



DECISION

Date of adoption: 8 May 2008

Case No. 11/07

Vesna ANDJELKOVIC

against

UNMIK

The Human Rights Advisory Panel sitting on 8 May 2008
with the following members present:
Mr. Marek NOWICKI, Presiding member
Mr. Paul LEMMENS

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 claims she was the occupancy right holder over an apartment located in Stimlje, Kosovo, and that she had purchased this apartment on 19 March 1999. She has been living as an internally displaced person (IDP) in Gamzigrad, Zaječar, Serbia, since she left Kosovo during the conflict in Kosovo. The complainant learned that her apartment was occupied by Mr. Ruzhdi Jashari at the time she left Kosovo.
2. She initiated proceedings to repossess her property before the Housing and Property Directorate (HPD)/Housing and Property Claims Commission (HPCC) in December 2002. The HPCC issued a decision on 18 June 2005 dismissing the complainant's claim on the ground that the complainant had failed to produce any verified documentary evidence to

prove that she ever had possession of the property or any proof of a property right which conferred the right to take possession.

3. The complainant filed a reconsideration request against this decision on 15 December 2006 asserting that she had submitted all relevant evidence of her property right at the moment of registering her claim, and claiming that the decision of the HPCC was brought on the ground of insufficiently determined facts and that there was a material error in the application of law.

4. On 26 March 2007, the HPCC issued a second decision dismissing the complainant's request on the grounds that she failed to produce any new legally relevant evidence and that the HPCC found no material error in the application of the law. The certified decision on the reconsideration request was dated 27 April 2007. The complainant claims she received it in May 2007.

II. COMPLAINTS

5. The complainant claims that the procedure and the unfavourable decisions of the HPD/HPCC in her case have interfered with her right to a fair hearing under Article 6 § 1 of the European Convention on Human Rights (ECHR), violated her right to peaceful enjoyment of possessions under Article 1 of Protocol 1 to the ECHR, her right to respect for home and private life under Article 8 and her right to an effective remedy under Article 13.

III. PROCEEDINGS BEFORE THE PANEL

6. The complaint was introduced on 15 September 2007 and registered on 18 October 2007.

7. 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

8. Before considering the case on its merits the Panel has to decide whether to accept the case, taking into consideration the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.

9. 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).

10. 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.

11. 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.

12. 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