



The Human Rights Advisory Panel

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DECISION

Date of adoption: 13 April 2011

Case No. 88/09

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against

UNMIK

The Human Rights Advisory Panel on 13 April 2011
with the following members taking part:

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, 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 7 April 2009 and registered on 30 April 2009.
2. On 9 December 2009, the Human Rights Advisory Panel requested further information from the complainant.
3. On 18 December 2009, the Panel requested information from the European Union Rule of Law Mission in Kosovo (EULEX).
4. On 23 December 2009, the complainant submitted an additional application form.

5. On 12 February 2010, the complainant responded to the Panel's letter of 9 December 2009.
6. On 23 March 2010 EULEX provided a response to the Panel's request of 18 December 2009.
7. On 30 November 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.
8. On 2 December 2010, the complainant submitted further information to the Panel.
9. On 25 February 2011, UNMIK provided its response to the Panel's communication of 30 November 2010.
10. On 4 March 2011, the Panel forwarded translations of the additional submissions from the complainant to UNMIK. On 10 March 2011, UNMIK provided its response.

II. THE FACTS

11. The complainant is the daughter of Mr B.R. According to the complainant, her father remained in the village of Mushtisht/Mušutište in Suharekë/Suva Reka Municipality after UNMIK and NATO entered Kosovo in June 1999. The complainant states that as of December 1999, she has no information concerning the whereabouts of her father.
12. The complainant states that she reported the disappearance of her father to the International Committee of the Red Cross, which opened a tracing request. She also indicates that she contacted the Association of Kidnapped and Missing Persons regarding her missing father. The whereabouts of Mr B.R. remain unknown to date.
13. On 9 December 2008, UNMIK's responsibility with regard to police and justice in Kosovo ended with 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.
14. Information obtained from EULEX indicates that the case remains open with the EULEX Office on Missing Persons and Forensics.

III. THE COMPLAINT

15. The complainant complains about UNMIK's alleged failure to properly investigate the abduction of her father and about the mental pain and suffering allegedly caused by this situation.
16. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of her father, 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

17. Before considering the case on the 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 complaint.
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 the complaint inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Anila PREMTI
Acting Executive Officer

Marek NOWICKI
Presiding Member