



DECISION

Date of adoption: 22 October 2011

Case No. 272/09

Jagoda VUKIĆEVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 22 October 2011,
with the following members present:

Mr Marek NOWICKI
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 10 April 2009 and registered on 30 April 2009.
2. On 24 November 2010 the Panel requested the complainant to submit additional information. The complainant responded on 29 November 2010.
3. On 19 July 2011 the complaint was communicated to the Special Representative of the Secretary-General (SRSG), for comments on admissibility. UNMIK responded on 5 September 2011.

II. THE FACTS

4. The complainant states her husband, Mr Zoran Vukićević, together with seven other persons of Serbian ethnicity, was injured during an armed attack on a bar located in the Serbian quarters of Rahovec/Orahovac, on 17 December 1999, where firearm and handgranades were used by unidentified assailants. He sustained severe head injury and was taken by KFOR to the hospital in the US KFOR base “Bondsteel”, where he passed away a few hours later. His body was handed over to the complainant twelve days after the murder, and she buried him in Belgrade, on 29 December 1999.
5. The complainant further submits that the perpetrators of this crime have not been identified and brought to justice.
6. 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

7. The complainant complains about UNMIK’s alleged failure to properly investigate the murder of her husband and about the fear, pain and illness suffered by herself because of this situation.
8. 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 (hereinafter 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

9. 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.

Alleged violation of Article 2 of the ECHR

10. The complainant alleges in substance the lack of an adequate criminal investigation into the disappearance and murder of her husband.
11. In his comments, the SRSG does not object to the admissibility of the complaint in relation to the procedural obligations under Article 2 of the ECHR.
12. 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.
13. No other ground for declaring this part of the complaint inadmissible has been established.

Alleged violation of Article 3 of the ECHR

14. The complainant alleges mental pain and suffering allegedly caused to her by the situation surrounding the abduction and murder of her husband.
15. 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 death of her husband, and therefore it is manifestly ill-founded.
16. In addition, the SRSG objects to the Panel's temporal jurisdiction to review the complaint in accordance with Section 2 of UNMIK Regulation 2006/12, in relation to a possible violation of Article 3 of the ECHR, because the killing was an instantaneous incident that does not give rise to a continuing violation of human rights.
17. The Panel, for its part, 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 of Human Rights 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).
18. 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.
19. 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.

20. Having regard to this conclusion, there is no need to examine UNMIK's objections to the admissibility of this part of the complaint.

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