



The Human Rights Advisory Panel

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DECISION

Date of adoption: 11 August 2011

Case No. 92/09

Marija FILIPOVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 11 August 2011,
with the following members present:

Mr Marek NOWICKI, Presiding Member

Mr Paul LEMMENS

Ms Christine CHINKIN

Assisted by

Mr Andrey ANTONOV, 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 April 2009 and registered on 30 April 2009.
2. By letter dated 9 December 2009 the Panel requested the complainant to provide additional information. The Panel received the complainant's response on 1 March 2010.
3. On 19 April 2011 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 21 June 2011, UNMIK provided its response.

II. THE FACTS

4. The complainant states that her husband Panta Filipović was murdered in Prizren on 21 June 1999. Mr Filipović was allegedly killed in his home while the complainant was out of the house trying to gather information on their son, who disappeared in April 1999.¹
5. The complainant states that in the aftermath of the murder the German KFOR sealed her house with yellow tape and conveyed her to the Serbian Orthodox Seminary in Prizren.
6. From information submitted by the complainant, it appears that a priest at the Seminary was informed by KFOR soldiers that Mr Filipović had been murdered by Albanians. The priest allegedly went to the crime scene and saw Mr Filipović's body covered with blood.
7. According to the complainant, Mr Filipović was buried in Prizren two days after his murder, in the presence of KFOR troops.
8. The complainant resided at the Seminary for four months before being transported to Belgrade. She states that she reported the murder to the International Committee of the Red Cross. She states that UNMIK, KFOR and the International Prosecutor's Office in Prishtinë/Priština were also informed.
9. The complainant states that in Belgrade she reported the murder to the Yugoslav Red Cross Society.
10. It appears that Mr Filipović's body was misplaced after his burial and rediscovered by UNMIK Office on Missing Persons and Forensics in Prizren on 24 May 2007. According to the autopsy conducted by UNMIK in June 2007 Mr Filipović was killed by a gunshot to the head. His mortal remains were identified and returned to the family in November 2007.
11. On 9 December 2008, UNMIK's responsibility with regard to the judiciary 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

12. The complainant complains about UNMIK's alleged failure to properly investigate the murder of her husband. She also complains about the fear, pain and illness 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, 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.

¹ The abduction of the complainant's son is the object of case no. 93/09, pending before the Panel.

IV. THE LAW

14. 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.

Alleged violation of Article 2 of the ECHR

15. The complainant alleges in substance the lack of an adequate criminal investigation into the murder of her husband.
16. The SRSG does not raise any objection to the admissibility of this part of the complaint.
17. The Panel considers that the complaint under Article 2 of the ECHR raises serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that this part of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
18. No other ground for declaring this part of the complaint inadmissible has been established.

Alleged violation of Article 3 of the ECHR

19. The complainant alleges mental pain and suffering allegedly caused to herself and her family by the situation surrounding the murder of her husband.
20. The SRSG argues that the complainant does not expressly allege that the mental pain and anguish suffered is a result of UNMIK's response to the killing of her husband. The SRSG argues that this mental pain and anguish is stated to be the result of the human rights violation committed against Mr Filipović and that therefore this part of the complaint is manifestly ill-founded.
21. The Panel refers to the case law of the European Court of Human Rights with respect to the question whether a member of the family of a person who has been killed can be considered the victim of a treatment contrary to Article 3 of the ECHR, which prohibits inhuman treatment. While the European Court accepts that a family member of a disappeared person can claim to be the victim of such an ill-treatment, notably in the light of the inability during a prolonged period of time to find out what happened to their relative, it does not usually extend the application of Article 3 of the ECHR to the relatives of a person who has been killed in the case of an instantaneous death (see, *e.g.*, European Court of Human Rights (ECtHR), *Bitiyeva and X v. Russia*, nos. 57953/00 and 37392/03, judgment of 21 June 2007, § 152; ECtHR, *Udayeva and Yusupova v. Russia*, no. 36542/05, judgment of 21 December 2010, § 82).
22. Applying the same principles, and while having no doubts as to the profound suffering caused to the complainant by the death of her husband, the Panel finds no appearance of a violation of Article 3 of the ECHR by UNMIK.
23. It follows that this part of the complaint is manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12, and therefore inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

- DECLARES ADMISSIBLE THE COMPLAINT RELATING TO THE RIGHT TO LIFE;

- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member