



# *The Human Rights Advisory Panel*

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## **DECISION**

**Date of adoption: 21 December 2011**

**Case No. 165/09**

**Vuksan BULATOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 21 December 2011,  
with the following members taking part:

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, 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 1 April 2009 and registered on 30 April 2009.
2. On 23 December 2009, the Panel requested additional information from the complainant. However, no response was received.
3. On 12 May 2010, the Panel reiterated its request for further information to the complainant. The complainant responded on 12 April 2011.
4. On 30 May 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.

5. On 31 August 2011, UNMIK submitted its response.

## **II. THE FACTS**

6. The complainant states that his brother, Mr. Vladislav Bulatović, was a conscript of the Yugoslav Army based in Pejë/Peć.
7. The complainant states that on 6 June 1999, Mr Vladislav Bulatović was wounded during a military attack launched by the NATO and the Kosovo Liberation Army in the area of Koshare/Košare. According to the complainant, his brother died on 14 June 1999 while being transported to the Military Medical Academy in Belgrade. Mr Vladislav Bulatović's body was subsequently handed over to his family and buried in Pančevo, Serbia.
8. No statement is made by the complainant that the killing of Mr Vladislav Bulatović was reported to UNMIK Police or to other UNMIK authorities.
9. 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. COMPLAINT**

10. The complainant complains about UNMIK's alleged failure to properly investigate into the killing of his brother. He also complains about the mental anguish and suffering allegedly caused to him by this situation.
11. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of his brother, guaranteed by Article 2 of the European Convention on Human Rights (ECHR), and a violation of his own right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the ECHR.

## **IV. THE LAW**

12. 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**

13. The complainant alleges in substance the lack of adequate criminal investigation into the killing of his brother.
14. The SRSG argues that Mr Vladislav Bulatović was injured in the course of a military action before UNMIK took responsibility for the territorial administration of Kosovo under the mandate of the United Nations Security Council Resolution No. 1244 of 10 June 1999. The SRSG further states that no file on the matter was found and that it is not clear from the documentation available if any report concerning Mr Vladislav Bulatović's killing was made to UNMIK in order to facilitate the investigation by the UNMIK Police aimed at identifying the perpetrators. The SRSG claims that, in the absence of such

information, UNMIK did not have any obligation to conduct an investigation under Article 2 of the ECHR. Therefore, the SRSG claims that this part of the complaint is “unjustifiable” and *prima facie* inadmissible.

15. The Panel notes that the issue could be raised of the applicability of Article 2 of the ECHR to the circumstances of this case concerning a combatant’s death as a result of a military operation. However, the Panel leaves this question open considering that this part of the complaint is in any case inadmissible for the following reason.
16. The Panel refers to the case law of the European Court of Human Rights setting out the obligation under Article 2 of the ECHR of the competent authorities to conduct an effective investigation into deaths resulting from the use of force. The Court holds that the authorities must act of their own motion once the matter has come to their attention, and that they cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures (see, e.g., European Court of Human Rights (ECtHR) (Grand Chamber), *Ílhan v. Turkey*, no. 22277/93, judgment of 27 June 2000, § 63, ECHR 2000-VII; ECtHR, *Rantsev v. Cyprus and Russia*, no. 25965/04, judgment of 7 January 2010, § 232; ECtHR (Grand Chamber), *Al-Skeini and Others v. United Kingdom*, no. 55721/07, judgment of 7 July 2011, § 165). For the duty to investigate to arise, it is thus not decisive whether members of the deceased’s family or others have lodged a formal complaint with the relevant investigatory authority (ECtHR, *Ergi v. Turkey*, no. 23818/94, judgment of 28 July 1998, Reports of judgments and decisions, 1998-IV, § 82; ECtHR, *Yaşa v. Turkey*, no. 22495/93, judgment of 2 September 1998, Reports of judgments and decisions, 1998-VI, § 100).
17. The Panel notes, however, that there is no indication that in the instant case UNMIK authorities were informed or were otherwise aware of Mr Vladislav Bulatović’s death. Therefore, the Panel considers that under the circumstances of the present case UNMIK did not have an obligation to carry out an effective investigation into Mr Vladislav Bulatović’s death under Article 2 of the ECHR."
18. 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.

### **Alleged violation of Article 3 of the ECHR**

19. The complainant alleges mental pain and suffering caused to him by the situation surrounding the killing of his brother.
20. In his comments, the SRSG argues that, while the complainant states that he has suffered mental pain and anguish as a result of the death of his brother, there is no express allegation that this fear and anguish were a result of UNMIK’s response to Mr Vladislav Bulatović’s killing. For that reason, this part of the complaint is inadmissible as manifestly ill-founded.
21. For the same reasons as regarding the complaint under Article 2 of the ECHR, and while having no doubts as to the profound suffering caused to the complainant by the death of his brother, the Panel finds no appearance of a violation of Article 3 of the ECHR by UNMIK.
22. 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 THE COMPLAINT INADMISSIBLE.**

Andrey ANTONOV  
Executive Officer

Marek NOWICKI  
Presiding Member