



DECISION

Date of adoption: 5 June 2009

Case 19/08

M. V.

against

UNMIK

The Human Rights Advisory Panel sitting on 5 June 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 he owned an apartment located in Sunny Hill, Pristina. Due to the outbreak of the hostilities in Kosovo in 1999 the apartment was illegally occupied by another person, J.J.
2. On 30 May 2003 the complainant lodged a claim for repossession with the Housing and Property Claims Commission (HPCC) under number DS008328. His claim was dismissed by decision dated 18 June 2005. The complainant requested reconsideration from the HPCC but this request was rejected by decision dated 31 March 2006.
3. The complainant subsequently entered into an agreement with the above-mentioned J.J. Under that agreement, the complainant gained possession of the apartment.

4. Meanwhile, on 22 May 2005, the complainant had lodged a claim concerning his property right to the same apartment with the Municipal Court of Pristina. On 16 February 2006 the Court decided that it did not have jurisdiction in this matter. The complainant then lodged a second claim to the same court on 12 July 2006 which was rejected as inadmissible. The complainant filed an appeal with the District Court of Pristina. This appeal seems to be pending.
5. In 2007, the complainant became aware of the fact that not J.J., but a certain M.S. had obtained possession of his apartment. After having contacted the Housing and Property Directorate (HPD), he found out that M.S. had filed a claim for repossession (claim number DS 3030640), concerning the same property, and that the HPCC had already on 16 April 2004 issued a decision (HPCC/D/114/2004) in favour of that claimant.
6. According to the information provided by the Kosovo Property Agency (KPA), the claim was lodged by M.S. with the HPD in January 2002. The property was notified on 20 March 2003 .
7. In addition to delivering the notice of the claim to the claimed property, the claim was published in a list of claims on 11 February 2002 and on 30 April 2003. This list was made publicly available by being distributed through HPD Offices, Municipal Courts and Municipalities.
8. Following the notification the complainant, who was living as an internally displaced person (IDP) in Montenegro until May 2003, did not identify himself as a person with a legal interest and as a result did not participate in the proceedings before the HPCC in this case.
9. The complainant, claiming that he had not been informed of the decision, wrote to the KPA on 27 December 2007 requesting a copy of the decision concerning M.S.'s claim, which was duly provided to him. Subsequently he wrote to the KPA on 31 January 2008 requesting reconsideration of this decision. The KPA informed the complainant by letter dated 5 February 2008 that his request was rejected as it was clearly lodged outside the time limit provided under UNMIK Regulation No. 2000/60 of 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.

II. COMPLAINTS

10. The complainant alleges in substance a violation of his property rights as guaranteed under 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 1 July 2008 and registered on the same date.
12. The Panel requested more information from the complainant by letter dated 17 November 2008.
13. The Panel received additional information upon its request from the complainant by letter dated 4 December 2008.

14. The Panel requested a copy of the complete case file from the Kosovo Property Agency (KPA) by letter dated 22 January 2009.
15. The Panel received a copy of the complete case file (DS303640) from the KPA by letter dated 4 February 2009.
16. The Panel requested clarifying information and comments on the information received from the KPA from the complainant by letter dated 25 February 2009.
17. The Panel received a response from the complainant by letter dated 9 March 2009.

IV. THE LAW

18. 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.
19. The Panel notes that the decision in case DS 303640 was taken by the HPCC on 16 April 2004. However, the complainant was not a party to this case because according to him he was not aware of it.
20. According to Section 2 of Regulation No. 2006/12 the Panel has jurisdiction over complaints relating to alleged violations of human rights that had 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. As the HPCC's decision in the case DS 303640 was taken on 16 April 2004 the claim falls outside the Panel's temporal jurisdiction. The fact that the complainant became aware of the said decision only in 2007 does not alter this conclusion.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.


John RYAN
Executive Officer


Marek NOWICKI
Presiding Member

