



DECISION

Date of adoption: 23 May 2009

Case 52/08

MS. ZLATANA JOVANOVIĆ

against

UNMIK

The Human Rights Advisory Panel sitting on 23 May 2009
with the following members present:

Mr. Marek NOWICKI, Presiding Member
Mr. Paul LEMMENS
Ms. Snezhana BOTUSHAROVA

Mr. John J. RYAN, 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. THE FACTS

1. According to the complaint, Ms. Zlatana Jovanović owned an apartment located in Suva Reka/Suharekë prior to the Kosovo conflict in June 1999. Following the outbreak of hostilities and the move of the complainant to central Serbia, her apartment was abandoned and subjected to illegal occupation.
2. The applicant stated that she submitted a Category "C" claim to the Housing and Property Directorate (HPD) prior to 15 April 2005 for the repossession of her apartment. A claim of Category "A" was filed by another person for the same residential property.

3. On 18 June 2005 the Housing and Property Claims Commission (HPCC) rejected the Category "C" claim of the complainant and granted the other claimant's claim. The complainant filed a request for reconsideration. The HPCC rejected that request by final decision dated 15 July 2006 and certified by the HPCC Registrar on 5 September 2006.
4. According to the complainant, the decision of the HPCC was notified to her prior to 10 October 2006, the date on which she communicated additional documents related to the said decision.

II. COMPLAINTS

5. The complainant alleges a violation of her right to peaceful enjoyment of possessions under Article 1 of Protocol no. 1 of the European Convention on Human Rights (ECHR).
6. The complainant also alleges a violation of her right to an effective remedy (Article 13 of the ECHR), due to certain shortcomings of UNMIK Regulation No. 2006/12 and its implementation.
7. The complainant finally alleges a violation of the prohibition of discrimination under Article 14 of the ECHR. She alleges in particular that by adopting UNMIK Regulation No. 2006/12 in its current form, UNMIK did not ensure that this legal remedy would be equally accessible to the current residents of Kosovo and those internally displaced outside Kosovo. The complainant asserts that Section 3.1 of Regulation No. 2006/12 exposed her to discrimination on the grounds of her status.

III. PROCEEDINGS BEFORE THE PANEL

8. The complaint was introduced on 10 December 2008 and registered on the same date. During the proceedings before the Panel, the complainant was represented by Ms. Jelena Nikolić from the Danish Refugee Council.

IV. THE LAW

9. 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.

Claim before the Housing and Property Claims Commission

10. The complainant submitted a claim requesting repossession of her property to the HPD. The HPCC refused to grant her Category "C" claim. The complainant requested reconsideration, which was rejected by a decision dated 15 July 2006. She stated that she was notified of this decision, which was a final one, prior to 10 October 2006.
11. According to Section 3.1 of Regulation No. 2006/12, the Advisory Panel may only deal with a matter within a period of six months from the date on which the final decision was taken.

12. The Panel notes that the final decision in the complainant's case, the binding and enforceable decision on the reconsideration request, was taken by the HPCC on 15 July 2006, and that the complainant was notified of this decision at least on 10 October 2006.
 13. As the period between 10 October 2006 and the date of the submission of the complaint to the Panel, 10 December 2008, is longer than six months, the complaint falls outside the time limit set by Section 3.1 of the UNMIK Regulation No. 2006/12.
 14. The complainant is aware of the fact that the deadline expired on 10 April 2007. However, she points to the fact that the Panel was established in March 2006, that the Special Representative of the Secretary-General (SRSG) appointed the Panel members in January 2007, and that the Panel held its inaugural session in Pristina in November 2007. She argues that the Panel was therefore not operational until at least October 2007. In the early period of the formal existence of the Panel the complainant lacked the possibility to submit a complaint against the final decision of the HPCC.
 15. The complainant further states that the Panel "failed to implement an information campaign in Serbia". She also argues that the Panel was, at the end of 2007, seemingly unknown even to international organizations in Kosovo.
 16. The complainant concludes that she, together with many other Internally Displaced Persons (IDP) in a similar situation, was served with the final decision of the HPCC on 10 October 2006, and that the six-month admissibility deadline started and finished during the aforementioned period when the Panel was not operational.
 17. The six-month rule serves the interests, not only of the respondent, but also of legal certainty (see, for example, ECtHR, *Walker v. United Kingdom*, no. 34979/97, decision of 25 January 2000, ECHR 2000-I). It is true that there may be special circumstances to the effect that the six-month rule cannot be held against a complainant. In view of the purpose of the said rule, the Panel considers that such circumstances "must be based on clear and conclusive evidence" (E.Comm.H.R., *H. v. United Kingdom and Ireland*, no. 9833/82, decision of 7 March 1985, Decisions and Reports, p. 57, § 13).
 18. In this case, the complainant in substance invokes the fact that she was unaware of the existence of the Panel. However, the complainant's lack of knowledge about Regulation No. 2006/12 does not constitute a special circumstance capable of absolving her from respecting the six-month rule (compare, with respect to the ECHR, E.Comm.H.R., no. 512/59, Coll., vol. 1, cited by E.Comm.H.R., *Peters v. Germany*, no. 25435/94, decision of 20 February 1995; see also HRAP, *Demirović*, no. 57/08, decision of 17 April 2009).
 19. An examination of the case therefore does not disclose the existence of any special circumstance which might have interrupted or suspended the running of the six-month time period. It follows that this part of the complaint has been lodged out of time.
- Regulation No. 2006/12 and its implementation*
20. As regards the complaints directed against Regulation No. 2006/12, the Panel considers that it is within the discretion of the SRSG to determine the regulatory

scheme of the complaint system. The Panel has no jurisdiction to examine the compatibility with human rights standards of the legal basis of its own functioning.

21. Moreover, since Regulation No. 2006/12 has been issued on 23 March 2006, the complaint is lodged out of time with respect to this aspect of the complaint, too. The same applies to the criticism directed against the implementation of the regulation.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.



John RYAN
Executive Officer



Marek NOWICKI
Presiding member