



The Human Rights Advisory Panel

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DECISION

Date of adoption: 06 December 2012

Case No. 191/09

Verica TOMANOVIĆ

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

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 12 April 2009 and registered on 30 April 2009.
2. On 23 December 2009, the Panel requested further information from the complainant. No response was received.
3. On 30 September 2011, the Panel requested additional information from the Court Liaison Office (CLO), Kosovo Ministry of Justice. The CLO responded on 30 November 2011.
4. On 7 November 2012, the Panel requested information from the Kosovo Property Agency (KPA). The KPA responded on 12 November 2012.

5. On 13 November 2012, Panel requested and obtained additional information from the complainant.

II. THE FACTS

6. The complainant is a former resident of Kosovo, currently residing in Serbia proper.
7. The complainant states that she is the owner of part of a house located in Prishtinë/Priština. The complainant retained use of the property until 17 June 1999 when following the abduction of her husband and the deterioration in security she moved to Serbia proper.
8. The complainant was subsequently notified that her part of the house was being occupied by another person. As a consequence the complainant filed a claim with the Housing and Property Claims Commission (HPCC) of the Housing and Property Directorate (HPD) for the repossession of her part of the property on 21 December 2001.
9. On 30 April 2005, the complainant's request for repossession was granted. Subsequently, and an eviction order was delivered by the HPD to the occupant to vacate the house within 90 days.
10. As the occupant did not voluntarily vacate the part of the house owned by the complainant, the KPA the successor in interest to the HPD carried out an eviction on 25 August 2005. According to the KPA on 7 September 2005 the keys to the house were handed over to Mr Živojin Jokanović, the authorised representative of the complainant.
11. The complainant subsequently became aware of the fact that her part of the house was again unlawfully occupied.
12. However, on 13 November 2012 the complainant informed the Panel that she had sold her part of the house to the unlawful occupier around April/May 2010 and consequently the problem relating to the unlawful usurpation of the property had resolved itself.
13. The complainant maintains, however, that she has not received any rental payment relating to the unlawful occupation of the house for the period June 1999 to around April/May 2010.

III. THE COMPLAINT

14. According to the complainant, failure by the HPD/KPA to implement the decision of the HPCC had prevented her from repossessing her part of her house on the second occasion and so constituted a violation of her right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR).
15. The complainant also claims that she has not received any rental income during the time her part of the property was unlawfully occupied between June 1999 and April/May 2010. She claims that, as a result, her right to protection of property under Article 1 of Protocol No. 1 to the European Convention on Human Rights has been violated.

IV. THE LAW

16. From the most recent information from the complainant, the Panel understands that unlawful occupation of her part of the house has now resolved itself through the subsequent sale of her share of the property.
17. In these circumstances, and in accordance with Rule 29 of the Panel's Rules and Procedure, it is appropriate to strike out this part of the complaint in so far as it relates to the unlawful usurpation of the house.
18. Before considering the remainder of 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.
19. The complainant complains about the violation of her right to property as a result of the non-payment of rent with respect to her part of the house during the period within which it had been unlawfully occupied.
20. In this regard the Panel notes that no application was ever made to the Housing and Property Directorate or its successor, the KPA with respect to administration of this specific property.
21. The Panel is also further aware that had such an application been made the KPA this in no way guarantees 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).
22. Therefore, the Panel is of the view that the complaint must be rejected as being manifestly ill-founded within the meaning of Section 3.3 of Regulation No. 2006/12.

FOR THESE REASONS,

The Panel, unanimously,

- **DECIDES TO STRIKE OUT THE ELEMENT OF THE COMPLAINT IN SO FAR AS IT RELATES TO THE UNLAWFUL USURPATION OF THE PROPERTY;**
- **DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.**

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member