



The Human Rights Advisory Panel

Building D, UNMIK HQ Prishtinë/Priština, Kosovo | E-mail: hrap-unmik@un.org | Tel: +381 (0)38 504-604, ext. 5182

DECISION

Date of adoption: 16 December 2010

Case No. 86/09

Zufe MILADINOVIĆ

against

UNMIK

The Human Rights Advisory Panel on 16 December 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, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 7 April 2009 and registered on 30 April 2009.
2. On 2 March 2010, the Human Rights Advisory Panel (the Panel) communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the case. On 24 May 2010, UNMIK provided its response.

3. On 30 June 2010, the Panel sent UNMIK's response to the complainant for comments. The complainant replied on 29 July 2010. Once translated, those comments were sent to the SRSG for information on 30 November 2010.

II. THE FACTS

4. The complainant states that her husband, Mr Srboljub Miladinović, left from their home in Rečan/Rečane for a trip by bus to Prishtinë/Priština to visit the complainant's parents on 25 June 1998.
5. Near a place called Carralevë/Crnoljevo – Duhël/Dulje in Suharekë/Suva Reka, the bus stopped or was stopped by armed persons and Mr Miladinović was removed from the bus by threat of force. They attempted to take another person with them, a Ms V.I., from a village near Suharekë/Suva Reka. However, an elderly woman on the bus intervened and stopped them from taking her.
6. The complainant learned via Ms V.I. that it was the Kosovo Liberation Army (KLA) who kidnapped Mr Miladinović and that he was blindfolded and bound before being led in the direction of Malishevë/Mališevo. In an UNMIK Police War Crime Unit report dated 9 December 2004, provided by the SRSG, it also emerges that Mr Miladinović may have been shot during the abduction, but survived, whilst attempting to escape.
7. After the abduction, the complainant searched Kosovo for her husband without success. At some point in December 1998, she attempted to visit a place where Serbs were alleged to have been held hostage, but claims that she was blocked from accessing the place by the head of the OSCE Kosovo Verification Mission and his staff. Some time later, the complainant heard from a person unknown to her that Mr Miladinović had been tied to a tree in a village near Lipjan/Lipljan and then killed.
8. In 1999, the complainant left Kosovo. The complainant states that she reported the abduction to the Ministry of Internal Affairs (former Yugoslavia), the "Mission Persons Commission", and the Yugoslav Red Cross. She attaches a certificate confirming that the International Committee of the Red Cross opened a tracing request for Mr Miladinović on 27 June 2001. In addition, the complainant attaches a criminal complaint addressed to the "International Prosecutor of the District Public Prosecutor's Office of Prizren". Although it is not known when the complainant would have filed the complaint, the document appears again in files provided by the SRSG with a reference number from 2005.
9. In his comments, the SRSG notes that UNMIK was able to obtain two UNMIK Police/War Crimes Unit reports: an Investigation Report dated 9 December 2004 and a Case Analysis Report dated 8 October 2007. Based on these reports, the SRSG avers that an investigation was conducted by UNMIK Police, aimed at clarifying the circumstances of the abduction, the possible causes that led to the incident, and the identity of persons involved. UNMIK Police contacted the complainant but was unable to identify potential witnesses to the incident. Furthermore, UNMIK notes that an UNMIK Police Investigator recommended closing the case in the 8 October 2007 report due to the unlikelihood of identifying or locating any witnesses or suspects.
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. THE COMPLAINT

11. The complainant complains about UNMIK's alleged failure to properly investigate the abduction of her husband. 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 husband'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