



The Human Rights Advisory Panel

UNMIK HQ, East Wing, 10000 Pristina, Kosovo

DECISION

Date of adoption: 8 May 2008

Case No. 09/07

Slobodan DRAGOJEVIC

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 he was the occupancy right holder over an apartment located in Urosevac, Kosovo, and that he purchased this apartment on 16 March 1999. He has been living as an internally displaced person (IDP) in Kraljevo, Serbia, since he left Kosovo during the conflict in Kosovo. The complainant learned that his apartment was occupied by "N.N." at the time he left Kosovo.
2. He initiated proceedings to repossess his property before the Housing and Property Directorate (HPD)/Housing and Property Claims Commission (HPCC) on 16 October 2001. 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 he 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 30 January 2006 asserting that he had submitted all relevant evidence of his property right at the moment of registering his claim.

4. On 11 December 2006 the HPCC issued a second decision dismissing the claim by stating that the Directorate was unable to verify the purchase contract and contract on lease that the complainant had provided as evidence. The complainant has a copy of this decision that was certified by the Registrar of the HPCC on 26 March 2007.

II. COMPLAINTS

5. 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

6. The complaint was introduced on 18 October 2007 and registered on the same date.

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 account 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