



PARTIAL DECISION

Date of adoption: 16 July 2008

Case No. 09/08

Olga LAJOVIĆ

against

UNMIK

The Human Rights Advisory Panel sitting on 16 July 2008
with the following members present:

Mr. Marek NOWICKI, Presiding Member
Mr. Paul LEMMENS
Ms. Snezhana BOTUSHAROVA-DOICHEVA

Mr. John J 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 born in 1923.

2. She is the owner of immovable property in Durakovac (Terazije). The immovable property consisted, apart from land, of a dwelling house built of solid construction material (133 m²) and auxiliary buildings that served for the management of household affairs (covering an area of 141 m²). She lived there with her family. For security reasons, she and her family left the property around 18 June 1999. They moved to the interior of Serbia, where the complainant is still residing. In December 2002, the

complainant learnt that most of her property had been demolished, pulled down and plundered. She does not know who the perpetrators were. On 17 March 2008 the only construction left, namely the remainder of a building with attic rooms, was destroyed. When she visited the place on 26 April 2008, she noticed that everything had been razed to the ground. The land upon which the buildings were built is now used by the family K.

The complainant is also the owner of a meadow situated in Žač (Livade). This property is currently used by the family A., who are reaping all the benefits of the yield.

3. With respect to the property situated in Durakovac, the complainant filed on 4 May 2004 a claim before the Municipal Court of Istok. The claim is directed against the Municipality of Istok and the Provisional Institutions of Kosovo. The complainant claims compensation for the damage caused to her property. He holds the said public authorities responsible on the basis of Section 185 of the Law on Obligations of the FRY (liability of public authorities for damage caused by acts of violence or terror). The case is still pending.

II. COMPLAINTS

4. The complainant seeks reparation from UNMIK by way of compensation for the damage caused to her plundered and destroyed property and for the yields from her land from 19 June 1999. She also asks that UNMIK -and KFOR- would protect the remainder of her property.

The Panel considers that she is invoking a violation of her right to property guaranteed by, inter alia, Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR).

III. PROCEEDINGS BEFORE THE PANEL

5. The complaint was introduced on 5 May 2008 and registered on the same date.

On 3 June 2008 the Panel requested the complainant to clarify a number of issues. The complainant replied by letter of 16 June 2008.

IV. THE LAW

6. 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.

7. Insofar as the complainant holds UNMIK accountable for the alleged violations of her right to property, the Panel considers that the complainant claims that UNMIK failed to protect her against interferences in her right to property by third persons.

According to Section 2 of Regulation No. 2006/12, the Panel has jurisdiction over complaints relating to alleged violations of human rights that have occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights. Insofar as the complaint is related to the damage to her property in Durakovac, inflicted before December 2002, the Panel has no jurisdiction. In this respect the complaint must be declared inadmissible. Insofar as the complaint is related to the damage to the complainant's property in

Durakovac, inflicted on 17 March 2008, there seems to be no obstacle to the Panel's jurisdiction.

Insofar as the complaint relates to the lack of protection against the alleged usurpation of her properties in Durakovac and Žač, the Panel considers that the complaint concerns a continuing violation. On this point, there is thus no question of lack of jurisdiction of the Panel.

The Panel notes, however, that the complainant has not specifically raised before any authority the issue of UNMIK's responsibility. The question therefore arises whether the complainant has exhausted all available remedies, as required by Section 3.1 of Regulation No. 2006/12. The Panel considers that it cannot, on the basis of the case file, determine the admissibility of this part of the complaint and that it is therefore necessary, in accordance with Rule 30 § 1 (b) of its Rules of Procedure, to give notice of this complaint to the Special Representative of the Secretary General.

8. Insofar as the complainant asks that UNMIK would protect her property which thus far has not been destroyed, the Panel considers that the complainant is not raising a complaint relating to acts or omissions with respect to which she can claim to be the "victim" of a violation of any of her rights, as required by Section 1.2 of Regulation No. 2006/12. In this respect the complaint must be declared inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

- DECIDES TO ADJOURN THE EXAMINATION OF THE COMPLAINT CONCERNING THE LACK OF PROTECTION AGAINST THE DESTRUCTION OF THE COMPLAINANT'S PROPERTY IN DURAKOVAC ON 17 MARCH 2008 AND AGAINST THE ALLEGED USURPATION OF THE COMPLAINANT'S PROPERTIES IN DURAKOVAC AND ŽAČ,

- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.

John J. RYAN
Executive Officer

Marek NOWICKI
Presiding member