



The Human Rights Advisory Panel

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DECISION

Date of adoption: 16 December 2010

Case No. 15/08

Miroslav MIHAJLOVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 16 December 2010, with the following members present:

Mr Paul LEMMENS, Presiding Member
Ms Christine CHINKIN

Assisted by
Mr. Rajesh TALWAR, Executive Officer

Having noted Mr Marek NOWICKI's withdrawal from sitting in the case pursuant to Rule 12 of the Rules of Procedure,

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 lodged with the Panel on 12 June 2008 and registered on the same date.
2. On 21 July 2008, the Panel requested from the complainant further information and documents regarding the complaint. A response was received on 10 September 2008.
3. On 29 October 2008, the Panel requested information and documents relevant to the complaint from the Kosovo Property Agency (KPA). A response was received on 19

November 2008. KPA's response was sent to the complainant for comments on 2 December 2008, and again on 2 February 2009. A response from the complainant was received by the Panel on 8 June 2009.

4. On 24 September 2009, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on the admissibility and merits of the complaint pursuant to Section 11.3 of UNMIK Regulation No. 2006/12 and Rule 30 of the Panel's Rules of Procedure. The SRSG responded by letter dated 14 October 2009. On 24 November 2009, the SRSG's response was forwarded to the complainant for comments.
5. A letter dated 15 June 2010 was sent to the complainant, inviting him once again to submit any further information and comments on the case. A response by the complainant was received by the Panel on 13 September 2010.

II. THE FACTS

6. The complainant is a resident of Kosovo currently living as a displaced person in Serbia. He is the owner of a house located in Prizren. He learned that since he left Kosovo fearing hostilities, his house is being occupied by an unknown person.
7. The complainant filed a request with the Housing and Property Directorate (HPD)/Housing and Property Claims Commission (HPCC) on 1 July 2002. On 18 June 2004, the claim was decided in his favour, confirming his property right.
8. The complainant requested that the HPD administer his property. His request was granted on 22 November 2005. Thus, the complainant's property was administered by the HPD/KPA until he requested termination of HPD administration on 1 October 2007. The HPD carried out an eviction of the complainant's property on 23 May 2008, and the keys to the property were delivered to the authorised representative of the complainant, on 4 June 2008.
9. The complainant alleges that after the eviction carried out by the HPD, the previous occupant moved back into the house. He complains that his authorised representative did not receive the keys of the house at the time of the eviction, on 23 May 2008, but only 12 days later, on 4 June 2008, when upon visiting the complainant's house he found that it was again occupied by the person who had been evicted. To this date, the complainant has been unable to repossess his property.
10. In addition, the complainant alleges that he has not received any rent payment during all the time that his house has been occupied.

III. COMPLAINT

11. According to the complainant, failure by the HPD/KPA to implement the decision of the HPCC has prevented him from repossessing his home and constitutes a violation of his right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR).
12. He also complains that he has not received any rent at all while his property has been occupied, which includes the period when his property was under HPD/KPA administration. Therefore, his right to property (Article 1 of Protocol No. 1 to the ECHR) has again been violated.

13. The Panel considers that the complainant may be deemed to invoke also Article 6 § 1 of the ECHR on the right to a fair trial, regarding the failure of the HPD/KPA to execute the decision of the HPCC.

IV. THE LAW

14. 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.

15. The Panel considers that the complaints under Article 6 § 1 of the ECHR and Article 1 of Protocol No. 1 to the ECHR raise serious issues of fact and law, the determination of which should depend on an examination of the merits of the complaints.

16. 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.

17. The Panel does not see any other ground for declaring the complaint inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Rajesh TALWAR
Executive Officer

Paul LEMMENS
Presiding Member