations is immune from legal proceedings instituted against them in domestic jurisdictions pursuant to the Convention on the Privileges and Immunities of the United Nations, unless a decision is taken to lift that immunity. The complainants detailed a number of complaints made to various United Nations agencies in this matter, including a specific request for the United Nations to waive immunity in July 2005. The complainants allege that they received no meaningful

response from UNMIK or any United Nations agency since November 2005 when they were advised that the United Nations was 'doing its utmost to solve the problem'.

45. The complainants further contend that there are no institutions in Kosovo with jurisdiction to hear this matter, or which are in a position to provide an effective remedy. They also contend that the local legal system is not independent of UNMIK and that, in any event, they had serious and justified fears of using the local court system for fear of reprisal attacks.
46. The Panel notes that the question of whether the requirement to exhaust remedies has been satisfied in the instant case is closely linked to the substance of the complaint, in particular insofar as the complainants invoke a violation of their right to an effective remedy. It is of the view that this matter is more appropriately addressed in an overall analysis and taking into account the means of redress available to the complainants, the scope of the obligations arising in this context under the international human rights instruments invoked by the complainants, and also the response given by the authorities to the complainants' use of remedies. Accordingly the question of exhaustion of remedies should be joined to the merits of the case (see the Panel's decision of 6 June 2008, *Balaj*, no. 04/07, § 10).

B. Admissibility of specific complaints

47. In its assessment of the admissibility of the separate complaints, the Panel must determine whether each complaint relates to continuing or non-continuing violations, and consequently which aspects of the complaint are admissible *ratione temporis* and are validly lodged within the relevant six-month period. The Panel must then consider whether the separate complaints satisfy the additional admissibility conditions, in particular the condition of being not manifestly ill-founded.

1. Right to life

A. General issues

a. Complaint

48. The complainants have alleged a number of violations of the right to life, including through the respondent's failure to relocate the complainants from the life-threatening conditions in the IDP camps, to provide them with adequate medical treatment and to otherwise abate their situation. It is further contended that the respondent failed to provide adequate or timely information on the risks of lead contamination and that the current conditions in the camps constitute a continuing violation of the right to life.

b. Admissibility of this aspect of the complaint

49. The right to life is enshrined in a number of international human rights instruments, including Article 2 of the ECHR and Article 6 of the ICCPR.
50. A large number of the complainants lived in the now closed camps of Zitkovac/Zhikoc, Cesmin Lug/Cesminluke and Kablare for varying periods, including before and after the date of the Panel's assumption of temporal jurisdiction on 23 April 2005. Some of those former residents have been relocated to the Osterode and Leposavić/Leopsaviq camps, others have been relocated elsewhere within Kosovo, including to the Roma Mahala (also known as the Mitrovica/Mitrovicë or Fabrika Mahala), whilst others have migrated to third countries, including Germany.

51. Those complainants no longer resident in the IDP camps at the relevant date of 4 January 2008 ceased to be exposed to the allegedly life-threatening conditions at the time they left the camps. For those residents, their complaint in relation to camp conditions must be found inadmissible as not lodged within six months of the alleged violation. However, other aspects of the complaints of former camp residents raise matters potentially giving rise to continuing violations of human rights, including the respondent's alleged breach of its ongoing positive obligation to protect the complainants' right to life (see, with respect to this obligation, ECtHR, *L.C.B v. United Kingdom*, judgment of 9 June 1998, *Reports of judgments and decisions*, 1998-III, p. 1403, § 36; see also ECtHR (Grand Chamber), *Öneryıldız v. Turkey*, no. 48939/99, judgment of 30 November 2004, §§ 71 and 90-93, *ECHR*, 2004-XII; ECtHR, *Branko Tomašić and Others v. Croatia*, no. 46598/06, judgment of 15 January 2009, § 49). Those complainants resident in the camps as of 4 January 2008 are self-evidently still subject to the conditions in the camps. Their complaints raise allegations of continuing human rights violations.
52. With the exception of the specific complaint against camp conditions for former camp residents, the Panel finds this aspect of the complaint admissible *ratione temporis* and lodged within the six-month time period.
53. Further, the Panel considers that this aspect of the complaint raises complex issues of law and fact, the determination of which should depend on an examination of the merits. It concludes, therefore, that this aspect of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of the Regulation. No other ground of inadmissibility has been established.

B. Specific issues in relation to the Death of D.M., R.M. and V.S.

a. Complaint

54. In addition to the more general allegations relating to the violation of the right to life in the camps discussed above, N.M. (no. 1) and S.M. (no. 2), parents of D.M., S.M. (no. 8), husband of R.M., and I.I. (no. 20), wife of V.S. also allege that the conditions in the camps directly caused the deaths of D.M., R.M. and V.S. and that no investigation was launched regarding those deaths.

b. Admissibility of this aspect of the complaint

55. These three decedents must be distinguished from the two individuals mentioned in § 25 as the families of D.M, R.M. and V.S. allege a violation of Article 2 ECHR and that the deaths were attributable to conditions in the IDP camps. The ECtHR noted that when complaining of the death of one's close family member, the applicant acts as a person who is affected by the death and not as the decedent's representative (ECtHR *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports of judgments and decisions*, 1998-VI, § 63). The alleged violations of Article 2 ECHR are therefore properly raised.
56. In the context of these three decedents, the Panel notes that the scope of protection afforded by Article 2 ECHR covers not only the substantive aspect of the right to life, but also the procedural obligation to carry out an effective investigation into alleged breaches of the substantive limb of these provisions (see for a recent example in the case-law of the ECtHR, *Šilih v. Slovenia*, no. 71463/01, Grand Chamber judgment of 9 April 2009, § 153). Moreover, while death occurs at a fixed point in time, the said procedural obligation binds the authorities throughout the period in which they can reasonably be expected to **take measures with an aim to elucidate the circumstances of death and establish responsibility for it** (ECtHR, *Šilih v. Slovenia*, § 157). Thus, the Panel must determine

whether it has jurisdiction *ratione temporis* and in accordance with the six-month rule in relation to both the substantive and procedural limbs of Article 2 ECHR.

57. According to the complaint D.M. died on 22 July 2004, R.M. in June 2005 and V.S. on 13 July 2005 and. Since the death of D.M. occurred prior to 23 April 2005, the claim in relation to the violation of the substantive requirements of Article 2 ECHR is inadmissible *ratione temporis*. For the claim in relation to the deaths of R.M. and V.S., the Panel notes that more than six months passed between the deaths and the filing of the complaints. Therefore the Panel finds the allegations relating to R.M. and V.S. concerning the violation of the substantive requirements of Article 2 ECHR inadmissible as filed out of time.
58. However, the complaint also alleges that the respondent knew the conditions in the camp were dangerous to human life and that no investigations were launched by the authorities following the deaths of D.M, R.M. and V.S. This allegation concerns the procedural limb of Article 2 ECHR and the Panel considers that the alleged lack of an investigation may constitute a continuing violation.
59. With the exception of the complaint relating to the substantive requirements of Article 2 ECHR in relation to D.M, R.M. and V.S., the Panel finds this aspect of the complaint admissible *ratione temporis* and lodged within the six-month time period.
60. Further, the Panel considers that this aspect of the complaint raises complex issues of law and fact, the determination of which should depend on an examination of the merits. It concludes, therefore, that this aspect of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of the Regulation. No other ground of inadmissibility has been established.

2. Prohibition of inhuman or degrading treatment

a. Complaint

61. It is contended that the respondent's failure to relocate the complainants from the IDP camps on contaminated land near waste dumps and mine tailings constituted a violation of the prohibition against ill-treatment in the sense that conditions in the camps inflicted upon the complainants great physical and mental suffering amounting to inhuman and degrading treatment. The living conditions in the camps are alleged to have caused the complainants severe health problems including permanent physical damage and irreversible brain damage.
62. The complainants contend that as members of the historically marginalised Roma community they are particularly vulnerable to degrading treatment.

b. Admissibility of this aspect of the complaint

63. The prohibition against inhuman and degrading treatment is enshrined in a number of international human rights instruments, including Article 3 of the ECHR, Article 7 of the ICCPR and Article 2 of the CAT.
64. As indicated above, the complaints of former camp residents concerning conditions in the camps must be found inadmissible if they have been lodged more than six months after their departure from the camp. However, the remainder of the complaint of former camp residents can be characterised as alleging continuing human rights violations arising out of a breach of the respondent's positive obligations to the complainants, such as the alleged obligation to take effective measures to provide protection against

violations of the prohibition of the ill-treatment (ECtHR, *A. v. United Kingdom*, judgment of 23 September 1998, *Reports of judgments and decisions*, 1998-VI, p. 2699, § 22; ECtHR (Grand Chamber), *Z. and others v. United Kingdom*, no. 29392/95, judgment of 10 May 2001, §§ 73-75, ECHR 2001-V; ECtHR, *Moldovan v. Romania*, nos. 41138/98 and 64320/00, judgment no. 2 of 12 July 2005, § 98, ECHR, 2005-VII), and to conduct investigations into allegations of inhuman and degrading treatment (ECtHR, *Assenov v. Bulgaria*, judgment of 28 September 1998, *Reports of judgments and decisions*, 1998-VII, p. 3290 § 102). This aspect of the complaint is consequently admissible *ratione temporis* and lodged within the six-month time period. The same applies to the entirety of the complaint of current camp residents.

65. Further, the Panel considers that this aspect of the complaint raises complex issues of law and fact, the determination of which should depend on an examination of the merits. It concludes, therefore, that this aspect of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of the Regulation. No other ground of inadmissibility has been established.

3. Right to respect for private and family life

a. Complaint

66. The complainants contend that the respondent's actions in allowing them to remain in life-threatening and squalid conditions in the camps effectively interfered with their right to respect for their private and family life as it was impossible for family members to maintain their well being and enjoy their homes in an environmentally dangerous environment where family members were at continual risk of serious illness.
67. The complainants further contend they were denied access to data concerning the lead contamination to which they were exposed, at least between 2000 and 2005 despite repeated requests to the respondent for information. Whilst the complainants have been provided with some health information since 2005, it is claimed that the disclosure of information has been insufficient.
68. It is also alleged that the respondent has actively or implicitly misrepresented the adequacy of conditions in the camps.

b. Admissibility of this aspect of the complaint

69. The right to respect for private and family life is contained in Article 8 of the ECHR and Article 17 of the ICCPR.
70. The Panel considers that a distinction should be made between those groups of complainants still resident in the IDP camps and those who have been relocated. Whilst all complainants can allege that their right to private and family life has been continuously violated because of the respondent's failure to provide information about the health risks faced by them in the camps (compare ECtHR, *Guerra v. Italy*, judgment of 19 February 1998, *Reports of judgments and decisions*, 1998-I, p. 228, § 60; ECtHR, *McGinley and Egan v. United Kingdom*, judgment of 9 June 1998, *Reports of judgments and decisions*, 1998-III, pp. 1363-1364, §101), only those continuing to reside in the camps at the relevant date can allege the additional violation of their right to respect for their private and family life on account of conditions in the camp. With the exception of the issue of camp conditions for former camp residents, the Panel finds this aspect of the complaint admissible *ratione temporis* and lodged within the requisite six-month time period.

71. Further, the Panel considers that this aspect of the complaint raises complex issues of law and fact, the determination of which should depend on an examination of the merits. It concludes, therefore, that this aspect of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of the Regulation. No other ground of inadmissibility has been established.

4. Right to a fair trial

a. Complaint

72. The complainants contend that they have been denied the right to a fair hearing on account of their lack of access to an independent and impartial tribunal which could determine their rights. They refer in particular to the respondent's immunity from prosecution or litigation.

b. Admissibility of this aspect of the complaint

73. The right to a fair trial is enshrined in a number of international human rights instruments, including Article 6 § 1 of the ECHR and Article 14 § 1 of ICCPR.

74. The obligation to provide all persons with a fair hearing in relation to the determination of their civil rights and obligations, which requires as a minimum the right of access to a tribunal or court for the determination of the dispute (ECtHR, *Golder v. United Kingdom*, judgment of 21 February 1975, *Publications of the Court*, Series A, no. 18, p. 18, § 36), is a continuing one. As such this aspect of the complaint lies within the Panel's temporal jurisdiction *ratione temporis* and is lodged within the six-month time period.

75. Having regard to the particular circumstances of the case, the Panel considers that this aspect of the complaint raises complex issues of law and fact, the determination of which should depend on an examination of the merits. It concludes, therefore, that this aspect of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of the Regulation. No other ground of inadmissibility has been established.

5. Right to an effective remedy

a. Complaint

76. The complainants allege that their inability to take their complaint to an authority with effective enforcement power denied them an effective remedy. This situation exists, according to the complainants, because the respondent is immune from legal action and because the legal system, as established and supervised by the respondent, is incoherent and lacks legal certainty.

b. Admissibility of this aspect of the complaint

77. Article 13 of the ECHR and Article 2 § 3 of the ICCPR require that where a person has an arguable claim that his or her fundamental rights have been violated, he or she has an effective remedy, including the right to bring such claim before a competent authority and to obtain relief.

78. The right to an effective remedy requires authorities to make available such a remedy. The remedy must be one which enables the complainants to raise their human rights and to have them considered by an independent authority, having a sufficiently broad power of review (ECtHR (Grand Chamber), *Hatton v. United Kingdom*, no. 36022/97, judgment of 8 July 2003, § 140, *ECHR*, 2003-VIII). Where the alleged violation consists of a

continuing violation against which no domestic remedy is available, the six-month period does not commence until the end of the situation (ECtHR, *Ülke v. Turkey*, no. 39437/98, decision of 1 June 2004). In the present case the Panel has found that many of the violations alleged by the complainants can be characterised as continuing situations. The complainants have alleged that there are no effective remedies for these continuing violations. As a consequence, this aspect of the complaint lies within the jurisdiction of the Panel *ratione temporis* and is lodged within the requisite six-month period.

79. The question of the availability of any remedies, in the light of the respondent's immunity from legal proceedings, is a central issue in this complaint. The Panel considers that this aspect of the complaint raises complex issues of law and fact, the determination of which should depend on an examination of the merits. It concludes, therefore, that this aspect of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of the Regulation. No other ground of inadmissibility has been established.

6. Right to adequate housing, health and standard of living

a. Complaint

80. The complainants contend a breach of various provisions of international human rights instruments requiring the adequate provision of housing, health and standards of living, including Article 25 (1) of the UDHR which states that everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services. Other human rights provisions alleged to have been breached by the respondent include: Article 11 of the ICESCR (standard of living, food, clothing and housing), Article 12 of the ICESCR (health), and Article 5 of the CERD (housing). Further specific provisions relevant to women are contained in Article 12 of the CEDAW (access to health care and nutrition, especially during pregnancy) and Article 14 of the CEDAW (adequate standards of living, including housing and sanitation). Further specific provisions relevant to children are found in Article 24 of the CRC (food, water) and Article 27 of the CRC (standard of living, nutrition, clothing and housing). The complainants point out that housing priority is required to be given to social groups living in unfavourable conditions, that the right applies to all persons including IDPs and that the right covers not only housing but also security, peace and dignity.
81. In the present complaint, it is contended that through the respondent's failure to relocate the complainants from the lead contaminated sites and its failure to take positive steps to improve the health, housing and living conditions of the Roma IDPs under its care, it has breached minimum human rights standards in relation to housing, health and adequate standards of living.

b. Admissibility of this aspect of the complaint

82. The Panel finds that any alleged violation of the right to housing, health and adequate standards of living related to conditions in the camps ceased at the time of the departure of residents from the camps. The Panel consequently finds this aspect of the complaint inadmissible for those complainants who left the camps more than six months prior to lodgement of the complaint. However, other aspects of the complaints of former residents raise matters giving rise to alleged continuing violations of human rights and are thus admissible. Such matters include the possible existence of positive and ongoing obligations by the respondent to the complainants in relation to the rights to housing, health and an adequate standard of living. The Panel notes that the public authorities may, in certain situations, have a responsibility in relation to subsequent living conditions of complainants which are a result of repercussions of previous acts or omissions by the

authorities. This kind of responsibility may be within the temporal jurisdiction of a reviewing body such as the Panel, even where those prior acts or omissions occurred outside its temporal jurisdiction (consult ECtHR, *Moldovan v. Romania*, nos. 41138/98 and 64320/00, judgment no. 2 of 12 July 2005, § 104, ECHR, 2005-VII). With the exception of the specific issue of camp conditions for former residents, the Panel finds this aspect of the complaint within its jurisdiction *ratione temporis* and lodged within the six-month time period.

83. The Panel considers that this aspect of the complaint raises complex issues of law and fact, the determination of which should depend on an examination of the merits. It concludes, therefore, that this aspect of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of the Regulation. No other ground of inadmissibility has been established.

7. Prohibition against discrimination in general

a. Complaint

84. The complainants state that the Roma community is subject to direct and institutional discrimination and that the respondent's failure to remove the Roma from the IDP camps contaminated with lead is a further manifestation of this entrenched discrimination, particularly in circumstances where other IDP communities have been treated more favourably and have been moved from dangerous locations more promptly.

b. Admissibility of this aspect of the complaint

85. The prohibition against discrimination is enshrined in a number of international human rights instruments, including Article 14 of the ECHR, Article 1 of Protocol No. 12 to the ECHR, Article 2 § 1 of the ICCPR, Article 2 § 2 of the ICESCR and Articles 2 and 5 of the CERD.
86. What is alleged by the complainants is not a series of isolated or individual instances of discrimination, but rather a policy or pattern of direct or indirect discrimination against the complainants as Roma. This pattern of discrimination is said to have manifested itself through the respondent's acts or omissions in failing to relocate them to a safe environment, to provide them with adequate information about the health risks faced by them and to take steps to improve their living standards. Alleged violations such as the failure to improve conditions within the camps or to relocate them, ceased for former residents with their departure from the camps. For those complainants who left the camps more than six months prior to the filing of the complaint, this aspect of the complaint is consequently inadmissible as being lodged outside of the six-month time period. However, the complaints of former residents also relate to other alleged violations, of a continuing nature. These allegations include, *inter alia*, the discriminatory and continuing failure to provide all residents of the camps, past and present, with information about health risks from the lead contamination they may have been exposed to as well as breaches of positive obligations owed to vulnerable minorities. With the exception of the complaint of former residents about discriminatory practices in relation to camp conditions and the failure of the respondent to relocate them, the Panel finds this aspect of the complaint within its jurisdiction *ratione temporis* and lodged within the six-month time period, both in relation to current and former camp residents.
87. The Panel considers that this aspect of the complaint raises complex issues of law and fact, the determination of which should depend on an examination of the merits. It concludes, therefore, that this aspect of the complaint is not manifestly ill-founded within

the meaning of Section 3.3 of the Regulation. No other ground of inadmissibility has been established.

8. Prohibition of discrimination against women

a. Complaint

88. In addition to the other alleged human rights violations which equally affect the female complainants in this matter, the complainants contend breaches of specific provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These provisions include: Article 2 (condemnation of discrimination against women), Article 3 (obligation to take action to guarantee equality), Article 5 (obligation to take measures regarding family education in the best interests of children), Article 12 (obligation to take measures to eliminate discrimination against women in the field of health care and to ensure appropriate services in connection with pregnancy including free services and adequate nutrition).
89. The complainants contend that as the respondent knew or should have known of the grave danger to the lives and health of the victims through the lead contamination in the camps and the general living conditions, and did not take any positive steps to remove the victims from the danger due to discrimination, it is in violation of the relevant provisions of CEDAW. It is further contended on behalf of those complainants who are or have been residents of the Zitkovac/Zhikoc, Cesmin Lug/Cesminluke and Kablare camps and are now residents of the Osterode camp, that their initial placement and long term maintenance in IDP camps on contaminated land near a toxic waste dump and attendant detrimental effects on their health and well-being constitute a violation of Article 12 of the CEDAW. It is also alleged that the conditions under which the complainants lived interfered with their ability to have proper family education and access to health and information, and further interfered with family life, thus constituting further violations of the CEDAW. The complainants emphasise that the alleged lack of adequate health care, the poor living conditions and the lack of appropriate medical information about the attendant risk were particularly serious for pregnant women on account of their increased vulnerability and that of their unborn children.

b. Admissibility of this aspect of the complaint

90. Consistently with its earlier reasoning, the Panel finds this aspect of the complaint inadmissible for those female complainants who departed the camps more than six months prior to lodgement of the complaint, insofar as the complaint relates directly to alleged discriminatory practices, or the breach by the respondent of CEDAW obligations, during their period of residence in the camps. However, other parts of this aspect of the complaint raise issues of continuing obligations on the respondent and consequent allegations of violations for failure to adhere to those obligations. With the exception of the complaints lodged by the former camp residents, the Panel finds this aspect of the complaint within its jurisdiction *ratione temporis* and lodged within the six-month time period.
91. The Panel considers that this aspect of the complaint raises complex issues of law and fact, the determination of which should depend on an examination of the merits. It concludes, therefore, that this aspect of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of the Regulation. No other ground of inadmissibility has been established.

9. Rights of children

a. *Complaint*

92. A number of specific violations of the Convention on the Rights of the Child (CRC) are alleged by the complainants. They allege that Article 2 is violated on account of ethnic and gender discrimination by the respondent, Article 3 is violated as the respondent has not taken into account the best interests of the child in its actions, Article 5 is violated as the rights of the parents have not been respected through the respondent's failure to report the results of the blood tests or give correct information. Moreover, Article 6 is violated for those children who have died, and further, that the right to development contained in Article 6 is denied as a consequence of the permanent mental deficiencies of children born with lead poisoning and through the denial of medical treatment.
93. The complainants allege a violation of Article 16 through a breach of the right to protection from attacks on or interference with privacy, family life and home. Article 19 is allegedly violated by the respondent's failure to take measures to protect the children from physical or mental violence, injury or abuse. On account of the respondent's failure to create conditions in which a mentally or physically disabled child can enjoy a full and decent life with special care, the complainants allege a violation of Article 23. It is alleged that the respondent has violated the right of the child to the highest attainable standard of health required by Article 24 through stopping the provision of nutritious food and medical care, failing to take into account the risks of environmental pollution and through failing to provide adequate or any information. Finally, the complainants contend a violation of the Article 27 right to an adequate standard of living and a violation of Article 37 on account of the subjection of child complainants to cruel, inhuman or degrading treatment.

b. *Admissibility of this aspect of the complaint*

94. In line with its consistent approach in this decision, the Panel would exclude those parts of the complaint of former child residents of the camp as inadmissible to the extent that they are related to violations that allegedly have occurred during their period of residence in the camps and prior to six months from the date of lodgement of the complaint. However, the Panel notes a number of continuing positive obligations to act in the best interests of the child in all actions concerning children, to ensure to the maximum extent possible the survival and development of the child, to recognise the right of the child to the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health and to recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. With the exception of the specific issue of camp conditions for former child residents, the Panel finds this aspect of the complaint within its jurisdiction *ratione temporis* and lodged within the six-month time period, both in relation to current and former child residents.
95. The Panel considers that this aspect of the complaint raises complex issues of law and fact, the determination of which should depend on an examination of the merits. It concludes, therefore, that this aspect of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of the Regulation. No other ground of inadmissibility has been established.

FOR THESE REASONS,

The Panel, unanimously,

- DECLARES INADMISSIBLE:

- **THE COMPLAINT INSOFAR AS IT IS FILED IN THE NAME OF THE COMPLAINANTS M.J. (NO. 43) AND S.G. (NO. 101);**

- THE COMPLAINT INsofar AS IT IS FILED BY THE COMPLAINANTS M.G. (NO. 88), A.G. (NO. 89) AND D.B. (NO. 90);
 - THE COMPLAINT IN RELATION TO THE SUBSTANTIVE ASPECT OF THE RIGHT TO LIFE FOR N.M. (NO. 1) AND S.M. (NO. 2), PARENTS OF D.M., S.M. (NO. 8), HUSBAND OF R.M., AND I.I. (NO. 20), WIFE OF V.S.;
 - THE COMPLAINT IN RELATION TO CONDITIONS IN THE ZITKOVAC/ZHIKOC, CESMIN LUG/CESMINLUKE, KABLARE, OSTERODE AND LEPOSAVIQ CAMPS FOR THOSE COMPLAINANTS NO LONGER RESIDENT IN THOSE CAMPS ON 4 JANUARY 2008;
- DECLARES ADMISSIBLE THE REMAINDER OF THE COMPLAINT.


John J. RYAN
Executive Officer


Marek NOWICKI
Presiding Member

