



DECISION

Date of adoption: 23 May 2009

Case 51/08

Ms. Lumturije VOCA

against

UNMIK

The Human Rights Advisory Panel sitting on 23 May 2009
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,

Having deliberated, decides as follows:

I. THE FACTS

1. According to the complainant, she bought an apartment located in Pristina from V.R. on 14 December 2001. The sale contract was registered at the Municipal Court of Pristina under number 6092/2001. Upon her arrival at the apartment, the complainant noticed that her property was occupied by another person, R.C. She filed a lawsuit against the occupant before the Municipal Court of Pristina.
2. On 30 May 2002, the Municipal Court granted the complainant's claim and ordered the occupant to vacate the property. Upon the appeal filed by the occupant the District Court of Pristina confirmed the first instance judgment on 2 July 2003. A further appeal by the occupant was rejected by the Supreme Court on 21 January 2004.

3. While the said proceedings were pending before the courts, according to the complainant, the occupant filed a claim with the Housing and Property Directorate (HPD). Upon the occupant's request to suspend the execution of the notice to vacate the property, the HPD issued a memorandum addressed to the judge on executions on 21 August 2003, in order to suspend the execution of the notice.
4. The complainant alleges that the procedure before the HPD lasted a very long time and that her requests to speed up the outcome of the proceedings remained unanswered.
5. On 12 December 2003 the Housing and Property Claims Commission (HPCC) issued a decision on the competing claims of S.K., a relative of the occupant R.C., who alleged that her late sister E.G. had purchased the apartment from the Allocation Right Holder in 1994, on the one hand, and V.R., who claimed that the Allocation Right Holder had allocated the apartment to her in 1998, on the other hand. The HPCC considered that the purchase contract between the Allocation Right Holder and E.G. was valid, and that E.G. had acquired the ownership of the apartment. The HPCC further found that V.R. could not claim any property rights on the apartment. As a result, the HPCC was precluded from examining the validity of the sale contract between V.R. and the complainant, who was an interested party in the proceedings.
6. According to the complainant, she was notified of the HPCC decision on 15 May 2005. The complainant submitted a request for reconsideration on 10 May 2005.
7. According to the complainant, she sent several letters to the Executive Director of the HPD in January and February 2006, complaining about the fact that there was still no decision on her request for reconsideration. On 28 February 2006, the HPD Executive Director allegedly informed the complainant that a decision in her favour was taken, but that the HPD had to stay the issuance of the decision until the expiration of the appellate procedure of the occupant.
8. On 31 March 2006 the HPCC rejected the requests for reconsideration filed by R.V. and the complainant. The complainant stated that she was served with the decision on 14 February 2007, the date of its certification by the HPCC Registrar.
9. She subsequently submitted two requests to the Kosovo Property Agency (KPA), but no responses were received.

II. THE COMPLAINTS

10. The complainant argues that the HPCC wrongly assessed the evidence submitted by her, and that it disregarded the binding force of the judgments handed down in her favor.
11. The Panel considers that the complaint raises issues relating to the complainant's right to peaceful enjoyment of possessions (Article 1 of Protocol No. 1 to the European Convention of Human Rights (ECHR)), her right to a fair trial (Article 6 of the ECHR) and her right to an effective remedy (Article 13 of the ECHR).

III. PROCEEDINGS BEFORE THE PANEL

12. The complaint was introduced on 5 December 2008 and registered on the same date. During the proceedings before the Panel, the complainant was represented by Mr. Ilaz Vojvoda.

IV. THE LAW

13. 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.
14. According to Section 3.1 of Regulation No. 2006/12, the Panel may only deal with a matter within a period of six months from the date on which the final decision was taken.
15. The complainant alleges that she received the final decision of the HPCC on the request for reconsideration on 14 February 2007 and that she subsequently submitted two requests to the KPA which remained unanswered.
16. The purpose of the six-month rule is to promote security of the law, to ensure that cases raising issues covered by Regulation No. 2006/12 are dealt with within a reasonable time and to protect the authorities and other persons concerned from being under uncertainty for a prolonged period of time (compare, with respect to the ECHR, European Court of Human Rights, *P.M. v. United Kingdom*, no. 6638/03, decision of 24 August 2004).
17. The Panel considers that the six-month period runs from the date of the final decision in the process of the exhaustion of remedies or from the date of notification of the decision to the complainant, if the complainant was previously ignorant of the decision (compare European Commission of Human Rights, *Bozano v. Italy*, no. 9991/82, decision of 12 July 1984, *Decisions and Reports*, vol. 39, p. 147, at p.156, § 1).
18. The Panel notes that the final decision in the complainant's case, on her request for reconsideration, was issued by the HPCC on 31 March 2006 and that the complainant was notified of this decision on 14 February 2007, date on which the decision was certified by the HPCC Registrar.
19. The Panel notes that the period between the notification of the final decision, 14 February 2007, and the submission of the complaint to the Panel, 5 December 2008, is of almost two years. The complaint therefore falls outside the six-month time limit.
20. The Panel concludes that the complaint has been filed out of time and should be rejected pursuant to Section 3.1 of UNMIK Regulation No. 2006/12.

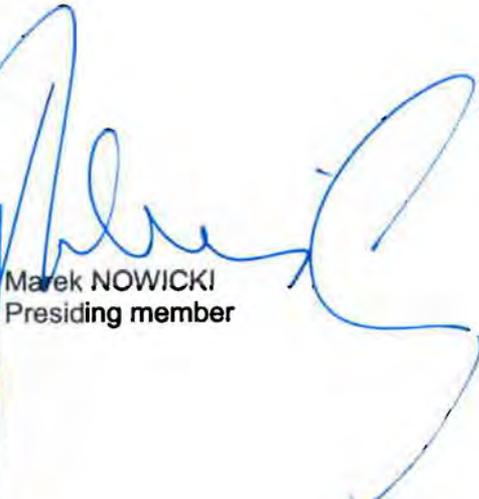
FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.


John RYAN
Executive Officer




Marek NOWICKI
Presiding member