



The Human Rights Advisory Panel

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DECISION

Date of adoption: 18 March 2011

Case No. 35/09

M.M. and V.M.

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 6 January 2009 and registered on 6 March 2009.
2. On 9 July 2009, the Human Rights Advisory Panel requested further information from the complainants. On 31 August 2009, the complainants provided their response.
3. On 26 November 2009, 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 15 March 2010, UNMIK provided its response.

4. On 19 April 2010, the Panel decided to split the complainants' submission into two separate complaints under case no. 35/09, dealing with the investigation into the murder of Mr R.M., and case no. 352/09, dealing with the court proceedings for compensation and the seizure of property.

II. THE FACTS

5. The first complainant is the father of Mr R.M. and the second complainant is the widow of Mr R.M.
6. On 3 December 2002, Mr R.M. and Mr Z.Ž. left a restaurant/café in the centre of Graçanicë/Gračanica at approximately 22:00 hours. Reportedly, after getting into Mr R.M.'s vehicle, an unknown person or persons who had apparently been lying in wait opened fire on the pair. Mr R.M. died before reaching the hospital whilst Mr Z.Ž. was injured but survived. The police apparently arrived quickly to the scene and began their investigation. The same day, the police impounded the vehicle for further investigation, as well as certain personal documents and belongings of the deceased.
7. On 4 December 2002, the Medical Examiner at the UNMIK Department of Justice, Office of the Medical Examiner, conducted an autopsy, concluding that Mr R.M. was killed by multiple gunshot wounds to the head, trunk and limbs.
8. On 5 December 2002, the complainants buried Mr R.M. He was survived by the second complainant and their three children, as well as his parents, the first complainant and his wife [R.M.'s mother].
9. Media reports at the time indicate that there was initial confusion as to whether Mr R.M. was a member of the Kosovo Police Service, but UNMIK later clarified that he was not in fact a member of the KPS. Media reports also indicated that UNMIK Police initially found no evidence that the crime was motivated by ethnicity.
10. Subsequently, the complainants were invited to collect the deceased's personal belongings that had been taken as evidence by the police, with the exception of the vehicle in which Mr R.M. was killed and some personal identification documents.
11. On 14 September 2004, the complainants lodged a civil claim in the Municipal Court of Prishtinë/Priština against the Provisional Institutions of Self-Government of Kosovo, the Municipality of Prishtinë/Priština, UNMIK, and KFOR concerning the alleged failure of those authorities to prevent the death of Mr R.M. and also noting that they had not been informed of any progress regarding any ongoing criminal investigation into the matter. The complainants received no response to this submission and no hearing has been scheduled as of the date of the adoption of this decision.
12. It appears that sometime later they were notified that the vehicle in which Mr R.M. was killed had remained impounded since customs fees were not paid for the importation of the vehicle. The complainants disputed this, noting that the vehicle was registered in 2001 via the parallel Serbian registration system in Zveçan/Zvečan and later via the Kosovo system on 15 October 2002 in Graçanicë/Gračanica. In 2007, they learned that the vehicle had allegedly been sold to a private individual by the Kosovo Customs Service. Based on this, they filed a request for preliminary measures in the Municipal Court of Lipjan/Lipljan on 29 November 2007 against that individual to prevent him from transferring ownership of the vehicle until the court procedure for reclaiming it was completed. It does not appear that the complainants received any response to that request.

The complainants further indicated that they believe the individual sold the vehicle since the filing of the request.

13. Upon the complainants' request, the KPS sent a memo to them on 24 August 2009, indicating that the Regional Investigation Unit of Prishtinë/Priština conducted the criminal investigation into the murder and that they transferred the case to the District Public Prosecutor's Office of Prishtinë/Priština on 30 January 2008. The complainants claim that this is the only piece of information they received concerning the investigation.
14. 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

15. The complainants complain about UNMIK's alleged failure to properly investigate the murder of Mr R.M. They also complain about the mental pain and suffering allegedly caused by this situation.
16. The Panel considers that the complainants may be deemed to invoke, respectively, a violation of the right to life of Mr R.M., guaranteed by Article 2 of the European Convention on Human Rights (ECHR), and a violation of their own right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the ECHR.

IV. THE LAW

17. 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.
18. In his comments, the SRSG does not raise any objection to the admissibility of the complaints.
19. 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 these complaints are not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
20. The Panel does not see any other ground for declaring it inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Anila PREMTI
Acting Executive Officer

Marek NOWICKI
Presiding Member