



The Human Rights Advisory Panel

UNMIK HQ, East Wing, 10000 Pristina, Kosovo

DECISION

Date of adoption: 4 June 2008

Case No. 03/07

Milija VUCKOVIC

against

UNMIK

The Human Rights Advisory Panel sitting on 3 June 2008 with the following members present:
Mr. Marek NOWICKI, Presiding member
Mr. Paul LEMMENS
Ms. Snezhana BOTUSHAROVA-DOICHEVA

Mr. John 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 was the occupancy right holder over an apartment located in Pristina where he lived with his family from 1995. He was forced to leave Kosovo in September 1999, due to the NATO bombing and other threats, and he is now living as an internally displaced person (IDP) with his family in Bor, Serbia.
2. In 2001, the complainant filed a claim for repossession of the apartment to the Housing and Property Directorate (HPD). The Housing and Property Claims Commission (HPCC) issued a decision on 27 June 2003 granting the complainant the right to repossess the apartment.

3. On 31 August 2004, Mr. Nesim Mullabazi complained against that decision, allegedly after the expiry of the deadline for complaints under UNMIK Regulation 2000/60, which states that: "Any interested person who was not a party to the claim (...) may request reconsideration of a Commission decision (...) not later than one year from the date of the Commission's decision". His complaint was rejected by decision of the HPCC issued on 24 February 2005, which he believed to be final and binding.
4. However, in December 2006, the complainant received a new decision at the Belgrade HPD office that had been issued on 15 July 2006, granting Mr. Mullabazi an occupancy right to the apartment on the ground that the earlier revocation of his occupancy right was the result of discrimination during the period between 23 March 1989 and 24 March 1999.

The complainant argues that this decision does not mention a judgment of the Municipal Court in Pristina dated 21 April 1998 cancelling the contract of lease between Mr. Mullabazi and the Republic of Serbia on the ground of inadequate use of the apartment since 1991 and that Mr. Mullabazi had not appealed against this decision.

5. The complainant submitted a reconsideration request to the HPCC which was rejected in a decision dated 19 January 2007 and certified by the Registrar of the HPCC on 19 March 2007.

II. COMPLAINTS

6. The complainant claims that the procedure and the unfavourable decisions of the HPD/HPCC in his case have interfered with his right to fair hearing under Article 6 § 1 of the European Convention on Human Rights (ECHR), violated his right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the ECHR, his right to respect for home and private life under Article 8 and his right to an effective remedy under Article 13.

III. PROCEEDINGS BEFORE THE PANEL

7. The complaint was introduced on 4 June 2007 and registered on the same date.
8. The Panel communicated the case to the SRSG on 7 February 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. The SRSG did not avail himself of this opportunity.

IV. THE LAW

9. 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.
10. As to the complaints under Article 6 § 1 of the ECHR, the Panel notes that they are directed against the proceedings before the HPCC. The guarantees of the said provision apply only to proceedings before a "tribunal", in the sense of Article 6 § 1 of the ECHR. The question therefore arises whether the HPCC can be considered a "tribunal" to which the guarantees of Article 6 § 1 apply. If the answer to this question is a positive one, the

complaints raised by the applicant will have to be examined. If the answer to the said question is a negative one, another question arises, namely whether the decisions of the HPCC are subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 § 1 (see E.Ct.H.R., 10 February 1983, Albert and Le Compte v. Belgium, Publ. Court, Series A, no. 58, § 29).

11. The complaints under Article 6 § 1 thus raise issues of law and of fact the determination of which should depend on an examination of the merits of the complaints.
12. The complaints under Articles 8 and 13 of the ECHR and Article 1 of Protocol No. 1 equally raise issues of law and of fact the determination of which should depend on an examination of the merits of the complaints.
13. The Panel therefore concludes that the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12. The Panel does not see any other ground for declaring it inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

John RYAN
Executive Officer

Marek NOWICKI
Presiding member