



The Human Rights Advisory Panel

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DECISION

Date of adoption: 6 December 2012

Case No. 75/10

Jasmina ADŽIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 6 December 2012,
with the following members present:

Mr Marek NOWICKI, Presiding Member

Ms Christine CHINKIN

Ms Françoise TULKENS

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 30 March 2010 and registered on 15 April 2010.
2. On 15 November 2011, the Panel requested information about the case from the Kosovo Property Agency (KPA). The KPA provided its response on 25 November 2011.
3. On 19 July 2012, the Panel requested additional clarifications from the KPA. The KPA responded on 20 July 2012.

4. On 4 September 2012, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on the admissibility of the complaint. The SRSG provided UNMIK's comments on 15 October 2012.

II. THE FACTS

5. The complainant is the co-owner of a plot of land including two residential properties in the southern part of Mitrovicë/Mitrovica. The complainant states that she and her uncle, the second co-owner, lost possession of the properties in early 1999 due to the hostilities. Since then both properties have been illegally occupied, by different persons for different periods of time.
6. The properties have been the object of two different claims before the Housing and Property Directorate (HPD) and later the KPA, successor-in-interest to the HPD. The main stages of the proceedings can be summarised as follows.
7. On 29 November 2001, the complainant submitted a claim (registered as DS302553) to the Housing and Property Claims Commission (HPCC) of the HPD for repossession of the properties.
8. On 14 February 2003, the HPCC issued a decision in favour of the complainant and ordered the respondent and any other person occupying the properties to vacate them within 30 days from the decision. However, it appears that this decision was not implemented at this time.
9. On 22 December 2003, the complainant requested both properties to be placed under HPD administration. On 4 December 2006, upon the complainant's request, the properties were included in the rental scheme which had been established in October 2006 under the administration of the newly established KPA. On this occasion, the complainant signed a document which stated that she understood that the rent would be paid to her when, and only if, it was paid to the KPA. The rental agreement also included a clause stating that the complainant accepted Section 12.8 of UNMIK Regulation No. 2000/60 of 31 October 2000, limiting the responsibility of the HPD and KPA concerning possible damage to the properties.
10. Apparently due to an administrative error, the complainant was requested to resubmit her request for placing the properties under the KPA administration on 4 May 2007. The KPA indicated that such request should be understood as concerning only one of the residential properties, as the second was allegedly not registered and could not be verified.
11. It appears that on 15 November 2007, the complainant registered a new claim for repossession of the above-mentioned properties before the KPA (registered as KPA01231).
12. On 15 May 2009, the complainant requested the KPA to evict the tenants from her properties based on the HPCC decision of 14 February 2003 concerning claim

DS302553. However the requested eviction did not take place. In this regard, the KPA states that they could not carry out the eviction on the complainant's properties, located in the southern

part of Mitrovicë/Mitrovica, as the occupants' own property located in the northern part of the city was also illegally occupied. According to the KPA, the lack of UNMIK Police support from 2006 to 2008 as well as, subsequently, the continued activities of the parallel structures, hampered the KPA's ability to implement its mandate in northern Mitrovicë/Mitrovica. As the KPA could not for this reason evict the illegal occupants of her properties, this situation impacted adversely on the complainant, although her own properties are located in the southern part of the city.

13. On 16 June 2010, the Kosovo Property Claims Commission (KPCC) of the KPA issued a decision in favour of the complainant with respect to claim KPA01231. The KPCC confirmed the complainant's right over the properties and ordered that the complainant be granted repossession.
14. On 30 March 2011, the complainant signed a request to close the case concerning claim DS302553, due to the fact that another claim (KPA01231, see § 11 above) concerning the same properties had been filed before the KPCC and related proceedings were on-going. The KPA states that during the first period of HPD and KPA administration (2003-2011), they were not able to rent the properties and consequently no rent had been accrued to be paid to the complainant.
15. On 12 February 2012, the complainant agreed to include the properties in the KPA rental scheme. The complainant states that in October 2012, she received from the KPA the rent for the month of July 2012, in the amount of 84 euros for both properties.

III. THE COMPLAINT

16. The complainant complains about the fact that notwithstanding the request she submitted to KPA in May 2009, no eviction had been carried out as of 30 March 2010, when she filed her claim with the Panel.
17. The complainant complains that she did not receive any rental income for the whole period her properties have been illegally occupied, including whilst they were under the HPD and KPA administration.
18. She further claims that the properties sustained substantial damage by the occupants and that no compensation has been paid.

IV. THE LAW

19. 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. Concerning the KPA's failure to conduct an eviction

20. The complainant complains against the failure of the KPA to carry out an eviction on her properties after she had submitted a request in this respect in May 2009.
21. The Panel recalls that according to Section 1.2 of the Regulation, the Panel has jurisdiction over complaints relating to alleged violations of human rights by UNMIK.
22. The Panel also notes that with regard to UNMIK's administrative control of the KPA, the UN 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 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).
23. It follows, as the Panel already considered in *Kušić* (cited above, at § 52) and in *Felegi* (cited above, at § 44), that from 31 December 2008, UNMIK can no longer be held responsible for acts or omissions imputable to the KPA.
24. The Panel notes that the complainant submitted her request for eviction in May 2009.
25. Therefore, the Panel is of the view that this part of the complaint falls outside its jurisdiction *ratione personae* in the meaning of Section 1.2 of UNMIK Regulation No. 2006/12.

B. Concerning the non-payment of rent

26. The complainant complains that her right to property has been violated as a result of the non-payment of rent for her properties, including for the time that the properties were under the HPD and KPA administration.
 - a) *Period before 23 April 2005*
27. Insofar as the complainant complains about the non-payment of rent for the period before 23 April 2005, the Panel recalls that according to Section 2 of UNMIK Regulation No. 2006/12, the Panel shall have jurisdiction over complaints relating to alleged violations of human rights that occurred not earlier than 23 April 2005.
28. The Panel therefore considers that this part of the complaint is outside its jurisdiction *ratione temporis*.
 - b) *Period from 23 April 2005 to 31 December 2008*
29. Section 3.3. of UNMIK Regulation No. 2006/12 states that the Panel shall declare inadmissible any complaint which it considers manifestly ill-founded.

30. As regards the complainant's claim that she did not receive rent for the period from 23 April 2005 to 31 December 2008, the Panel notes that during this period, the properties were under the administration of the HPD and KPA.
31. In this regard, the Panel has already noted that the KPA, when taking a property under its administration, 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; and HRAP, *Sokoli*, no. 14/08, decision of 17 March 2011, § 26).
32. The complaint and the subsequent information obtained contain no evidence to 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 due to the complainant (see HRAP, *Sokoli*, cited above, § 27).
33. Therefore, the Panel is of the view that this part of the complaint is manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.

c) Period after 31 December 2008

34. Insofar as the complainant complains about the non-payment of rent by the KPA after 31 December 2008, the Panel has already noted that as of this date, UNMIK can no longer be held responsible for acts or omissions imputable to the KPA (see § 23 above).
35. For these reasons, the Panel considers that this part of the complaint also falls outside its jurisdiction *ratione personae* in the meaning of Section 1.2 of UNMIK Regulation No. 2006/12.

B. Concerning the damages to the properties

36. As regards the damages allegedly sustained by the complainant's properties, the Panel notes that the administration of properties by the HPD and KPA is governed by Section 12.9 of UNMIK Regulation No. 2000/60, which reads as follows: "The Directorate shall make reasonable efforts to minimize the risk of damage to any property under its administration. The Directorate shall bear no responsibility for any damage to property under administration or loss of or damage to its contents."
37. The Panel also notes that the complainant has signed agreements with the HPD and the KPA accepting, in accordance with the relevant regulation, that they are not liable for any damage attributable to occupants. Accordingly, there is no basis for finding that the complainant's rights have been violated as a result of a failure by UNMIK to compensate her for damages inflicted to her property in this case (see HRAP, *Trajković*, cited above, §§ 24-25).
38. Therefore, the Panel considers this part of the complaint manifestly ill-founded.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member