



The Human Rights Advisory Panel

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DECISION

Date of adoption: 21 October 2010

Case No. 145/09

Z. I.

against

UNMIK

The Human Rights Advisory Panel on 21 October 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, including through electronic means, in accordance with Rule 13 § 2 of its Rules of Procedure,

Decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 1 April 2009 and registered on 30 April 2009.
2. On 13 January 2010, the Panel requested further information from the complainant.

3. On 4 May 2010, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the case.
4. On 9 June 2010, UNMIK provided its response.
5. On 7 July 2010, the Panel sent UNMIK's response to the complainant for comments. The complainant did not reply by the deadline of 11 August 2010.

II. THE FACTS

6. The complainant states that her mother, Mrs M.I., was murdered in her home in Pjetërq i Epërm/Gornji Petrić village on 16 June 1999. The complainant claims to have been a witness to the crime.
7. According to an UNMIK Police War Crimes Unit Case Analysis Report dated 5 October 2007, summarized by UNMIK in its response to the Panel, on the night of 16 June 1999, several neighbours of the victim and other unknown persons broke into the victim's house. Mrs M.I. was at home with the complainant and the complainant's child. During the incursion, the complainant and her child were able to hide. They remained hidden until the following morning, at which time they found Mrs M.I. dead, with four visible bullet wounds. The complainant then reported the crime to Italian KFOR, who arrived and removed the body. According to the complainant, Mrs M.I.'s mortal remains have not yet been returned to the complainant or her family.
8. According to the 5 October 2007 report, UNMIK Police did not conduct an investigation into the matter. Despite a recommendation that an investigator should be assigned and that UNMIK Police should commence an investigation, there is no indication that it was ever done. The report also states that a request was made to KFOR regarding the victim's missing body, but it does not state when and to whom the request was made. According to the SRSG's comments, the files obtained by UNMIK in relation to this matter do not contain any evidence or any forensic report in relation to the murder.
9. Aside from reporting the incident to the Italian KFOR, the complainant indicates that she reported the crime to the Ministry of Internal Affairs of Serbia, the "Albanian Police Service" (presumably the Kosovo Police Service), and the Humanitarian Law Centre.
10. On 9 December 2008, UNMIK's responsibility with regard to police and justice in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX) assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK Department of Justice and UNMIK Police were handed over to their EULEX counterparts.

III. COMPLAINT

11. The complainant complains about UNMIK's alleged failure to properly investigate the murder of her mother. She also complains about the mental pain and suffering allegedly caused by this situation.
12. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of her mother's right to life, guaranteed by Article 2 of the European Convention

on Human Rights (ECHR) and a violation of her own right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the ECHR.

IV. THE LAW

13. Before considering the case on its merits, the Panel must first decide whether to accept the case, considering the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.
14. In his comments, the SRSG does not raise any objection to the admissibility of the complaint.
15. The Panel considers that the complaints under Articles 2 and 3 of the ECHR raise serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that this complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
16. The Panel does not see any other ground for declaring it inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member