



DECISION

Date of adoption: 5 June 2008

Case No. 08/07

Nadica KUŠIĆ

against

UNMIK

The Human Rights Advisory Panel sitting on 5 June 2008
with the following members present:

Mr. Marek NOWICKI, Presiding member
Mr. Paul LEMMENS
Ms Snezhana BOTUCHAROVA-DOICHEVA

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

The facts of the case as submitted by the complainant may be summarized as follows:

1. The applicant is a Serbian citizen and was occupancy right holder over an apartment located in Orahovac/Rahovec, Kosovo. She purchased it on 10 June 1996 and left Kosovo on an unspecified later date. Subsequently, she learned that her apartment was currently occupied by Mr S. A. In June 2002 the complainant initiated proceedings to repossess her apartment before the Housing and Property Directorate (HPD)/Housing and Property Claims Commission (HPCC). Mr S.A. submitted a counterclaim arguing that in the past he had suffered discrimination in the process of allocation of the rights related to the apartment.

2. The HPCC issued a decision on 22 October 2005, finding both claims well-founded. It held that Mr A. had a right to retain the apartment, provided that he reimbursed the purchase price to the complainant. It further held that the complainant, as she had bought the apartment, had also a right over it. She was entitled either to repossess it if Mr A. failed to pay the purchase price or to be compensated for the price she had paid.

3. On 2 February 2006 the complainant filed with the HPCC a request to have her case re-examined asserting that, in view of a decision given by the Municipal Court of Orahovac which had rejected the claim of Mr A., he had not been discriminated against. She further argued that the judge deciding on the case had not been Serbian and that M. A. had already had his housing needs satisfied at that time.

4. By a decision of 31 March 2006 the HPCC issued a second decision rejecting the reconsideration request on the ground that the decision of the Orahovac Municipal Court had not related to the merits of the case as Mr A's claim had been rejected on formal grounds.

5. No appeal lay against this decision. The complainant was served with it in June 2006.

II. COMPLAINTS

6. The complainant submits that the circumstances of the case amount to a breach of her rights guaranteed by Articles 6, 8, 13 ECHR and by Article 1 of Protocol No. 1 to the ECHR.

7. She further complains that no steps have been taken to ensure the payment of compensation to which she is entitled under the decision given by the HPCC.

III. PROCEEDINGS BEFORE THE PANEL

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

9. The Panel communicated the case to the Special Representative of the Secretary General on 7 February 2008 giving him the opportunity to provide comments on behalf of UNMIK on its admissibility and merits pursuant to Section 11.3 of UNMIK Regulation No. 2006/12 and Rule 30 of the Panel's Rules of Procedure.

10. The SRSG did not avail himself of this opportunity.

IV. THE LAW

11. 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 referred to above.

12. As to the complaint 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 found to be negative, the Panel considers that another question would therefore arise; 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).

13. 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.

14. 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.

15. The Panel notes that the complaint is not manifestly ill-founded within the meaning of Section 3.3 of the said Regulation. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

John RYAN
Executive Officer

Marek NOWICKI
Presiding member