



DECISION

Date of adoption: 17 April 2009

Case No. 57/08

Mr. Ramadan Demirović

against

UNMIK

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

Mr. Marek NOWICKI, President
Mr. Paul LEMMENS
Ms. Snezhana BOTUSHAROVA

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 is a resident of Kosovo currently living as an internally displaced person (IDP) in Belgrade. Prior to fleeing the Kosovo conflict in June 1999, the complainant was residing in the town of Pristina.
2. The complainant claims he was the owner of an apartment located in Dardanija, Pristina. Upon the outbreak of hostilities and following the complainant's move to

central Serbia, the apartment remained abandoned and became the subject of an illegal occupation.

3. The complainant submitted a category "C" claim with the Housing and Property Directorate (HPD), requesting repossession of his residential property in Pristina. The HPD registered another claim from a different person for the same property, which was registered as a category "A" claim.
4. On 18 June 2004 the Housing and Property Claims Commission (HPCC) adjudicated these claims. The HPCC rejected the category "C" claim of the complainant and granted the category "A" claim of the other person.
5. The complainant filed a request for reconsideration. The HPCC rejected the complainant's request for reconsideration by final decision dated 11 December 2006. The complainant was notified of this decision on 11 June 2007.

II. COMPLAINTS

6. The complainant alleges 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).
7. The complainant also alleges a violation of his right to an effective remedy (Article 13 of the ECHR), due to certain shortcomings of UNMIK Regulation No. 2006/12 and its implementation.
8. The complainant finally alleges a violation of the prohibition on discrimination under Article 14 of the ECHR. He alleges in particular that by adopting UNMIK Regulation No. 2006/12 in its current form, UNMIK did not ensure that this legal remedy would be equally accessible to the current residents of Kosovo and those internally displaced outside Kosovo. The complainant asserts that Section 3.1 of Regulation No. 2006/12 exposed him to discrimination on the grounds of his status.

III. PROCEEDINGS BEFORE THE PANEL

9. The complaint was introduced on 15 December 2008 and registered on the same date.

IV. THE LAW

10. 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.

Claim before the Housing and Property Claims Commission

11. The complainant submitted a claim requesting repossession of his property to the Housing and Property Directorate (HPD). The Housing and Property Claims Commission (HPCC) refused to grant his category "C" claim. The complainant requested reconsideration, which was rejected by a decision dated 11 December

2006. The complainant was notified of this decision, which is a final one, on 11 June 2007.

12. According to Section 3.1 of Regulation No. 2006/12, the Advisory 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 on 11 December 2006, and that the complainant was notified of this decision on 11 June 2007.
14. As the period between 11 June 2007 and the date of the submission of the complainant to the Panel, 15 December 2008, is longer than six months, the complaint falls outside the time limit set by Section 3.1 of the UNMIK Regulation No. 2006/12.
15. The complainant is aware of the fact that the deadline expired on 11 December 2007. However, he points to the fact that the Panel was established in March 2006, that the Special Representative of the Secretary-General (SRSG) appointed the Panel members in January 2007, and that the Panel held its inaugural session in Pristina in November 2007. He argues that the Panel was therefore not operational until at least October 2007. In the early period of the formal existence of the Panel the complainant lacked the possibility to submit a complaint against the final decision of the HPCC.
16. The complainant further states that the Panel "failed to implement an information campaign in Serbia". He also argues that the Panel was, at the end of 2007, seemingly unknown even to international organizations in Kosovo.
17. The complainant concludes that he, together with many other IDPs in a similar situation, was served with the final decision of the HPCC on 11 December 2006, and that the six-month admissibility deadline started and finished during the aforementioned period when the Panel was not operational.
18. The six-month rule serves the interests, not only of the respondent, but also of legal certainty (see, for example, ECtHR, *Walker v. United Kingdom*, no. 34979/97, decision of 25 January 2000, ECHR 2000-I). It is true that there may be special circumstances to the effect that the six-month rule cannot be held against a complainant. In view of the purpose of the said rule, the Panel considers that such circumstances "must be based on clear and conclusive evidence" (E.Comm.H.R., *H. v. United Kingdom and Ireland*, no. 9833/82, decision of 7 March 1985, Decisions and Reports, p. 57, § 13).
19. In this case, the complainant in substance invokes the fact that he was unaware of the existence of the Panel. However, the complainant's lack of knowledge about Regulation No. 2006/12 does not constitute a special circumstance capable of absolving him from respecting the six-month rule (compare, with respect to the ECHR, E.Comm.H.R., no. 512/59, Coll., vol. 1, cited by E.Comm.H.R., *Peters v. Germany*, no. 25435/94, decision of 20 February 1995).
20. An examination of the case therefore does not disclose the existence of any special circumstance which might have interrupted or suspended the running of the six-month time period. It follows that this part of the complaint has been lodged out of time.

Regulation No. 2006/12 and its implementation

21. As regards the complaints directed against Regulation No. 2006/12, the Panel considers that it is within the discretion of the SRSG to determine the regulatory scheme of the complaint system. The Panel has no jurisdiction to examine the compatibility with human rights standards of the legal basis of its own functioning.
22. Moreover, since Regulation No. 2006/12 has been issued on 23 March 2006, the complaint is lodged out of time with respect to this aspect of the complaint, too. The same applies to the criticism directed against the implementation of the regulation.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.


John RYAN
Executive Officer


Marek NOWICKI
Presiding member

