



The Human Rights Advisory Panel

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DECISION

Date of adoption: 26 November 2010

Cases Nos. 120/09 & 121/09

R.P.

against

UNMIK

The Human Rights Advisory Panel on 26 November 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 complaints, 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 complaints were introduced by Ms R.P on 4 April 2009 and registered on 30 April 2009.
2. On 19 November 2009, the Panel joined Cases nos. 120/09 and 121/09 pursuant to Rule 20 of the Panel's Rules of Procedure. On the same date, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the case.
3. On 2 February 2010, UNMIK provided its response.

4. On 18 August 2010, the Panel sent UNMIK's response to the complainant for comments. The complainant did not reply by the deadline of 18 September 2010.
5. The Panel learned of the death of Ms R.P. on 15 November 2010 and accepted her nephew, Mr R.P., as the person entitled to pursue the complaints. For practical reasons, the Panel will continue to name Ms R.P. as the complainant, even though that capacity should now be attributed to Mr R.P.

II. THE FACTS

6. The complainant states that her son, Mr R.P, and her husband, Mr M.P. went missing close to Klinë/Klina on the night of 15 to 16 July 1999 while transporting goods to Prishtinë/Priština at the request of a company based in Prishtinë/Priština, owned by Mr N.B. Messrs R.P. and M.P. were to continue on to Niš after dropping off the goods in Prishtinë/Priština.
7. According to the complainant, her daughter-in-law, the wife of Mr R.P., was in contact with Mr N.B. after the disappearances and found out that Mr N.B. and his brother met the missing persons in Rožaje, Montenegro, and accompanied them into Kosovo toward Prishtinë/Priština on 15 July 1999. During the trip to Kosovo, Mr R.P., the complainant's son, drove the lorry along with Mr N.B.'s brother, Mr Ne.B., Mr M.P. travelled with Mr N.B. in another vehicle. At around 01:30 A.M. on 16 July 1999, in the vicinity of Klinë/Klina, the lorry's brakes failed. This failure resulted in the injury of Mr Ne.B., whom Mr N.B. then transported to hospital for treatment. Messrs M.P. and R.P. remained with the lorry. After transporting his brother to hospital Mr N.B. returned to the place where he left Messrs M.P. and R.P. However, there was no sign of the lorry or of its two occupants.
8. The complainant states that the disappearance was reported to the International Committee of the Red Cross, the Red Cross of Serbia, the Ministry of Internal Affairs (former Yugoslavia), and the Association of Families of Missing and Kidnapped Persons.
9. From UNMIK's comments, it appears that an investigation was begun by UNMIK Police in April 2004 after UNMIK's Office on Missing Persons and Forensics obtained a witness statement from the complainant. UNMIK located the mortal remains of Messrs R.P. and M.P. on 1 June 2005 in Klinë/Klina. The autopsy conducted by UNMIK could not determine the cause of death of Mr R.P., but concluded that Mr M.P. had died of gunshot wounds to the chest. The mortal remains of Messrs R.P. and M.P. were returned to their family in December 2005.
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.
11. In July 2009, the investigation was reviewed by the EULEX War Crimes Investigation Unit, and it was decided to continue the investigation. The investigation remains ongoing to date.

III. COMPLAINT

12. The complainant complains about UNMIK's alleged failure to properly investigate the disappearance and murders of her husband and son. She also complains about the mental pain and suffering allegedly caused by this situation.
13. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of her husband and son, 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

14. 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.
15. The complainant alleges in substance the lack of an adequate criminal investigation into the kidnapping and murder of her son and husband. The Panel notes that Messrs R.P. and M.P. went missing on the night of 15-16 July 1999, which is more than ten years ago.
16. The SRSG argued that the case is *prima facie* inadmissible. He is of the view that all other avenues for review have not been exhausted because the complainant's case is pending with a EULEX International Prosecutor. The SRSG further states, however, that UNMIK acknowledges that the exhaustion of remedies issue is closely linked to the question of the effectiveness of the investigation and it is therefore prepared to provide comments on the merits in relation to this aspect of the admissibility of the case.
17. Although the SRSG raises these issues during the admissibility stage of the proceedings, the Panel recalls that where an admissibility issue is closely linked to the merits of the complaint, the Panel may join the issue to the merits, provided that there is no other obstacle to the admissibility, pursuant to Rule 31*bis* of the Panel's Rules of Procedure.
18. The Panel therefore concludes that the issue of non-exhaustion of remedies within the meaning of Section 3.1 of UNMIK Regulation No. 2006/12 must be joined to the merits of the complaint. No other ground for declaring it inadmissible has been established (compare Human Rights Advisory Panel, *D.P.*, no. 04/09, decision of 6 August 2010).

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member