



The Human Rights Advisory Panel

UNMIK HQ, East Wing, 10000 Pristina, Kosovo

DECISION

Date of adoption: 8 May 2008

Case No. 06/07

Simo MITROVIC

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 Stimlje, Kosovo, which he purchased on 19 March 1999. He has been living as an internally displaced person (IDP) in Paraćin, Serbia, since he left Kosovo during the conflict. He learned that his apartment is currently occupied by Mr Naim Ismilji.

2. The complainant initiated proceedings to repossess his property before the Housing and Property Directorate (HPD)/Housing and Property Claims Commission (HPCC) in 2002. The HPCC issued a decision on the 21 October 2005 dismissing the applicant's claim on the ground that the applicant failed to produce verified documentation proving he possessed property rights over the apartment, and that, moreover, on 24 March 1999 the building was still under construction so that he could not be in possession of the apartment.

3. He filed a reconsideration request against this decision on 21 March 2006, proposing to obtain witness statements from persons who had lived in this building (which he claims was not under construction) and whom he believed had obtained favourable decisions by the HPCC.

4. On 11 December 2006, the HPCC issued a second decision dismissing the claim by stating that the complainant submitted no documents which could be verified. The HPCC made no attempt to obtain the witness statements.

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