



The Human Rights Advisory Panel

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

DECISION

Date of adoption: 15 September 2011

Case no. 341/09

N.P., D.P., D.K., B.P., L.J., D.L. and S.P.

against

UNMIK

The Human Rights Advisory Panel on 15 September 2011,
with the following members present:

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

Assisted by
Mr Andrey ANTONOV, 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 9 September 2009 and registered on 4 December 2009.
2. On 9 March 2011, the Secretariat of the Panel obtained further information from the first complainant by phone.

II. THE FACTS

3. The complainants are the family of Mr D.P., a Kosovo resident, who was killed on 19 June 2006 in his home in Klinë/Klina Municipality.

4. On 17 June 1999 Mr D.P. was displaced from his property, which included a house and agricultural land, in Klinë/Klina Municipality by persons unknown to him and moved to Serbia. In 2001, a former neighbour of Mr D.P., Mr J.E., forced the unknown occupants to leave Mr D.P.'s property, began himself to occupy the house, farm the land, and contacted Mr D.P. to discuss purchasing the property. No agreement was reached between the parties.
5. Mr J.E. occupied the property of Mr D.P. and tilled the land from 2001 until May or June 2005. At that time, Mr D.P. returned to Kosovo as part of an organised return programme and met with Mr J.E. to discuss the property. During the discussion, they agreed that Mr J.E. would leave Mr D.P.'s house and that they would share the harvest that Mr J.E. had planted on Mr D.P.'s land.
6. However, disputes allegedly arose after this initial meeting. The following day, Mr J.E. reported the theft of a tractor and a car and accused Mr D.P. of the crime. Mr J.E. later retracted his accusation before the police. The complainants allege that the family of Mr J.E. continued to feign interest in purchasing Mr D.P.'s property in order to dissuade him from selling the land to anyone other than the family of Mr J.E. On 14 June 2006, Mr D.P. sold part of his land to a certain Mr N.G.
7. On 19 June 2006, Mr D.P. was shot dead in his home. Following the killing the Kosovo Police Service conducted an investigation, including interviewing Mr J.E. and other members of his family.
8. On 23 April 2008, the International Public Prosecutor in Pejë/Peć sent a notice of termination of investigation to the complainants, indicating that the investigation had not made it possible to identify the person or persons responsible for the murder, without prejudice as to the reopening of the investigation on the initiative of the police or upon the presentation of new information that could lead to the identification of the person or persons responsible. The notice also informed the complainants that they had the right to undertake the criminal investigation themselves as a subsidiary prosecutor under Article 62 of the Provisional Criminal Procedure Code of Kosovo. If the complainants chose to exercise their right to undertake a subsidiary prosecution, they would have to do so within eight days of receipt of the notice of termination. The complainants state that they received the notice within eight days of the date of the notice, as required by law.
9. The complainants did not pursue a subsidiary prosecution. They allege that their failure to do so was due to the unwillingness of any ethnic Albanian attorney to represent them in such a prosecution.

III. COMPLAINTS

10. The complainants allege a violation of Article 6 of the International Covenant on Civil and Political Rights (ICCPR) (the right to life), based on to the failure of UNMIK to protect Mr D.P.'s right to life and to prosecute the suspect.
11. They also allege violations of Article 10 of the Universal Declaration of Human Rights (fair and public hearing by an impartial tribunal), Article 6 of the European Convention on Human Rights (ECHR) (right to a fair trial) in conjunction with

Article 14 of the ECHR (prohibition of discrimination in the enjoyment of rights in the ECHR), Article 1 of Protocol No. 12 to the ECHR (general prohibition of discrimination), Article 14 of the ICCPR (equality before the courts) and Article 26 of the ICCPR (equal protection before the law and prohibition of discrimination). According to the complainants, UNMIK failed to guarantee Mr D.P.'s freedom of movement and to protect his right to life, because of his national origin, failed to prosecute the suspect because of his race, and treated investigations of crimes against ethnic Albanian victims more favourably than those involving Serbian victims.

IV. THE LAW

12. 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.
13. The complainants allege in substance that the authorities failed to conduct an adequate criminal investigation into the murder of Mr D.P. due to discrimination. They also allege that Mr D.P. was discriminated against while alive.
14. Insofar as the complaints relate to discrimination allegedly suffered by Mr D.P. prior to his death, the Panel recalls that a complaint cannot be brought in the name of a deceased person, since a deceased person is unable, even through a representative, to lodge a complaint with the Panel. The complainants themselves cannot be said to have suffered the discrimination. Therefore it follows that the complaints regarding discrimination suffered by Mr D.P. prior to his death are inadmissible *ratione personae* (see, Human Rights Advisory Panel (HRAP), *N.M. and others*, no. 26/08, decision of 5 June 2009, § 25; see also, for example, European Court of Human Rights (ECtHR), *Gavrielidou v. Cyprus*, no. 73802/01, decision of 13 November 2003; ECtHR, *Gurlesen v. Turkey*, no. 15573/03, decision of 29 April 2008).
15. It is true that a person with the required standing as a next-of-kin or an heir of the estate of the deceased may bring the application as a rightful successor or on behalf of the deceased and, in certain circumstances, on his own behalf - in his own name as a victim. The ability to bring a complaint in such circumstances exists in exceptional circumstances such as alleged violations of Article 2 of the ECHR (right to life) (see for example, ECtHR, *McCann and Others v. United Kingdom*, judgment of 27 September 1995, *Publications of the Court*, Series A, no. 324; ECtHR, *X v. France*, judgment of 31 March 1992, *Publications of the Court*, Series A, no. 234-C).
16. Insofar as the complainants allege that the authorities failed to protect the life of Mr D.P. and failed to conduct an adequate investigation into his murder and that such failures were due to ethnic discrimination, the Panel recalls that the complainants received the notice of termination of the investigation from the International Public Prosecutor within eight days of the date of its issuance (23 April 2008), and therefore not later than 1 May 2008. The complainants filed their complaint with the Panel on 9 September 2009.
17. Pursuant to Section 3.1 of UNMIK Regulation No. 2006/12, the Panel may only deal with a matter within six months from the date on which the final decision was

taken. The purpose of the six-month rule is to promote legal certainty and to ensure that cases raising issues under UNMIK Regulation No. 2006/12 are dealt with within a reasonable time (see, HRAP, *Ranko Vasić*, no. 02/07, second decision of 6 August 2010, § 22).

18. While it is often difficult to determine the point at which the six-month period begins to run, with respect to complaints concerning an allegedly ineffective investigation, the Panel finds that, where an official investigation indeed took place and is subsequently terminated by a legal notice of termination of the investigation, the six-month period in which a complainant can file a complaint with the Panel begins to run from the date of receipt of such a notice. The inability of the complainants to find a lawyer to represent their interests, while unfortunate, would not have prevented them from providing notice to the authorities that they intended to continue the subsidiary prosecution while they sought out a lawyer to pursue the investigation. Thus, the relevant date for the start of the six-month period is 1 May 2008 at the latest.
19. Accordingly, given that the present complaint was submitted to the Panel more than six months following receipt by the complainants of the written decision to terminate the investigation, the complaints concerning the alleged failure to protect Mr D.P.'s right to life and to conduct an effective investigation, as well as the discrimination complaints connected with it, fall outside the time-limit set by Section 3 of UNMIK Regulation No. 2006/12.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Andrey ANTONOV
Acting Executive Officer

Marek NOWICKI
Presiding Member