



# *The Human Rights Advisory Panel*

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## **OPINION**

**Date of adoption: 22 August 2012**

**Case No. 15/08**

**Miroslav MIHAJLOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 22 August 2012,  
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, as amended,

Having deliberated, makes the following findings:

### **I. PROCEEDINGS BEFORE THE PANEL**

1. The complaint was lodged with the Panel on 12 June 2008 and registered on the same date.
2. On 21 July 2008, the Panel requested from the complainant additional information and documents regarding the complaint. A response was received on 10 September 2008.
3. On 29 October 2008, the Panel requested information and documents relevant to the complaint from the Kosovo Property Agency (KPA). A response was received on 19

November 2008. The KPA's response was sent to the complainant for comments on 2 December 2008, and again on 2 February 2009. A response from the complainant was received by the Panel on 8 June 2009.

4. On 24 September 2009, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on the admissibility and the merits of the complaint. The SRSG responded by letter dated 14 October 2009. On 24 November 2009, the SRSG's response was forwarded to the complainant for comments.
5. A letter dated 15 June 2010 was sent to the complainant, inviting him once again to submit any further information and comments on the case. A response by the complainant was received by the Panel on 13 September 2010.
6. On 16 December 2010, the Panel declared the complaint admissible.
7. On 20 December 2010, the Panel informed the SRSG of the decision and requested UNMIK's comments on the merits of the case. On 20 January 2011, the SRSG submitted UNMIK's response.
8. On 16 March 2011, the Panel forwarded the SRSG's comments to the complainant and invited him to submit further comments if he so wished. On 19 October 2011, the Panel again forwarded the SRSG's comments to the complainant inviting his further comments. However, no response was received.

## **II. THE FACTS**

9. The complainant is a former resident of Kosovo currently living in Serbia proper. He is the owner of a house located in Prizren. The complainant states that since he left Kosovo for security reasons, his house has been unlawfully occupied by a third person.
10. On 1 July 2002, the complainant filed a claim with the Housing and Property Claims Commission (HPCC) of the Housing and Property Directorate (HPD) for the repossession of his house. On 18 June 2004, the HPCC issued a decision in his favour, confirming his property right.
11. Sometime between 2004 and 2005, the complainant requested the HPD to administer his property. His request was granted. The complainant states that his property was later included in the rental scheme, which was established in October 2006 under the administration of the KPA, successor in interest of the HPD.
12. The complainant states that because he did not receive any payment of rental fees, on 18 September 2007, he requested termination of the HPD/KPA administration. He signed a request form, which in its relevant parts reads as follows:

“I understand that I will be contacted by the HPD and offered repossession at a given date and time. I will be considered to have repossessed the property at this time regardless if I collect keys or not to the property. I also understand that the

HPD is absolved from any other obligation regarding the property after the time of repossession. HPD will not execute a new eviction on the property after the time of repossession or take the property under administration.”

13. On 1 October 2007, the complainant’s request for repossession was granted and an eviction order was delivered by the KPA to the occupant to vacate the property within 90 days, in accordance with 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.
14. As the occupant did not voluntarily vacate the property, the KPA carried out an eviction on 23 May 2008. According to the KPA, on this date, the occupant’s items were removed from the complainant’s house, the locks were changed, the property was secured against flood and fire and it was sealed.
15. The keys to the property were collected by the authorised representative of the complainant on 4 June 2008, from the KPA Office in Prizren. In this regard, the complainant states that his representative had made himself available to collect the keys from the day announced as the date of the eviction. However, the keys were handed over to him only 14 days after the eviction had taken place.
16. The complainant states that when his representative went to the property on 4 June 2008 he found that it had been re-occupied by the previous occupant. According to the complainant, the KPA had sealed only one of the two entrances to the house and the previous occupants had managed to re-occupy the house through the unsealed entrance.
17. To date, the complainant has been unable to repossess his property. In addition, the complainant states that he has not received any rental payment during all the time that his house has been occupied.

### **III. THE COMPLAINT**

18. The complainant complains that the relevant authorities failed to execute the 1 October 2007 HPCC decision in violation of his right to a fair trial guaranteed by Article 6 § 1 of the European Convention on Human Rights (ECHR).
19. The complainant also complains that the failure to implement the decision of the HPCC has prevented him from repossessing his home, thus constituting a violation of his right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the ECHR.
20. The complainant further complains that he has not received any rent at all while his property has been occupied, which included the period when his property was under HPD/KPA administration. Therefore, his right to property (Article 1 of Protocol No. 1 to the ECHR) has been again violated.

## **IV. THE LAW**

### **A. Alleged violation of Article 6 § 1 of the ECHR with regard to the implementation of the HPCC decision**

#### **a. Arguments of the parties**

21. The complainant states that the competent authorities, in particular the HPD/KPA, failed to implement the decision of the HPCC, preventing him from repossessing his property. He invokes a violation of his right to the execution of the decision, guaranteed by Article 6 § 1 of the ECHR.
22. The complainant states that his representative had requested the KPA to be present during the eviction so as to verify that it was properly carried out and to check on the condition of the house. However, this request was denied. Further, although the eviction took place on 23 May 2008, the keys to the apartment were only made available to his representative on 4 June 2008. At that time, the authorised representative requested KPA officers to accompany him to the complainant's house to verify that the house had been vacated. However, the KPA also refused this request. Once at the house, the complainant's representative found that it had been re-occupied by the previous occupant, who threatened him and requested him to leave immediately. According to the complainant, his house has two different entrances, but only one of them had been sealed by the KPA, and the other one had been used by the previous occupant to re-enter the house. The complainant concludes that the re-occupation occurred with the acquiescence of the authorities.
23. The complainant argues that the execution of a final and binding judgment is an integral part of the fair trial guarantees, as it is only when such a decision is implemented that the rights become effective. He therefore argues that the failure to implement the 1 October 2007 decision of the HPCC amounts to a violation of Article 6 § 1 of the ECHR.
24. In his comments, the SRSG argues that there is no violation of Article 6 § 1 of the ECHR that can be attributed to the HPD/KPA or UNMIK and that the above-mentioned decision of the HPCC was implemented following the procedures prescribed by law. The SRSG states that it is clearly established in the applicable law, UNMIK Regulation No. 2000/60 and UNMIK Regulation No. 2006/50 of 16 October 2006 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property, that the HPD/KPA is mandated to conduct only one eviction at the request of the property right holder. After such an eviction is conducted, the case is considered closed from the perspective of the HPD/KPA.
25. The SRSG maintains that an eviction procedure would generally entail vacating the property, securing it from fire and flooding, changing the locks and sealing the property. In the present case, the complainant's property was vacated and sealed on 23 May 2008 pursuant to Section 16.5 of UNMIK Regulation No. 2006/50, which states that "... following the execution of an eviction order, if the claimant is not present to take immediate possession of the property, the responsible officer shall seal the property and notify the claimant". In this regard, the SRSG stresses that "by signing

the request for repossession form on 18 September 2007, the complainant clearly expressed that he understood he would have been considered to have repossessed the property regardless of whether he or his authorised representative received the keys to the property on the same day of the repossession. Furthermore, he was made aware and agreed to the HPD/KPA being absolved of any further obligation regarding the property including any further eviction in case of reoccupation”.

26. As regards the complainant’s allegations that the eviction was not properly carried out and that not all entrances to the property had been effectively sealed, the SRSG argues that the complainant does not provide any evidence to substantiate these allegations. Moreover, the SRSG argues that what is most important is that the property was sealed “by law” during the eviction, becoming therefore inviolable after that time from entrance by any other person than the property right holder. The SRSG states that it was the HPD/KPA policy to inform persons who complained about their properties being re-occupied upon eviction that they would need to refer the matter to the Kosovo Police, as the HPD/KPA was not mandated to involve itself further in such a case.
27. The SRSG argues that following eviction and legal sealing of the property, any illegal occupation of the house would constitute a criminal offence to be dealt with by the law enforcement authorities. However, in the present case the complainant did not provide evidence to suggest that he took any step towards reporting the alleged illegal occupation of his property to the Kosovo Police.

#### **b. The Panel’s assessment**

28. The complainant complains that, because he could not repossess his house, an enforceable decision of the HPCC was not executed. He states that his right to a fair trial as envisaged in Article 6 § 1 of the ECHR has been violated by this failure of execution.
29. The Panel recalls that the HPCC, although not a court of the classic kind, was judicial in function, and that Article 6 applies to proceedings before the HPCC (see, e.g., Human Rights Advisory Panel (HRAP), *Vučković*, no. 03/07, opinion of 13 March 2010, § 34; HRAP, *Dorđević*, no. 03/09, decision of 12 August 2011, § 26).
30. The Panel refers to the case law of the European Court of Human Rights on the matter of execution of judicial decisions. The Court holds consistently that Article 6 § 1 of the ECHR secures to everyone the right to have any claim relating to his or her civil rights and obligations determined by a court or tribunal. That right would be illusory if a State’s legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. According to the Court, it would be inconceivable that Article 6 § 1 should describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without also protecting the implementation of judicial decisions. Execution of a judgment given by any court is therefore regarded as an integral part of the “trial” for the purposes of Article 6 of the ECHR and even an unreasonably long delay in the enforcement of a binding decision may constitute a breach of Article 6 (see, among other judgments, ECtHR, *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of judgments and decisions*, 1997-II, p. 510, § 40; ECtHR, *Marini v. Albania*, no. 3738/02, judgment of 18 December 2007,

§ 126; ECtHR, *Burdov v. Russia* (no. 2), no. 33509/04, judgment of 15 January 2009, §§ 65-67; see also HRAP, *Vulić*, no. 05/07, opinion of 15 March 2011, § 50).

31. In light of the above mentioned case law of the European Court of Human Rights, the Panel will consider the complainant's allegations from the point of view of the right to a court, in particular of the right to enforcement of a final and binding judicial decision. The Panel considers that, in this respect, the question is whether the HPPC decision can be considered duly executed by the eviction carried out by the KPA on 23 May 2008.
  
32. The Panel notes that the execution of decisions of the HPCC ordering the repossession of property is regulated by UNMIK Regulation No. 2000/60 and UNMIK Regulation No. 2006/50. Relevant provisions of the law read as follows:
 

“The owner ... of a property under the (HPD) administration may give notice to the Directorate of his/her intention to return into possession of the property. Following a request from the owner ... the Directorate will deliver an eviction requiring the current occupant to vacate the property within 90 days, and if the occupant does not voluntarily vacate the property, the Directorate will issue a warrant authorising execution of the eviction order ...” (Section 12.7 of UNMIK Regulation No. 2000/60).

“(The HPD) may, at its discretion, delay the execution of an eviction order for up to six months, pending resolution of the housing needs of the current occupant (the HPD) shall inform the current occupant and the claimant of the reasons for the delay” (Section 13.2 of UNMIK Regulation No. 2000/60).

“(The HPD/KPA) shall notify the claimant and any person occupying the property of the scheduled day of the eviction. Following the execution of an eviction order, if the claimant is not present to take immediate possession of the property, the responsible officer shall seal the property, and notify the claimant. Any person who, without lawful excuse, enters a property by breaking a seal shall be subject to removal from the property by the law enforcement authorities” (Section 13.6 of UNMIK Regulation No. 2000/60 and Section 16.5 of UNMIK Regulation No. 2006/60).
  
33. The Panel notes that the applicable law does not require, for an eviction order to be properly executed, that the owner or his authorised representative is present during the eviction, or that the keys to the property are handed over to the owner at the time of the eviction. In this regard, the Panel also notes that the complainant, when signing the request for repossession form, was made aware of these aspects of the procedure and that he would be considered to have repossessed the house upon notification that the house had been sealed. The Panel also notes that it is not contested by the complainant that such notification did take place.
  
34. As regards the complainant's allegations that not all external locks to the property were changed and that not all entrances were sealed, the Panel notes that the complainant did not submit any evidence to support such allegations. Furthermore, the Panel shares the SRSG's view that sealing of the property by the HDP/KPA, provided

that it is done with due diligence, is to be understood in the legal sense and that any person who enters the sealed property is subject to removal by the law enforcement authorities. In this regard, the Panel notes that there is no indication in the complaint or subsequent submissions to the Panel that the complainant contacted the law enforcement authorities to report that his property had been illegally occupied.

35. In these circumstances, the Panel considers that the HPCC decision of 1 October 2007, granting the complainant repossession of his property, was duly executed by the KPA by the eviction of 23 May 2008. While noting with regret that the complainant has been unable to repossess his property to date, the Panel considers that, after the first eviction, this responsibility no longer lies with the KPA.
36. Consequently, there has been no violation of Article 6 § 1 of the ECHR.
37. The Panel observes however that this factual situation is not unusual and notes that the system established for gaining repossession of property for persons displaced from Kosovo has been onerous and fraught with uncertainties.

**B. Alleged violation of Article 1 of Protocol No. 1 to the ECHR with regard to the implementation of the HPCC decision**

38. The complainant argues that because he was unable to repossess his home, his right to respect for his property under Article 1 of Protocol No. 1 to the ECHR has also been violated.
39. The Panel notes that the alleged breach of Article 1 of Protocol No. 1 to the ECHR relies on the complainant's arguments in relation to the alleged violation of Article 6 § 1 of the ECHR. Having found no violation of Article 6 § 1 of the ECHR, the Panel likewise finds that there has been no violation of Article 1 of Protocol No. 1 to the ECHR for the reasons set forth above (see HRAP, *Vučković*, cited in § 29 above, at § 60; HRAP, *Anđelković*, no. 11/07, opinion of 17 December 2010, § 108; HRAP, *Vulić*, cited in § 30 above, at § 65).

**C. Alleged violation of Article 1 of Protocol No. 1 to the ECHR with regard to the non-payment of rent**

40. The complainant complains that his right to property has been violated as a result of the non-payment of rent for his property, including for the time that the property was under the HPD/KPA administration.
41. In his comments, the SRSG states that the complainant's property could only have been included in the HPD/KPA rental scheme from October 2006, when the rental scheme became operational. Moreover, neither the HPD nor the KPA guaranteed any income from properties that were party to the rental scheme, including where a tenant who might have agreed to pay, did not pay.
42. With regard to this aspect of the complaint, the Panel has already noted that the KPA does not guarantee that any income from the property will be realised, nor does it guarantee that a rent-paying tenant will be found to reside at the property. A payment

can be disbursed to the owner only if the tenant pays rents to the KPA (see HRAP, *Trajković*, no. 35/08, decision of 17 April 2009, § 20; HRAP, *Sokoli*, no. 14/08, decision of 17 March 2011, § 26).

43. The complaint and the subsequent information obtained contain no evidence that support the conclusion that the complainant's right to protection of property was violated because of the failure of the KPA to pay any rental amounts owing to the complainant (see, HRAP, *Sokoli*, cited in § 42 above, at § 27).
44. Therefore, the Panel is of the view that there has been no violation of Article 1 of Protocol No. 1 of the ECHR with respect to this part of the complaint.

**FOR THESE REASONS,**

The Panel, unanimously,

- 1. FINDS THAT THERE HAS BEEN NO VIOLATION OF ARTICLE 6 § 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
- 2. FINDS THAT THERE HAS BEEN NO VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS WITH REGARD TO THE IMPLEMENTATION OF THE DECISION OF THE HOUSING AND PROPERTY CLAIMS COMMISSION;**
- 3. FINDS THAT THERE HAS BEEN NO VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS WITH REGARD TO THE NON-PAYMENT OF RENT.**

Andrey ANTONOV  
Executive Officer

Paul LEMMENS  
Presiding Member