



DECISION

Date of adoption: 17 April 2009

Case No. 35/08

Ilija TRAJKOVIĆ

against

UNMIK

The Human Rights Advisory Panel sitting on 17 April 2009
with the following members present:

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

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. According to the complainant, Mr. Ilija Trajković, as a result of public disturbances on 17 March 2004, he and his wife were evacuated from their home in Pristina by KFOR and UNMIK Police. Shortly thereafter, the home was looted and damaged. The Trajković family relocated to Gračanica/Graçanicë, a Serbian village outside of the city of Pristina. They were accommodated in "Vocar" Collective Center in Gračanica/Graçanice.
2. Upon learning of the damage to his property, the complainant reported the incident to the Housing and Property Directorate (HPD), now the Kosovo Property Agency (KPA). Subsequently, the complainant requested that the property be put under the administration of the KPA. At that time he was unwilling to return to the property because he believed his security could not be guaranteed.

3. On 27 April 2007, the complainant entered into a written agreement with the KPA for the purposes of putting the property under the KPA rental scheme. This rental scheme authorized the KPA to rent the property to another person, collect the rental income and disburse it to the complainant as the owner of the property. Part of the written agreement signed by the complainant notes: "I am aware [of] and accept article 12.8 of UNMIK Regulation 2000/60 which limits KPA liability, and I shall not hold KPA liable if the property is damaged."
4. In December of 2007, the occupants of the complainant's apartment were informed that the property had been put under KPA administration and that they would be required to pay rent. After the occupants refused to pay rent, the KPA evicted them in March 2008. Photographs dated 14 October 2008 show an apparently vacant residence with substantial interior damage.
5. As of December 2008, the KPA maintained that the property remained vacant. The KPA was unable to locate any tenants. The complainant believes that the property has recently been reoccupied. No rental income was ever collected from any occupants and the complainant did not obtain any compensation for the damage to the structure. The KPA has noted that at anytime the complainant may request the repossession of his property and that the KPA will facilitate this.

II. COMPLAINT

6. The complainant claims that he did not receive any rental income for his property whilst it was under the administration of the KPA. He further avers that his house sustained substantial damage by the tenants of his property and that no compensation has been paid. He claims that, as a result, his right to protection of property under Article 1 of Protocol No.1 to the European Convention on Human Rights (ECHR) has been violated.

III. PROCEEDINGS BEFORE THE PANEL

7. The complaint was introduced on 7 August 2008 and registered on the same date.
8. By letter dated 29 October 2008, the Panel requested information and documents from the KPA. The Special Representative of the Secretary General (SRSG) had earlier requested that the Panel contact the KPA directly for information related to complaints before the Panel regarding matters of KPA activities.
9. Upon another request for information by the Panel, the KPA responded on 22 December 2008 with its explanation of the circumstances relevant to the case. The complainant was afforded an opportunity to respond to the comments of the KPA and did so by letter dated 30 January 2009.

IV. THE LAW

10. The complainant alleges a violation of his right to the peaceful enjoyment of his possessions as protected under Article 1 of Protocol No. 1 to the ECHR.
11. This provision reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

12. The complainant initially reported the damage to his property to the HPD in 2004. He alleges however a violation of his rights by the KPA.
13. The Panel shall deal with complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of the human rights as listed in Section 1 of UNMIK Regulation No. 2006/12
14. UNMIK Regulation No. 1999/1 of 25 July 1999 on the Authority of the Interim Administration in Kosovo provides that UNMIK is vested with all legislative and executive authority with respect to Kosovo. Section 6 states that “UNMIK shall administer movable or immovable property which is in the territory of Kosovo [...]”. UNMIK subsequently adopted specific legislation in this area. The HPD was established under the authority of the SRSG by UNMIK Regulation No. 1999/23 to provide overall direction on property rights in Kosovo for the purpose of achieving efficient and effective resolution of claims concerning residential property. The HPD was later replaced by the KPA, by virtue of UNMIK Regulation No. 2006/10 of 4 March 2006 on the resolution of claims relating to private immovable property, including agricultural and commercial property.
15. The Panel notes that an area of property administration under UNMIK’s authority is performed by the KPA pursuant to UNMIK Regulation 2006/10. Thus it is the view of the Panel that UNMIK is ultimately responsible for the acts and omissions of the KPA exercised pursuant to the Regulation that occur within relevant time frames.
16. 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. Pursuant to Section 3 the Panel may declare inadmissible any complaint which is manifestly ill-founded.
17. The Panel notes that the purpose of this admissibility rule is to ensure that complaints filed with the Panel are not obviously unmeritorious. Therefore an application shall be declared inadmissible if it merely contains allegations without targeting substantive rights or if the allegation is insufficient to ascertain a violation of the protected rights and freedoms.
18. The Panel further notices that, according to the case law of the European Court of Human Rights, an application shall be rejected as manifestly ill-founded if the applicant refers to a breach of a protected right without providing any reasoning and if “the Court finds no indication whatsoever in the case file which might disclose any appearance of a violation of this provision” (see ECtHR, Pavlyulynets v. Ukraine, no. 70767/01, 6 September 2005, § 30).
19. The complainant considers that the KPA is responsible for the failure to pay income on property and for the failure to inform him of the illegal occupation. He also deems the KPA accountable for the damages caused to his property.

20. As to the rental payment aspect of the complaint, it has to be noted that the KPA does not guarantee that any income from the property will be realized, nor does it guarantee that a rent-paying tenant will be found to reside at the property. A payment can be disbursed to the owner only if the tenant pays rents to the KPA.
21. The complaint and subsequent information obtained contain no evidence that might support the conclusion that the complainant's right to protection of property was violated by UNMIK because of the failure of the KPA to rent the property.
22. Insofar as the complainant alleges that the KPA failed to inform him of the illegal occupation of his property, the Panel does not consider that such failure, even assuming that it would be proven, constitutes an interference with his property rights.
23. The Panel finds that the 2007 agreement signed between the complainant and the KPA limits the liability of the latter, including in case of damage to the property. Reference is expressly made to Section 12.8 of UNMIK Regulation No. 2000/60. That provision reads as follows: "The Directorate shall make reasonable efforts to minimize the risk of damage to any property under its administration. The Directorate shall bear no responsibility for any damage to property under administration or loss of or damage to its contents."
24. The complainant has signed an agreement with the KPA noting, in accordance with the relevant regulation, that the KPA is not liable for any damage attributable to occupants. Accordingly, there is no basis for finding that the complainant's right to protection of property has been violated as a result of a failure by UNMIK to compensate him for damages inflicted to his property in this case.
25. The Panel concludes that the complaint does not disclose any appearance of a violation of the right invoked by the complainant. It is of the view that the complaint must therefore be rejected as being manifestly ill-founded within the meaning of Section 3.3 of Regulation No. 2006/12.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

John J. RYAN
Executive Officer

Marek NOWICKI
Presiding Member