



DECISION

Date of adoption: 27 February 2009

Case No. 53/08

D.K.

against

UNMIK

The Human Rights Advisory Panel sitting on 27 February 2009
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 owner of an apartment located in Ferizaj/Uroševac, Kosovo. He states that the construction of the building was terminated in January 1999, that he obtained a contract of lease from the owner, the company that was his employer, on 10 February 1999 and that he bought the apartment on 22 February 1999. He left the apartment on 17 June 1999, as a result of the conflict in Kosovo. The complainant later was informed that his apartment was occupied by an ethnic Albanian family.
2. He initiated proceedings to repossess his property with the Housing and Property Directorate (HPD) in August 2001. The Housing and Property Claims Commission

(HPCC) issued a decision on 18 June 2005 dismissing the complainant's claim on the ground that he was unable to show that he ever had possession of the property concerned or right of ownership which conferred the right to take possession.

3. The complainant filed a request for reconsideration of this decision on 10 October 2005 asserting that by producing the lease contract and the purchase contract he had submitted sufficient proof of his property right. He also submitted new evidence, namely a statement by the former owner according to which he had completely paid off the property.
4. On 15 July 2006 the HPCC rejected the reconsideration request. It stated that the verification of the purchase contract was inadequate as it was based on entries in the registers at the dislocated archive in Serbia, not on a comparison of the document with an original or copy stored in the archive. The certified copy of this decision is dated 31 August 2006. The complainant does not mention when he was notified of this decision.

II. COMPLAINTS

5. The complainant claims that he is a victim of violations of his right to peaceful enjoyment of possessions, his right to respect for private life and family life, his right to a fair trial and his right to an effective remedy.

III. PROCEEDINGS BEFORE THE PANEL

6. The complaint was introduced on 10 December 2008 and registered on the same date.
- 7.

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. According to Section 3 of the Regulation, the Advisory Panel may only deal with a matter within a period of six months from the date on which the final decision was taken.
10. The Panel notes that the final decision in the complainant's case, the binding and enforceable decision on the reconsideration request, was taken by the HPCC on 15 July 2006. The complainant does not indicate that this decision was served on him at a later moment than normally to be expected. Moreover, it is clear that he was aware of the decision on 16 May 2007 at the latest, when he went to the archive of the district court located in Serbia, in order to obtain additional elements to prove his ownership, with a view of using such elements in proceedings following up on the decision of the HPCC.

11. As the complainant submitted the complaint to the Panel manifestly more than six months after the date on which he was notified of the final decision, the complaint falls outside the time limit set by Section 3 of the Regulation.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

John RYAN
Executive Officer

Marek NOWICKI
Presiding member