



The Human Rights Advisory Panel

UNMIK Administrative HQ, Building D, 10000 Pristina, Kosovo

DECISION

Date of adoption: 5 June 2009

Case No. 01/09

Mr. Ramadan XHEMA

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 complainant claims that in 1973 he was granted the right to use an apartment belonging to his employer and located in Pristina.
2. In 1980, with the approval of his employer, the complainant entered an educational program in his specialty in the United States. During the time of his specialisation, his mother and sister resided in the apartment. The complainant also lived in the apartment during the time of his visits to Kosovo.

3. At the beginning of the 1990's he was fired from his job by the government. According to the complainant, he and his family were expelled in 1992 from the apartment. The apartment was then allocated to another employee of the same employer, B.M.
4. As a result of the war in Kosovo in 1999, B.M. left the apartment in 1999. The complainant returned and re-occupied the apartment.
5. B.M. filed a claim for repossession of the apartment with the Housing and Property Directorate (HPD). The complainant also filed a claim. On 27 September 2005, the Housing and Property Claims Commission (HPCC) held that the complainant had established that he had a valid occupancy right (category A claim), that B.M.'s claim satisfied the requirements for a valid category C claim, and that the category C claim was superseded by the category A claim. The complainant's rights were restored and B.M.'s claim was dismissed.
6. B.M. filed a request for reconsideration of this decision. On 11 December 2006, the HPCC granted the request. It stated that "that [the complainant] lost his property right when he left voluntarily to go to the United States of America." The HPCC ordered that B.M. be given repossession of the claimed property and that the complainant or any other person occupying the property vacate the same. The certified copy of this decision is dated 2 March 2007.
7. The present status of possession of the apartment is not clear. In his complaint to the Panel, the complainant indicates the contested apartment as his address.

II. COMPLAINTS

8. The complainant claims that he is a victim of violations of his right to property and to peaceful enjoyment of possessions (Article 17 of the Universal Declaration of Human Rights and Article 1 of Protocol No. 1 to the European Convention on Human Rights) and his right to respect for private life and family life (Article 17 of the International Covenant on Civil and Political Rights).

III. PROCEEDINGS BEFORE THE PANEL

9. The complaint was introduced on 14 January 2009 and registered on the same date. During the proceedings before the Panel, the complainant was represented by Messrs. Nushi and Hasolli, lawyers.
10. On 4 May 2009 the Panel communicated some information received from the Kosovo Property Agency to the complainant, requesting him to comment on that information. The complainant's lawyers replied on 15 May 2009.

IV. THE LAW

11. 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.

12. According to Section 3 of Regulation No. 2006/12, the Panel may only deal with a matter within a period of six months from the date on which the final decision was taken.
13. The Panel notes that the final decision in the complainant's case, the binding and enforceable decision on the reconsideration request, was taken by the HPCC 11 December 2007 and certified on 2 March 2007.
14. In his complaint to the Panel, the complainant states that since he was constantly traveling to the United States, he did not personally receive a copy of the said decision. He claims that he received a copy on 20 December 2008 from his authorised lawyer.
15. The successor agency to the HPD, the Kosovo Property Agency (KPA), provided the Panel with documents relevant to the time frame questions in this matter. It noted that the complainant was notified of the decision of 11 December 2006 in April 2007. The KPA mentions a delivery receipt indicating that the decision was "left inside the (claimed) apartment". In addition, on 17 April 2007 a telephone call was made to a certain Mr. Salihu, who at that time "had an agreement with (the complainant) to occupy the claimed property". Mr. Salihu was informed of the decision of 11 December 2006.
16. Moreover, the KPA provided a copy of a letter dated 8 May 2007 to the HPD from Mr. Seeger, an attorney in the United States. That letter mentioned the intention of the complainant to seek further reconsideration of the decision of the HPCC or to file an appeal. Mr. Seeger also requested a stay of any further action by the HPD, in particular in case of a request for eviction. The letter was accompanied by an authorisation signed by the complainant consenting to his representation by both Mr. Seeger in the United States and by a local attorney in Pristina. The authorization was also dated 8 May 2007. In his letter of 8 May 2007, Mr. Seeger stated that the complainant had received notice of the "March 2, 2007, decision" (read: the decision of 11 December 2006, certified on 2 March 2007) "within the previous thirty (30) days".
17. The complainant's lawyers argue that the delivery of the decision of the HPCC inside the claimed apartment is not a valid way of delivery. They refer to Section 13.1 of Regulation No. 2000/60 of 31 October 2000 on residential property claims and the rules of procedure and evidence of the Housing and Property Directorate and the Housing and Property Claims Commission, according to which the HPD shall deliver a certified copy of an HPCC decision "to each party at the address given in terms of section 9.4". They also state that the information given by phone to Mr. Salihu, a third person, is not relevant.
18. Referring to the letter from Mr. Seeger, the complainant's lawyers note that it is clear from that letter that the complainant was in the United States when the delivery of the HPCC decision took place. In these conditions, there cannot be a regular delivery. The complainant's lawyers also argued that even if the complainant was informed orally of the decision, such knowledge is not relevant.
19. The Panel is of the opinion that where a complainant is entitled to be served *ex officio* with a certified copy of the final decision, the object and purpose of Section 3.1 of Regulation No. 2006/12 are best served by counting the six-month period as running from the date of service of the decision (see European Court of Human Rights (ECtHR), *Worm v. Austria*, judgment of 29 August 1997, § 33,

Reports of Judgments and Decisions, 1997-V; ECtHR, *Jałowiecki v. Poland*, no. 34030/07, judgment of 17 February 2009, § 21).

20. As indicated by the complainant, Section 13.1 of Regulation No. 2000/60 of 31 October 2000 provides that the HPD shall deliver a certified copy of an HPCC decision “to each party at the address given in terms of section 9.4”. The address referred to in Section 9.4 is the address indicated by any party in the proceedings before the HPCC “for delivery of documents”. The complainant does not deny that he gave the claimed apartment as the address for delivery of documents.
21. Under the circumstances of this case, there was regular delivery at the time the decision was left at the address that the complainant provided to the HPCC for delivery of documents. Whether or not he was present at the moment of delivery is not a relevant factor in this determination. Similarly, it is not relevant that the complainant was traveling out of Kosovo at the time. In any event, it is clear that the complainant and his lawyers had actual notice as of 8 May 2007.
22. It results from the foregoing that there was a regular delivery of a certified copy of the final decision in April 2007. Moreover, it results in particular from the letter of Mr. Seeger of 8 May 2007 that the complainant must have been aware of that decision at the latest on 8 May 2007.
23. The Panel notes that the period between April 2007 or even 8 May 2007 and the date on which the complainant submitted the complaint to the Panel, 14 January 2009, is longer than six months. It therefore concludes that the complaint has been filed out of time and should be rejected pursuant to Section 3.1 of Regulation No. 2006/12.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

John J RYAN
Executive Officer

Marek NOWICKI
Presiding member