



The Human Rights Advisory Panel

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DECISION

Date of adoption: 22 August 2012

Case No. 01/10

M.N.

against

UNMIK

The Human Rights Advisory Panel, sitting on 22 August 2012,
with the following members present:

Mr Marek NOWICKI, Presiding Member
Mr Paul LEMMENS
Ms Christine CHINKIN

Assisted by
Mr Andrey ANTONOV, Executive Officer

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

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 25 January 2010 and registered on 28 January 2010.
2. Following the Panel's request, on 4 July 2012 the complainant submitted additional clarification and documents.
3. On 10 August 2012, the complainant provided further additional clarification.

II. THE FACTS

4. The complainant is a former resident of Kosovo, currently living in Serbia proper.
5. The complainant informs the Panel that he is the owner of an apartment in Ferizaj/Uroševac and that he used to live there until NATO troops entered Kosovo in 1999.
6. As his property had been subsequently illegally occupied, he filed a claim with the Housing and Property Directorate (HPD). In a decision of 9 December 2004 the Housing and Property Claims Commission (HPCC) of the HPD confirmed the complainant's rights over this property.
7. The complainant further informs the Panel that on 17 January 2007 he requested the Kosovo Property Agency (KPA), the successor-in-interest of the HPD, to place his apartment under KPA administration. The HPD website states that the property had been under its administration since 13 March 2008.
8. By a letter dated 10 November 2009, the KPA informed the complainant that his property had been taken under its administration and included within the KPA rental scheme. The KPA further explained that at an unidentified time after that the property had been vacated and not rented again. The KPA also stated in the same letter, that while the property was vacant, it had been damaged to such an extent that it was impossible to find anyone else interested in renting it further. The KPA concluded that the property was excluded from the rental scheme, and advised the complainant to take possession of it. The Panel has not been informed if the complainant attempted to take possession of the property.
9. At the Panel's request, the KPA additionally clarified that the complainant's property had been rented out until 1 June 2009, when the tenant had discontinued the rental agreement because of its poor condition. As of that time, the KPA had classified the property as "not rentable".
10. The KPA further informed the Panel that on 22 May 2009 the municipality of Ferizaj/Uroševac had asked the KPA about any outstanding claims with regard to the apartments in the building where the complainant's property was located. By a letter dated 1 September 2009, the KPA informed the municipality about the claim of M.N., which had been decided in his favour by the HPCC. The KPA also informed the municipality that the apartment was under its administration and was included in the KPA rental scheme. A copy of the same letter was sent to M.N., but the complainant states that he never received it.
11. The KPA also states that it later found out that the building had been demolished by the municipality.
12. On 11 February 2010, the complainant requested the KPA to confirm to him that the property had been destroyed, and asked it to identify the persons responsible. In response, by a letter dated 11 February 2010, the KPA informed the complainant that, as the property was damaged and uninhabitable, it was forced to discontinue its administration over the property. In the same letter, the KPA also stated that it could not return it into the

complainant's possession. The letter also informed the complainant about his right to pursue other legal avenues to obtain compensation for his material loss.

13. The complainant however claims that the building was completely demolished by the Ferizaj/Uroševac municipal authorities in June 2009, that the KPA knew about that fact, but undertook no measures to prevent it, and that it failed to properly inform him of the demolition.
14. The Panel was later informed that a traffic roundabout has been constructed at the site.

III. THE COMPLAINT

15. The complainant complains about acts of the municipal administration of Ferizaj/Uroševac, which demolished his property, causing him material damage.
16. He also complains about the failure of the KPA to protect his property under its administration, which led to its demolition by the municipal authorities and caused him material damage.

IV. THE LAW

17. Before considering the case on its merits the Panel has to decide whether to accept the case, taking into account the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.
18. According to Section 1.2 of the Regulation, the Panel has jurisdiction over complaints relating to alleged violations of human rights by UNMIK.
19. With regard to the alleged acts of the municipality of Ferizaj/Uroševac, the Panel has already considered that, from 15 June 2008 at the latest, UNMIK can in principle no longer be held responsible for acts or omissions imputable to the Kosovo authorities, merely on the basis of the continuing existence of the United Nations Security Council resolution 1244 (1999) (see HRAP, *Ibrahimi*, no. 86/10, decision of 16 March 2012, §§ 10-11). There are no special circumstances that lead to a different conclusion in the present case.
20. With regard to the alleged failure of the KPA to protect the complainant's property from demolition, the Panel has also already considered that after 31 December 2008 UNMIK no longer had jurisdiction to oversee the KPA's functioning (see HRAP, *Vulić*, no. 05/07, opinion of 18 March 2011, §§ 54-56). Therefore, when the complainant's property in Ferizaj/Uroševac was destroyed and when the KPA decided to exclude it from its rental scheme, i.e. in June and November 2009 respectively, UNMIK was no longer responsible for the alleged action or inaction of the KPA.
21. For this reason, the Panel considers that the complaint is outside of its jurisdiction *ratione personae*, and must therefore be declared inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member