The Human Rights Advisory Panel
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DECISION

Date of adoption: 12 August 2011

Case No. 03/09

Dragan DJORDJEVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 12 August 2011,
with the following members present:

Mr Paul LEMMENS, Presiding Member
Ms Christine CHINKIN

Assisted by
Mr Andrey ANTONOV, Executive Officer

Having noted Mr Marek NOWICKI's withdrawal from sitting in the case pursuant to Rule 12 of the Rules of Procedure,

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. PROCEEDINGS BEFORE THE PANEL

1. The complaint, dated 19 September 2007, was registered on 15 January 2009.

2. On 20 May 2009, the Panel requested further information from the complainant. On 11 and 12 June 2009, the complainant provided a response.

3. On 9 November 2010, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the complaint. On 8 December 2010, UNMIK provided its response.

4. On 26 January 2011, the Panel forwarded the SRSG's comments to the complainant for response. On 11 February 2011, the complainant provided his response.

5. On 30 May 2011, the Panel requested from the Kosovo Property Agency (KPA), successor of the Housing and Property Directorate (HPD), a copy of the file relating to the complainant's claim with the HPD. On 1 June 2011 the KPA provided a copy of the file.

II. THE FACTS

6. The complainant is a resident of Kosovo currently living as a displaced person in Serbia. He claims that he was in possession of an apartment in Prizren. He left Kosovo in June 1999.

7. On 12 June 2003, the complainant's son, on behalf of the complainant, filed a claim with the HPD seeking repossession of the apartment. He argued that the complainant had leased the flat from the socially owned enterprise Progres (lease contract signed on 19 November 1992) and subsequently obtained ownership of the apartment (purchase contract signed on 8 March 1999 and certified by the Municipal Court of Prizren on 23 March 1999).

8. The Housing and Property Claims Commission (HPCC) examined the claim and issued its decision on 30 April 2005 dismissing the claim on the ground that the complainant, as well as some other claimants in the same situation, had

> "failed to produce any verified documentary evidence to prove that they had ever possession of the property concerned, or any proof of a property right, which conferred the right to take possession".

9. The complainant filed a request for reconsideration of that decision on 13 September 2005. He asserted that the HPCC was wrong in stating that he had not submitted evidence of his property rights. He again referred to the lease contract of 20 November 1992 and the purchase contract certified on 23 March 1999. The records show that the complainant also provided an undated statement by Progres that he had executed all the obligations relating to the purchase contract, as well as a statement by the Ministry of Internal Affairs of the Republic of Serbia, dated 25 August 2005, according to which his registered residence as of 18 February 1999 was the address of the apartment that was the object of the claim.

10. The HPCC issued its decision on 26 March 2007, dismissing the complainant's request for reconsideration. It recalled that according to 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 reconsideration request may be submitted: "a. upon the presentation of legally relevant evidence, which was not considered by the [HPCC] in deciding the claim; or b. on the ground that there was a material error in the application of [that] regulation". The HPCC found that the complainant had not presented any new evidence, which was not considered by the HPCC in deciding his claim (in its first examination of the claim), and that no material error in the application of UNMIK Regulation No. 2000/60 had been found.

11. The decision on the reconsideration request was certified on 27 April 2007. It is unclear when the complainant was notified of that decision.

III. THE COMPLAINT

12. The complainant complains of a violation of the right to a fair trial, guaranteed by Article 6 § 1 of the European Convention on Human Rights (ECHR), because of lack of reasoning on the decisions complained of.

13. The complainant further complains about a violation of the right to respect for his home, guaranteed by Article 8 of the ECHR, as well as about a violation of his right to a peaceful enjoyment of his possessions, guaranteed by Article 1 of Protocol No. 1 to the ECHR.

IV. THE LAW

14. Before considering the case on the merits, the Panel must first decide whether to accept the case, considering the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.

A. Six-month time-limit

15. According to Section 3.1 of UNMIK Regulation No. 2006/12, the Panel may only deal with a matter after it determines that the matter has been submitted "within a period of six months from the date on which the final decision was taken".

16. The SRSG argues that the complaint was filed outside the six-month time-limit. He notes that the final decision was taken by the HPCC on 26 March 2007 and that the six-month period started to run from that date. The complainant, through an NGO, submitted his complaint to the Panel via the UNMIK Belgrade Office. The complaint was submitted at that office on 21 September 2007, but it reached the Panel only on 15 January 2009, *i.e.* outside the time-limit.

17. According to the SRSG, the complainant could have submitted his complaint directly to the Panel Secretariat in Prishtinë/Priština, even though the Panel was not fully operational until November 2007.

18. The complainant replies that the complaint was lodged through the UNMIK Office in Belgrade, according to instructions received from UNMIK. The envelope addressed to the UNMIK Office in Belgrade, containing a second envelope, which was addressed to the Panel, was stamped by the UNMIK Office in Belgrade on 21 September 2007. The complainant produces a copy of that first envelope. He does not know why the complaint was not immediately forwarded to the Panel and considers it illogical for UNMIK to invoke its own failure in support of the objection that the complaint was filed out of time.

19. The Panel notes that it is not disputed that the complainant submitted an envelope to the UNMIK Office in Belgrade and that this envelope was received by that office on 21 September 2007. Whether the six-month period commenced on 26 March 2007, date of the HPCC's decision on reconsideration, or on 27 April 2007, date of the certification of that decision, or at any later date, it is clear that the date of submission of the envelope to the UNMIK Office in Belgrade falls within that period.

20. The SRSG argues that the complainant provides only a copy of the first envelope (addressed to the UNMIK Office in Belgrade), but no evidence as to what was in the second envelope (allegedly addressed to the Panel). The Panel for its part considers that to require the complainant to prove the contents of the second envelope, which was handed over to the UNMIK Office in Belgrade, would impose upon him an impossible burden.

The Panel therefore considers that it can rely on all circumstantial evidence. It sees no reason to doubt the veracity of the complainant's affirmation that the envelope submitted by the latter, through an NGO, to the UNMIK Office in Belgrade contained his complaint dated 19 September 2007.

21. The Panel furthermore considers that it was perfectly legitimate for a displaced person living in Serbia to submit a complaint to the Panel through the UNMIK Office in Belgrade. It was - and still is - the normal practice for that Office to forward any correspondence for the Panel to it. To have recourse to the UNMIK Office in Belgrade was all the more justified in September 2007 when the Panel was not yet fully operational.

22. It is true that the complaint reached the Panel only on 15 January 2009. However, whatever the reasons for the delay may be, they cannot be held against the complainant, since the delay occurred while the envelope containing the complaint was out of the control of the complainant and within the control of UNMIK, whether the UNMIK Office in Belgrade or UNMIK headquarters in Prishtinë/Priština.

23. The Panel therefore dismisses the objection raised by the SRSG.

B. Whether the complaint is manifestly ill-founded

24. According to Section 3.3 of UNMIK Regulation No. 2006/12, the Panel shall declare inadmissible any complaint which it considers manifestly ill-founded.

Alleged violation of Article 6 § 1 of the ECHR

25. In the present case the complainant complains in the first place about the lack of reasons for both decisions of the HPCC. He argues that he submitted documents to the HPCC, in particular the lease contract, the purchase contract, a certificate on the execution of his financial obligations resulting from the purchase contract, and a certificate on his residence registration. The HPCC did not explain why the evidence thus produced is not considered sufficient. The complainant also mentions that he requested the HPCC to hear witnesses.

26. The Panel recalls that the HPCC, although not a court of the classic kind, was judicial in function, and that Article 6 of the ECHR applies to proceedings before the HPCC (see, e.g., Human Rights Advisory Panel (HRAP), *Vučković*, no. 03/07, opinion of 13 March 2010, § 34).

27. Article 6 § 1 of the ECHR places the tribunal under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties (see, *e.g.*, ECtHR, v*an de Hurk v. Netherlands*, judgment of 19 April 1994, *Publications of the Court*, Series A, no. 288, p. 19, § 59).

28. However, as the Panel has already stated, it is not its task to act as a court of appeal over the HPCC (see, *e.g.*, HRAP, *Mitrović*, no. 06/07, opinion of 17 December 2010, § 65). It is the role of the HPCC to interpret and apply the relevant rules of substantive or procedural law in its decision-making process. Furthermore, it is the HPCC that is best placed for assessing the credibility of the evidence and its relevance to the issues in the case (compare, for example, ECtHR, *Vidal v. Belgium*, judgment of 22 April 1992, *Publications of the Court*, Series A, no. 235-B, p. 32, § 33; ECtHR, *Shalimov v. Ukraine*, no. 20808/02, judgment of 4 March 2010, § 67). The mere fact that a party to proceedings is dissatisfied with their outcome cannot of itself raise an issue under Article 6 § 1 of the ECHR (ECtHR, *Tengerakis v. Cyprus*, no. 35698/03, judgment of 9 November 2006, §

74). A tribunal's decision, as such, will be indicative of a violation of the fair trial requirement if, for instance, the unreasonableness of it is so striking on its face that the decision can be regarded as being grossly arbitrary (see ECtHR, *Khamidov v. Russia*, no. 72118/01, judgment of 15 November 2007, § 175).

29. Insofar as the complainant argues that the HPCC does not state the reasons why his claim was rejected, the Panel notes that the initial decision of the HPCC explicitly states that the complainant failed to produce any verified documentary evidence to prove that he ever had possession of the property claimed, or any proof of a property right. The decision thus states the reasons, albeit summarily, why the complainant's claim was rejected.

30. It is true that the decision does not explain why the documentary evidence produced by the complainant could not be verified and why he failed to prove a property right. This raises the question whether that decision can be held to be sufficiently reasoned.

31. In this respect the Panel refers to the case law of the European Court of Human Rights, according to which, in conformity with "a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based". However, "the extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case" (ECtHR (Grand Chamber), *García Ruiz v. Spain*, no. 30544/96, judgment of 21 January 1999, *ECHR*, 1999-I, § 26). The Panel considers that in proceedings specifically designed to deal with mass claims, like in those of the HPCC, the duty to give reasons cannot be understood in the same way as it should be understood in regular proceedings before ordinary courts. It is not for the Panel to elaborate a general theory on this issue. It confines itself to noting that in mass claim proceedings such as those before the HPCC it may be sufficient, from the point of view of the fairness of the proceedings, that the tribunal's decision indicates in general terms why a given claim is accepted or rejected, without explicit reference to the concrete elements of the particular case, provided that its reasoning finds support in the elements of the file. It is for the Panel to verify whether such support can indeed be found (see, *e.g.*, HRAP, *Mitrović*, no. 06/07, opinion of 17 December 2010, § 72).

32. It results from the claim processing report in the initial proceedings, drafted by a legal officer of the HPD, that the lease contract could not be found in the archives of the socially owned enterprise Progres. Moreover, the purchase contract could not be verified as authentic by comparison with the records of the Municipal Court of Prizren, which allegedly had certified the contract on 23 March 1999, given that the authorised representative of the court stated that the document was not valid. Finally, in order to verify the complainant's allegation that he had lived in the apartment for some time prior to 24 March 1999, the HPD also investigated the archives of a number of public utility companies, but none of these searches turned up any evidence that the complainant was ever an occupant of the claimed property. The complainant's argument as to the absence of reasons cannot therefore be accepted.

33. The request for reconsideration is rejected on the ground that the complainant does not present any new legally relevant evidence, nor is there any material error in the application of the relevant regulation. The Panel notes that in his reconsideration request the complainant submitted the same documents as presented by him during the initial proceedings, together with a statement of execution of all obligations deriving from the purchase contract and a statement relating to the registered residence of the complainant. The first new document is related to the purchase contract itself, while the second document is not evidence of the actual occupation of the claimed property by the complainant. The Panel considers that, in these circumstances, the HPCC could

appropriately rely on the elements in the file before it to conclude that there was no "new legally relevant evidence" that had not been taken into account by the HPCC in the initial proceedings. Nor is there any indication that the HPCC in its initial decision made a "material error". Again, the complainant's argument as to the absence of reasons cannot be accepted.

34. Finally, insofar as the complainant argues that he submitted witness statements and that this evidence was not taken into account by the HPCC, the Panel notes that the HPD file does not contain any such statements. The Panel also notes that it results from that file that during the initial proceedings the HPCC sought to obtain relevant evidence from witnesses, namely the current occupants of the building in which the claimed apartment is situated, but that these occupants did not make any declaration that supported the complainant's claim. The complainant's argument as to an alleged refusal to take into account witness statements submitted by him cannot therefore be accepted.

35. The Panel concludes that the decisions complained of do not disclose any appearance of a violation of Article 6 § 1 of the ECHR. It follows that this part of the complaint must be rejected as manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.

Alleged violation of Article 8 of the ECHR and Article 1 of Protocol No. 1 to the ECHR

36. The complaints concerning the alleged violation of the complainant's right to respect for his home under article 8 of the ECHR and his right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the ECHR both concern the impossibility of obtaining repossession of the apartment that is the object of his claim.

37. The complainant does not invoke any specific arguments in this respect. It thus appears that he relies in fact on the same arguments as those invoked in the context of Article 6 § 1 of the ECHR, which in substance amount to the allegation that the decisions of the HPCC are not appropriately reasoned. Having found that the complaint based on Article 6 § 1 of the ECHR is manifestly ill-founded, the Panel likewise finds that the complaints based on Article 8 of the ECHR and Article 1 of Protocol No. 1 to the ECHR are manifestly ill-founded, for the reasons set forth above (compare HRAP, *Vulić*, no. 05/07, opinion of 18 March 2011, § 65).

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Andrey ANTONOV
Executive Officer

Paul LEMMENS
Presiding Member