



The Human Rights Advisory Panel

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DECISION

Date of adoption: 18 March 2011

Case No. 45/09

C.S.

against

UNMIK

The Human Rights Advisory Panel on 18 March 2011
with the following members present:

Mr Marek NOWICKI, Presiding Member
Mr Paul LEMMENS
Ms Christine CHINKIN

Assisted by
Ms Anila PREMTI, Acting 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 27 March 2009 and registered on 17 April 2009.
2. On 27 May 2009, the Human Rights Advisory Panel requested further information from the complainant. On 14 July 2009, the complainant provided her response.
3. On 26 February 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. On 28 April 2010, UNMIK provided its response.

4. On 19 May 2010, the Panel sent UNMIK's response to the complainant for comments and posed additional questions to the complainant. On 1 June 2010, the Panel resent the letter to the complainant. The complainant replied on 17 June 2010.

II. THE FACTS

5. The complainant states that her husband, Mr S.S., and her daughter, Ms B.S., left from the Prishtinë/Priština bus station on their way to Rahovec/Orahovac to attend the funeral of the complainant's other daughter on 17 May 1999. The other daughter had been killed in a previous incident, allegedly involving the Kosovo Liberation Army.
6. A number of days later - the complainant only remembers that it was a Sunday 6-7 days after the pair left for Rahovec/Orahovac (and therefore presumably on 23 May 1999) - the complainant learned that Mr S.S. and Ms B.S. never arrived at their destination. Following their disappearance, the daughter of Ms B.S. (the complainant's granddaughter) went to live with the complainant.
7. The complainant states that she informed "all institutions in Kosovo and Metohija about the incident". She attaches certificates from the Yugoslav Red Cross dated 14 May 2001 indicating that it opened tracing requests for Mr S.S. and Ms B.S. on 12 July 1999. She also attaches certificates from the International Committee of the Red Cross (ICRC) dated 9 April 2004 indicating that it opened tracing requests for Mr S.S. and Ms B.S. on 5 August 1999. Both the Yugoslav Red Cross and the ICRC indicate that the whereabouts of Mr S.S. and Ms B.S. were unknown since 17 May 1999.
8. In his comments, the SRSB submits that the complainant gave contradictory statements, presumably to UNMIK OMPF, as to the date she found out that Mr S.S. and Ms B.S. never arrived in Rahovec/Orahovac (on 22 May 1999 and on 19 May 1999) and as to the purpose of their journey to Rahovec/Orahovac (to attend the funeral of the complainant's other daughter or to visit the same daughter). However, before the Panel, the complainant stated that the pair were on their way to the funeral of the complainant's other daughter. The certificates from the Yugoslav Red Cross similarly mention that the missing persons were on their way to the funeral of the complainant's other daughter.
9. On 29 July 2000, the complainant reported the disappearances to UNMIK Police in Graçanicë/Gračanica. The complainant indicated at that time that she had last seen Mr S.S. and Ms B.S. on 17 May 1999 and provided personal details of the missing persons. In March 2001, the complainant provided *ante mortem* information to the Missing Persons Unit of UNMIK Police.
10. According to identification certificates issued by the UNMIK Office on Missing Persons and Forensics (OMPF), the mortal remains of Mr S.S. and Ms B.S. were located in Rahovec/Orahovac on 2 October 2002. Autopsies were conducted on the remains on 17 December 2003, which found that the cause of death for Mr S.S. was "unascertained" while the cause of death for Ms B.S. was listed as "gunshot wound to the head". However, according to UNMIK's submission, a second autopsy was conducted on the remains of Ms B.S. on 5 March 2004. The second autopsy listed the cause of death as "gunshot injury to trunk and left arm".
11. Following a positive DNA identification, on 26 November 2004, the remains were identified as belonging to Mr S.S. and Ms B.S. On 7 February 2005, the remains were handed over to the complainant.

12. In his comments, the SRSG notes that UNMIK was unable to obtain any information as to whether criminal or judicial proceedings were ever initiated in relation to these disappearances. Thus, UNMIK assumes that in fact no criminal investigation took place.
13. 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

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

16. 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.
17. In his comments, the SRSG argues firstly that the complaint is inadmissible since the complainant failed to set forth sufficient facts to attribute any action or inaction to any UNMIK body or to UNMIK personnel which could give rise to a human rights violation.
18. Secondly, the SRSG argues that since the disappearances occurred on 17 May 1999 and therefore prior to the entry of UNMIK into Kosovo, UNMIK Police had to rely on statements and information from the complainant and from the Serbian governmental authorities. UNMIK avers that the information was not specific enough to act upon and therefore UNMIK Police and UNMIK OMPF did all they could in the circumstances, taking into account the minimal information available.
19. Regarding the first objection, the Panel finds that the complainant did in fact supply sufficient information concerning the disappearance of her husband and daughter in order to make out a *prima facie* complaint against UNMIK. Indeed, the complainant specifically argues that "UNMIK has done nothing to this day" regarding the deaths of her husband and daughter. Although that blanket statement is overly broad considering that UNMIK OMPF located, identified and returned the remains of Mr S.S. and Ms B.S., it is clear to the Panel that the complainant argues that UNMIK did not do enough to investigate the abductions and murders and that she was not adequately informed of the progress of the investigation. The Panel therefore rejects UNMIK's first objection.

20. The Panel notes that the SRSG's arguments under the second heading are closely tied to the effectiveness of the investigation and thus the merits of the complaint. 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.
21. The Panel therefore concludes that the SRSG's remaining arguments concerning the effectiveness of the investigation must be joined to the merits of the complaint.
22. No other ground for declaring the complaint inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Anila PREMTI
Acting Executive Officer

Marek NOWICKI
Presiding Member