



DECISION

Date of adoption: 14 May 2010

Case No. 07/08

Momir JEVTIĆ

against

UNMIK

The Human Rights Advisory Panel sitting on 14 May 2010,
with the following members present:

Mr. Marek NOWICKI, Presiding Member

Mr. Paul LEMMENS

Ms. Christine CHINKIN

Assisted by

Mr. Rajesh TALWAR, 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 21 April 2008 and registered on the same day.

2. On 10 June 2008 the Panel requested some clarifications from the complainant. The complainant replied on 2 July 2008.
3. The Panel communicated the complaint to the Special Representative of the Secretary-General (SRSG) on 23 October 2008, with a view to obtaining UNMIK's comments on both the admissibility and the merits of the complaint.
4. The SRSG commented on 18 November 2008 on the admissibility and reserved his right to comment on the merits of the complaint. On 20 December 2008 the complainant submitted his reply to the SRSG's comments.

II. THE FACTS

5. The complainant is a displaced person from Kosovo living in Belgrade, Serbia.
6. In 1994 the complainant was allocated an occupancy right over an apartment in Prishtinë/Priština. He purchased that apartment in 1995.
7. In June 1999, with the outbreak of hostilities, the complainant left Kosovo. He stated that following his departure, Mr S.A. illegally took possession of the apartment.
8. Both the complainant and S.A. initiated proceedings before the Housing and Property Claims Commission (HPCC) in order to have their property rights over the apartment at issue recognized. On 12 December 2003, the HPCC decided that S.A.'s claim failed, as he was unable to show that he ever had lawful possession of the apartment. The HPCC considered that the complainant had shown, *prima facie*, that he had a property right and that he had lost possession of his apartment following the NATO air campaign in 1999. The HPCC ordered S.A. to vacate the property.
9. Upon a request for reconsideration, the HPCC issued its final decision on 31 March 2006 in which it overturned its earlier decision of 12 December 2003. The reconsideration decision again held that S.A. was unable to show that he had a property right, considered that the complainant had shown, *prima facie*, that he had a property right over the apartment, and ordered S.A. to vacate the latter under the threat of eviction. However, "in view of the allegedly irregular manner in which the claimed [property was] allocated to [the complainant]", the HPCC considered it appropriate "to refer the determination of the legal relief, if any, that may be available to [S.A.] under the applicable law, to the competent local court". Until such date as the competent court had taken a decision in the matter, the complainant was prohibited from transferring the claimed property to any other person.
10. The Municipal Court of Prishtinë/Priština, upon a claim brought by S.A. in 2001, on 17 September 2007 issued a judgment annulling the 1994 decision allocating the occupancy right to the complainant and the 1996 contract on the purchase of the apartment. The Court held that S.A. had an occupancy right over the apartment and ordered the complainant to return the apartment into the possession of S.A. It also

considered that the complainant could request compensation from the Kosovo Property Agency (KPA), the successor body to the HPD.

11. On an unspecified date the Executive Director of the KPA sent a letter to the President of the Municipal Court in Prishtinë/Priština, stating, *inter alia*, that the said Court had acted outside its jurisdiction given that the judgment at issue in fact overruled the HPCC's final and binding decision, and that therefore this judgment was null and void.
12. The complainant appealed against the said judgment before the District Court of Prishtinë/Priština. The appeal proceedings are apparently still pending.
13. The complainant also alleges that, when she attempted to visit the apartment at issue in February 2008, his spouse was assaulted by a son of S.A., and that afterwards she was brought to the police station by the Police, where she was subjected to ill-treatment by S.A., who is a member of the Kosovo Police Service (KPS), and other KPS members for some seven hours. With regard to this incident, the complainant submitted a criminal complaint against S.A., his son and unidentified Police officers.

III. COMPLAINT

14. The complainant alleges the violation of a number of human rights instruments without invoking any right or provision in particular. He states that his rights were violated by the judgment of the Municipal Court of Prishtinë/Priština. He also alleges that the judgment at issue discriminated against him on the basis of his ethnic origin.

IV. THE LAW

15. Before considering the case on its merits the Panel has to decide whether to accept the case, taking into consideration the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12 referred to above.
16. In his comments, the SRSG states that "the case appears *prima facie* inadmissible" because of lack of exhaustion of all available avenues for review.
17. Section 3.1 of UNMIK Regulation No. 2006/12 provides that the Panel may only deal with a matter after it determines that all other available avenues for review of the alleged violations have been pursued.
18. The Panel notes that the purpose of the requirement of exhaustion of available avenues for review is to afford UNMIK the opportunity of preventing or putting right the violations alleged against it before those allegations are submitted to the Panel. Under Section 3.1 of Regulation No. 2006/12 normal recourse should be had by a complainant to avenues which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the avenues in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite

accessibility and effectiveness (Human Rights Advisory Panel (HRAP), *Balaj and Others*, no. 04/07, decision of 31 March 2010, § 45, and *N.M. and Others*, no. 26/08, decision of 31 March 2010, § 35; compare, with respect to the requirement of exhaustion of domestic remedies under Article 35 § 1 of the ECHR, European Court of Human Rights (ECtHR) (Grand Chamber), *Demopoulos and Others v. Turkey*, nos. 46113/99 and other, decision of 1 March 2010, § 70, quoting from ECtHR, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions*, 1996-IV, p. 1210, § 66).

19. Insofar as the complaint is addressed against the judgment of the Municipal Court of Prishtinë/Priština, the Panel notes that the proceedings concerning the complainant's appeal are still pending before the District Court of Prishtinë/Priština. The complainant will be able to make use of the letter of the Executive Director of the KPA, commenting on the legality of the first instance judgment. There is no indication that the appeal procedure will be ineffective for any reason.
20. It follows that the complaint is premature and must be rejected for non-exhaustion of available remedies, in accordance with Section 3.1 of UNMIK Regulation No. 2006/12 (compare, for example, ECtHR, *Koç v. Turkey*, no. 36686/07, decision of 26 February 2008).

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member