



DECISION

Date of adoption: 17 October 2008

Case No. 24/08

Agim BEHRAMI

against

UNMIK

The Human Rights Advisory Panel sitting on 17 October 2008,
with the following members present:

Mr. Marek NOWICKI, Presiding Member
Mr. Paul LEMMENS

Mr. John J. RYAN, Executive Officer

Having noted Ms. Snezhana BOTUSHAROVA'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. The complainant has submitted a complaint on behalf of his sons Gadaf Behrami, born in 1988, deceased, and Bekim Behrami, born in 1990.

2. On 11 March 2000 Gadaf and Bekim Behrami were playing with some other boys in a place known as “Zmiq” in the village of Broboniq in the Mitrovica/Mitrovicë area. They discovered some undetonated cluster bombs, which had been dropped during the bombardment of the Former Republic of Yugoslavia (FRY) by NATO in 1999. One of the bombs detonated when it was thrown into the air by one of the boys. Gadaf Behrami was killed and Bekim Behrami was seriously injured. Despite numerous eye operations, his eyesight is still impaired.
3. A multinational brigade led by France was responsible for the sector of Kosovo that included the area of Mitrovica/Mitrovicë where the incident occurred. France was one of four brigades making up the international security force (KFOR) presence in Kosovo, mandated by UN Security Council Resolution 1244 of 10 June 1999.
4. UNMIK, mandated by the same Resolution 1244, investigated the incident and reported, on 18 March 2000, that Gadaf Behrami had died from numerous injuries following a cluster bomb explosion and that the incident amounted to “an unintentional homicide committed by imprudence” by the boy that threw the bomb into the air.
5. On 22 May 2000, the District Public Prosecutor wrote to the complainant informing him that the evidence was that the detonation was an accident and that no criminal charges would be pursued. He was also informed that he had the right to pursue a criminal prosecution within eight days.
6. On 25 October 2001, the complainant complained to the Kosovo Claims Office that France had not respected the provisions (concerning de-mining) of Resolution 1244. The claim was ultimately rejected on the ground that mine clearance had been the responsibility of the UN since 5 July 1999.
7. Meanwhile, the complainant had lodged an application to the European Court of Human Rights (ECtHR) on 28 September 2000. The Grand Chamber ruled the application inadmissible in a decision dated 2 May 2007, on the basis that it had no jurisdiction to hear the matter. The Court held, in the first place, that KFOR was exercising powers lawfully delegated to it under Chapter VII of the Charter of the United Nations by the UN Security Council, so that the impugned action was, in principle, “attributable” to the UN. Furthermore, since UNMIK was a subsidiary organ of the UN created under Chapter VII, the impugned inaction was, in principle, also “attributable” to the UN. The UN had a legal personality separate from that of its member states and was not a Contracting Party to the European Convention on Human Rights (ECHR). The ECtHR decided that the ECHR could not be interpreted in a manner which would subject the acts and omissions of Contracting Parties which were covered by UN Security Council resolutions and occurred prior to or in the course of UN missions to secure international peace and security, to the scrutiny of the Court. To do so would be to interfere with the fulfillment of the UN’s key mission in this field, including with the effective conduct of its operations.

II. COMPLAINT

8. The complainant alleges that Gadaf Behrami’s death and Bekim Behrami’s injuries were caused by the failure of the “competent authorities” to put up danger

signs. The complainant claims that this constitutes a violation of the right to life, as guaranteed among other provisions by Article 2 of the ECHR.

III. PROCEEDINGS BEFORE THE PANEL

9. The complaint was introduced on 7 July 2008 and registered on the same date.
10. The complainant was represented by Mr Gazmend Nushi.

IV. THE LAW

11. 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.
12. 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.
13. The Panel notes that the incident in which Gadaf Behrami was killed and Bekim Behrami was seriously injured, occurred on 11 March 2000. The alleged inaction on the part of the "competent authorities" in failing to mark and/or defuse the undetonated cluster bombs was also relevant at that point in time.
14. The Panel therefore is forced to conclude that the facts in this case occurred before 23 April 2005 and do not give rise to a continuing violation of human rights. Apart from the question whether the omission complained of can be attributed to UNMIK, the complaint therefore lies outside the Panel's competence *ratione temporis*.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

John J. RYAN
Executive Officer

Marek NOWICKI
Presiding Member