



The Human Rights Advisory Panel

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DECISION

Date of adoption: 17 August 2012

Case No. 196/09

Zlatibor LJUŠIĆ

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 17 April 2009 and registered on 30 April 2009.
2. On 11 and 17 June 2009, the Panel requested additional information from the complainant. The complainant's response was received on 20 May 2010.

II. THE FACTS

3. The complainant is a former resident of Kosovo currently residing in Serbia proper. He states that his parents were the owners of a residential property located in Istog/Istok municipality consisting of two houses, outbuildings and a backyard.
4. The complainant states that after the arrival of the KFOR and UNMIK in Kosovo the family property was destroyed and looted.
5. On 6 November 2002, the complainant filed a claim with the Housing and Property Directorate (HPD) asking for the repossession of the above-mentioned property. By decision dated 29 April 2005, the Housing and Property Claims Commission (HPCC) of the HPD stated that the property had been destroyed after the claimant lost possession of the property and that afterwards the land parcel had become vacant. The HPCC also declared that, at the moment of the destruction of the property, the claimant satisfied the requirements for the repossession of the property.

III. THE COMPLAINT

6. The complainant generally complains that his property rights have been violated. He complains about the fact that his property has been damaged and looted and that he did not receive any compensation.

IV. THE LAW

7. 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.
8. Insofar as the complainant complains about the destruction of his property, 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. According to the complainant's submission, the damage to his family property occurred at some time after the arrival of KFOR and UNMIK in Kosovo in 1999.
9. The Panel considers that the damage and destruction 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*, nos 122/09 and others, decision of 5 April 2012, § 21). It follows that this part of the complaint lies outside the Panel's jurisdiction *ratione temporis*.
10. Insofar as the complaint relates to compensation of damage to the destroyed property, the Panel recalls that pursuant to Section 3.1 of UNMIK Regulation No. 2006/12, the

Panel may only deal with a matter after it determines that all avenues for review of the alleged violation have been pursued.

11. The Panel notes that there is no indication in the complaint and subsequent documents received by the Panel that the complainant filed any complaint with the relevant judicial authorities or the police, which are the bodies having competence over such matters. He therefore did not give the competent authorities an opportunity to redress the alleged violation of his property rights.
12. It follows that in this respect the complainant did not exhaust all available avenues for review, as required by UNMIK Regulation No. 2006/12.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member