The Human Rights Advisory Panel
UNMIK HQ, East Wing, 10000 Pristina, Kosovo

DECISION

Date of adoption: 15 July 2008

Case No. 04/08

Shaip CANHASI

against

UNMIK

The Human Rights Advisory Panel sitting on 15 July 2008
with the following members present:

Mr. Paul LEMMENS, Presiding Member
Ms. Snezhana BOTUSHAROVA-DOICHEVA

Mr. John J RYAN, 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,

Having deliberated, decides as follows:

I. THE FACTS

1. On 3 February 2000, at approximately 23.15 individuals forcibly entered an apartment in North Mitrovica and killed the complainant's wife (Mrs Remzije Canhasi) in the presence of the complainant and an UNMIK Police Officer who lived in the apartment as a tenant.

   On 4 February 2000, at approximately 00.30, UNMIK police officers removed the

complainant and the UNMIK Police Officer from the apartment.

2. On 4 February 2000 the regional Investigations Unit in Mitrovica (RIU) together with a forensic team searched and documented the crime scene and secured evidence.

   On 7 February 2000, a pathologist from the Institute of Forensic Pathology in Pristina performed an autopsy on Mrs Canhasi.

   Between 4 and 20 February 2000, the RIU interviewed several witnesses who provided names and addresses of four individuals they alleged had killed Mrs Canhasi.

   On 11 September 2000, the Research Institute of Criminalistics and Criminology of Sofia, Bulgaria examined the material evidence.

   As at 29 January 2002, when the Ombudsperson in Kosovo addressed a report to the Special Representative of the Secretary General (SRSG) on the same case, there were no indications that the competent authorities had taken any further action since 11 September 2000, and no record that the individuals identified by the witnesses in February 2000 were ever interviewed.

   As at the time of submitting the current complaint to the HRAP, the complainant does not indicate that there have been any further developments in the investigation.

II. COMPLAINTS

3. The complainant claims that appropriate measures have not been taken to properly investigate his wife's murder. He complains that UNMIK did not take the necessary action in the investigation of the case, including interviewing the UNMIK Police Officer who he claims was an eye witness to the murder.

The Panel considers that the complainant is invoking a violation of the procedural aspect of the right to life, as guaranteed among other provisions by Article 2 of the European Convention on Human Rights (ECHR).

III. PROCEEDINGS BEFORE THE PANEL

4. The complaint was introduced on 15 April 2008 and registered on the same date.

   The Panel communicated the case to the SRSG on 10 June 2008 giving him the opportunity to provide comments on behalf of UNMIK on the admissibility and merits pursuant to Section 11.3 of UNMIK Regulation No. 2006/12 and Rule 30 of the Panel's Rules of Procedure. The SRSG did not avail himself of this opportunity.

IV. THE LAW

5. Before considering the complaint on its merits the Panel has to decide whether to accept the complaint, taking into account the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.

6. In the Panel's view, although UNMIK has not raised any objection as to the Panel's competence *ratione temporis*, this issue calls for consideration by the Panel.

   According to Section 2 of the Regulation the Panel has jurisdiction over complaints relating to alleged violations of human rights that have occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights.

   As regards the procedural aspect of the right to life, as guaranteed among other provisions by Article 2 of the ECHR, the Panel recalls that this provision imposes a particular obligation on the state to conduct an effective investigation when individuals have been killed as a result of the use of force.

   As the investigation in the complainant's case is ongoing and there is no record that the individuals identified by the witnesses in February 2000 were ever interviewed, the Panel is of the view that the facts concerning this procedural aspect under Article 2, that is the alleged ineffective investigation of the complainant's wife's death, fell at least partly during the period following 23 April 2005. The Panel therefore finds that it has temporal jurisdiction to examine the complaint concerning the procedural aspect of Article 2.

7. The complaint under Article 2 moreover raises issues of law and of fact the determination of which should depend on an examination of the merits of the complaint.

   The Panel therefore concludes that the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12. The Panel does not see any other ground for declaring it inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

John J. RYAN	Paul LEMMENS
Executive Officer	Presiding Member