



The Human Rights Advisory Panel

Building D, UNMIK HQ Prishtinë/Priština, Kosovo | E-mail: hrap-unmik@un.org | Tel: +381 (0)38 504-604, ext. 5182

DECISION

Date of adoption: 17 August 2012

Case No. 119/09

Faik JAŠARI

against

UNMIK

The Human Rights Advisory Panel sitting on 17 August 2012,
with the following members present:

Mr Marek NOWICKI, Presiding Member
Mr Paul LEMMENS
Ms Christine CHINKIN

Assisted by
Mr Andrey ANTONOV, 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. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 26 March 2009 and registered on 30 April 2009.
2. On 17 September 2009, the Panel requested the complainant to submit additional information. On 7 October 2009, the Panel received the requested documentation from the complainant. The complainant sent the documentation again on 15 April 2010.
3. On 4 July 2011, the Panel requested information from the Kosovo Property Agency (KPA). The KPA responded by letter dated 11 July 2011.

4. On 24 July 2012, the Panel requested further additional information from the KPA. The KPA responded by letter dated 27 July 2012.

II. THE FACTS

5. The complainant is a former resident of Kosovo, currently residing in Serbia proper. He is the owner of an apartment in Gjilan/Gnjilane. In addition he also lays claim to a garage located in the same street. The complainant retained use of the property and the garage until 18 June 1999 when due to security reasons he left with his family and moved to Serbia proper. He states that the apartment has been damaged and looted, and that the garage, which served as business premises, has been torn down by unknown perpetrators in 2006 or 2007.
6. On 19 December 2002, the complainant filed a claim with the Housing and Property Directorate (HPD), requesting that the Housing and Property Claims Commission (HPCC) issue a decision granting him the right to repossess the apartment. The claim was granted by the HPCC on 30 April 2005. Its decision was certified by the HPCC Registrar on 21 June 2005 and notified to the complainant on 8 December 2005. On 23 November 2007, the complainant submitted a request to the KPA, the successor to the HPD, to place the property under its administration. This request was granted. On 16 October 2008, the complainant indicated that he wanted to join the voluntary rental scheme. The property is currently still under the administration of the KPA.
7. On 23 November 2007, the complainant filed a claim with the KPA for repossession of the garage. According to information received from the KPA on 27 July 2012, that claim is still pending before the Kosovo Property Claims Commission (KPCC) for consideration.

III. THE COMPLAINT

8. The complainant complains in the first place about the damage to his apartment, which occurred in 1999.
9. He further complains about the destruction of his garage, which occurred in 2006 or 2007, and about the inability of the authorities to inform the complainant about who is responsible. He also complains about the duration of the proceedings before the KPCC with respect to the claim relating to his alleged property right over the garage.

IV. THE LAW

10. 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.

A. Complaint with respect to the apartment

11. The complainant complains about the fact that his apartment has been damaged and that all the items in it have been stolen. These acts allegedly took place shortly after 18 June 1999, when the complainant and his family left the apartment.
12. The Panel recalls that, according to Section 2 of UNMIK Regulation No. 2006/12, it has jurisdiction only over complaints relating to alleged violations of human rights that 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.
13. The Panel considers that the damage to and the looting of property are instantaneous acts, which do not give rise to a continuing violation (see Human Rights Advisory Panel (HRAP), *Lajović*, no. 09/08, decision of 16 July 2008, § 7; HRAP, *M.S. and others*, 122/09 and others, decision of 5 April 2012, § 21).
14. It follows that this part of the complaint lies outside the Panel's jurisdiction *ratione temporis*.

B. Complaint with respect to the garage

15. The complainant further complains about the fact that his garage, which served as business premises, was torn down in 2006 or 2007, and that the authorities are unable to inform him about who destroyed it. He brought proceedings before the KPA, but until now there has been no decision by the KPCC on his claim. The complainant complains about the duration of the proceedings before the KPCC.
16. Insofar as the complainant complains about the destruction of the garage and the subsequent failure on the part of the authorities to identify the perpetrators, he refers to the KPA as the only authority to which he has complained about the destruction.
17. The Panel notes that the KPA, through the KPCC, is competent to examine whether a claimant has a property right over the claimed property. It has no competence to investigate alleged violations of that right by third parties. On the basis of the information provided by the complainant, the Panel is therefore unable to conclude that the competent authorities have failed to react properly to any complaint made by the complainant with respect to the destruction of his garage. In this respect, the complaint must be declared manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
18. Insofar as the complainant complains about the duration of the proceedings before the KPCC, the Panel notes that the complainant filed his claim with the KPA on 23 November 2007 and that the claim is still pending before the KPCC.
19. The Panel further notes that with regard to UNMIK's administrative control of the KPA, the United Nations Secretary-General in his report to the United Nations Security Council on the Interim Administration Mission in Kosovo dated 17 March 2009, states that as UNMIK's authority over the KPA was not extended after 31 December 2008, the Kosovo authorities and an international director appointed by the

International Civilian Representative/European Union Special Representative assumed full operational control of the KPA. Thereafter, the KPA has operated in accordance with legislation adopted by the Assembly of Kosovo (S/2009/149, § 24; see Human Rights Advisory Panel (HRAP), *Kušić*, no. 08/07, opinion of 15 May 2010, § 51; HRAP, *Felegi*, no. 32/08, decision of 20 January 2012, § 43; HRAP, *Mladenović*, decision of 6 April 2012, § 18).

20. It follows, as the Panel already considered in *Kušić* (cited in § 19 above, at § 52), in *Felegi* (cited in § 19 above, at § 44) and in *Mladenović* (cited in § 19 above, at § 19), that from 31 December 2008, UNMIK can no longer be held responsible for acts or omissions imputable to the KPA.
21. Insofar as the period between 23 November 2007 and 31 December 2008 is concerned, it appears from information obtained from the KPA that during that period the claim was physically notified on 28 January 2008 and published in the KPA official Gazette on 4 March 2008, and that there has been no contestation of the claim.
22. Taking into account the high number of claims filed with the KPA (42,134 claims, of which 31,529 have been decided to date)¹, the Panel does not consider that during that period there was a delay of such a length that it was unreasonable. The Panel therefore holds this part of the complaint, with respect to the said period, to be manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12 (see HRAP, *Mladenović*, cited in § 19 above, at § 21).
23. Insofar as the period after 31 December 2008 is concerned, the complaint falls outside the jurisdiction *ratione personae* of the Panel (see § 20 above).

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member

¹ Information from the KPA official website: http://www.kpaonline.org/ClaimsTotalDecided_caseload.asp.