



DECISION

Date of adoption: 13 November 2008

Case No. 40/08

Slavoljub DEDOVIC

against

UNMIK

The Human Rights Advisory Panel sitting on 13 November 2008, with the following members present:

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

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 (the Regulation)

Having deliberated, decides as follows:

I. THE FACTS

1. The complainant owned an apartment in Peja/Pec but fled Kosovo in the context of the civil conflict in June 1999.
2. In October 2005 the Housing and Property Directorate awarded the complainant repossession of his property and handed him the keys to his apartment.

3. On 11 December 2005 NS unlawfully occupied the apartment. With the assistance of his lawyer, NH, the complainant instituted criminal proceedings against NS resulting in her conviction by the Municipal Court of Peja/Pec on 12 December 2006 for infringing the inviolability of his residence with an order that she vacate the premises by 1 April 2007.
4. Shortly after the eviction of NS, the complainant's lawyer, NH, occupied the complainant's apartment and refused to vacate it. The complainant states that NH has falsified certain documents in relation to his case and has opened a radio and television station in his apartment.
5. In 2008 the complainant reported this matter to the Kosovo Police Service who took a statement, opened a case file and referred the matter to the Municipal Public Prosecutor's Office who appointed a prosecutor to the file. The case is still pending with the prosecution service. The complainant fears that NS will use his connections with the police and the court to prolong the proceedings.

II. COMPLAINTS

6. The complainant is aggrieved that the Municipal Court of Peja/Pec in the criminal action against NS did not grant him any compensation for the unlawful occupation of his apartment from 1999 to 2006.
7. The complainant requests the Panel's assistance in regaining his apartment and in obtaining compensation for its unlawful occupation by persons including NS and NH.
8. Whilst the complainant does not invoke any specific human rights violations, the Panel accepts that the complaint alleges a violation of Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR), namely in relation to the right to use and enjoy his property.

III. PROCEEDINGS BEFORE THE PANEL

9. The complaint was introduced on 23 October 2008 and registered on the same day.

IV. THE LAW

10. Before considering the complaint on its merits the Panel has to decide whether to accept the complaint, taking into account the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.
11. Section 3.1 of the Regulation states that the Panel may only deal with a matter after it determines that all other available avenues for review of the alleged violations have been pursued and within a period of six months from the date on which the final decision is taken.
12. The decision of the Municipal Court of Peja/Pec in relation to NS, being the final decision in this case, was handed down on 12 December 2006 and the complaint

was introduced on 23 October 2008. As a result, this aspect of the complaint has been lodged outside the six month period and is consequently inadmissible.

13. The Panel notes that a criminal investigation into NH's alleged unlawful occupation of the complainant's apartment has been opened and that prosecutorial proceedings are pending.

14. The complainant has therefore not exhausted all available avenues for review of the alleged violations in relation to this second aspect of his complaint. This aspect of the complaint is consequently also inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE

John J. RYAN
Executive Officer

Marek NOWICKI
Presiding Member