



The Human Rights Advisory Panel

UNMIK HQ, East Wing, 10000 Pristina, Kosovo

DECISION

Date of adoption: 12 December 2008

Case No. 43/08

Živka SIMIĆ

against

UNMIK

The Human Rights Advisory Panel sitting on 12 December 2008
with the following members present:

Mr. Marek NOWICKI, Presiding Member
Mr. Paul LEMMENS

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

A. The circumstances of the case

1. The complainant owned a house in Prizen. In 1999 she fled Kosovo and currently lives in Novi Sad in Serbia.
2. According to the complainant, in 1999 she purchased a house in Novi Sad from T.B., who was represented by M.F. Later, she signed a power of attorney in the name of the said M.F., which she signed on 5 October 1999 and which the Municipal Court of Novi Sad certified on 12 November 1999, so that M.F. could sell her house in Prizen on her behalf. The complainant later changed her mind and revoked the power of attorney on 31 July 2001.

3. The complainant sought repossession of her property in Prizren through the Housing and Property Claims Commission (HPCC) on an unspecified date. On 17 October 2003 the HPCC issued an order recognizing the complainant as the prima facie owner of the property. The HPCC awarded her repossession of the property.
4. On 10 May 2004 the complainant asked the Housing and Property Directorate (HPD) to place the property under its administration, in order to allow the complainant to obtain from the HPD the eviction of the unlawful occupant.
5. The HPD notified the occupant of the house in Prizren, I.B., of the order of the HPCC. On 16 June 2004 I.B. filed a reconsideration request with the HPCC arguing that he had bought the house in 2004 from T.B. who had bought the house from the complainant with a valid purchase contract.
6. Following hearings with the parties concerned, the HPCC reconsidered its earlier order of 17 October 2003 and, by decision of 26 March 2007, held that the initial claim of the complainant should be dismissed. The HPCC was of the view that the complainant had failed to prove that the power of attorney made by her was revoked. The HPCC was therefore satisfied with the validity of transactions on which T.B. based his sale of the property to I.B.
7. The decision by the HPCC dated 26 March 2007 was certified on 1 June 2007 and notified to the complainant. She requested reconsideration of the HPCC decision on 19 June 2007, in particular because of the failure to organise a confrontation between the complainant and I.B., although such possibility was raised in telephone conversations between the complainant and a staff member of the HPD. By letter dated 3 October 2007 the Executive Director of the HPCC informed the complainant that her request for reconsideration did not include any new relevant information, and that it was therefore rejected.
8. On 8 May 2008 the HPCC issued a certificate confirming that the decision of the HPCC of 26 March 2007 was final, binding and enforceable. The certificate is based on the finding that the time period to file a request for reconsideration had expired.

II. COMPLAINT

9. The complainant seeks the return of her house in Prizren, or payment of compensation for the loss of her house and possessions.
10. The Panel considers that the complainant is invoking a violation of her right to the peaceful enjoyment of her property, as guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR).

III. PROCEEDINGS BEFORE THE PANEL

11. The complaint was introduced on 24 October 2008 and registered on 27 October 2008.

IV. THE LAW

12. 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.
13. According to Section 3 of the Regulation, the Panel may only deal with a matter within a period of six months from the date on which the final decision was taken.
14. The Panel notes that the HPCC on 26 March 2007 adopted a decision by which it reconsidered its earlier decision of 17 October 2003. On 19 June 2007 the complainant asked the HPCC to reconsider that decision of 26 March 2007. Under Section 14.1 of UNMIK Regulation No. 2000/60 of 31 October 2000 on residential property claims and the rules of procedure and evidence of the Housing and Property Directorate and the Housing and Property Claims Commission, a request for reconsideration can be filed with the HPCC "upon the presentation of legally relevant evidence, which was not considered by the (HPCC) in deciding the claim", or "on the ground that there was a material error in the application of the (said) regulation". It is true that such request can be made only on limited grounds, and that it constitutes an extraordinary remedy. However, the complainant did not have any other possibility to obtain a re-examination of her case. Therefore, in terms of the admissibility of a subsequent complaint to the Panel, she cannot undergo any negative consequences for making use of the only remedy at her disposal. It can be questioned whether the complainant's request could be disposed of by the Executive Director of the HPCC, through a simple letter, and whether it was not for the HPCC itself to take action on the request. Whatever the answer to that question may be, it is clear that the HPCC must be deemed to have endorsed the approach taken by its Executive Director, as the Registrar certified on 8 May 2008 that no request for reconsideration had been filed within the prescribed time period.
15. Having regard to the foregoing, the Panel considers that the final decision in this case is the decision contained in the Executive Director's letter of 3 October 2007. There is no indication that this letter did not reach the complainant within a reasonable time, in particular before 24 March 2008.
16. As the period of time between 3 October 2007, or a date to be situated shortly thereafter, and the date on which the complainant submitted the complaint to the

Panel, 24 October 2008, is longer than six months, the complaint falls outside the time limit set by Section 3.1 of UNMIK Regulation No. 2006/12.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

John J. RYAN
Executive Officer

Marek NOWICKI
Presiding member