



DECISION

Date of adoption: 22 December 2011

Cases No. 326/09, 327/09, 328/09, 329/09, and 330/09

X.

against

UNMIK

The Human Rights Advisory Panel, on 22 December 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 complaints, 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 complaints in cases nos. 326/09, 327/09, 328/09, 329/09 and 330/09 were introduced on 11 November 2009 and registered on 4 December 2009.
2. On 9 September 2010 the Panel decided to join these cases, pursuant to Rule 20 of the Panel's Rules of Procedure.
3. On 2 November 2010, the Panel communicated the cases to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on admissibility. On 28 February 2011 the SRSG provided his response.

II. THE FACTS

4. The complainant informs the Panel that Victim “A” (case no. 326/09), Victim “B” (case no. 327/09), Victim “C” (case no. 328/09), Victim “D” (case no. 329/09) and Victim “E” (case no. 330/09) were killed by armed members of the Kosovo Liberation Army (KLA) between 15 and 22 June 1999,
5. The complainant further details that Victim “A”, Victim “B”, Victim “D” and Victim “E” were forcefully taken from the family house on 15 June 1999 by armed KLA members and brought to a hotel. These events were carried out with extreme physical violence, including extreme sexual violence. Victim “A”, Victim “B” and Victim “E” were reportedly killed at the hotel, while Victim “D” managed to escape. Later on the same day the Victim “C” was likewise captured by KLA members and brought to the same hotel. He was then taken from that location in an unknown direction by armed KLA members, and eventually killed. Victim “D” was killed by armed KLA members on the morning of 22 June 1999, in the back yard of his house.
6. The complainant further clarifies that the bodies of Victim “A”, Victim “B”, Victim “C” and Victim “D” were found shortly after, in different locations in Kosovo. Victim “E” has never been seen again after 15 June 1999 and his mortal remains have never been found.
7. The complainant claims that he reported everything to the Office of the War Crimes Prosecutor and the Ministry of Internal Affairs of the Republic of Serbia. KFOR, UNMIK, and the International Committee of the Red Cross (ICRC) were also informed about everything that had happened, but no action was taken.
8. The complainant also states that a number of highly-valued movable items belonging to him and the victims, cash and jewelry were stolen from their house, on or around the time of the described incident.
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 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 COMPLAINTS

10. The complainant complains about UNMIK’s alleged failure to properly investigate the killing of Victim “A”, Victim “B”, Victim “C” and Victim “D”, and disappearance and probable killing of Victim “E”, and about the fear, mental pain and suffering caused to himself by this situation. In addition, the complainant seems to complain about the material damage sustained.
11. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of the killed or missing victims, guaranteed by Article 2 of the European Convention on Human Rights (ECHR), a violation of his right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the ECHR, and of his right to protection of property, guaranteed under Article 1 of Protocol No. 1 to the ECHR.

IV. THE LAW

12. Before considering the cases on their merits, the Panel must first decide whether to accept them, considering the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.
13. Section 3.3 of UNMIK Regulation No. 2006/12 provides that the Panel may only deal with a matter after it determines that it is not manifestly ill-founded.
14. In his comments, the SRSG does not raise any objection to the admissibility of the complaints.

Alleged violation of Article 2 of the ECHR

15. The complainant alleges in substance the lack of an adequate criminal investigation into the disappearance and probable killing of Victim “E”, and the killing of the other victims.
16. The Panel considers that the complaints under Article 2 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 parts of the complaints are not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
17. No other ground for declaring these parts of the complaints inadmissible has been established.

Alleged violation of Article 3 of the ECHR

18. The complainant alleges mental pain and suffering caused to him by the situation surrounding the disappearance and probable killing of Victim “E”, and the killing of the other victims.
19. With regard to the killing of Victim “A”, Victim “B”, Victim “C” and Victim “D”, the Panel refers to the case law of the European Court of Human Rights (ECtHR) 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 the 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., 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).
20. Applying the same principle, and while having no doubts as to the profound suffering caused to the complainant by the deaths of the victims, the Panel finds no appearance of a violation of Article 3 of the ECHR by UNMIK.
21. It follows that the parts of the complaints in cases nos. 326/09, 327/09, 328/09 and 329/09 in relation to the alleged violation of Article 3 of the ECHR are manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.

22. With regard to Victim “E”, the Panel notes that there is no verifiable evidence that he has been killed, as has been the case for the other family members. Victim “E” currently remains a missing person. . Thus the Panel is of the opinion that the complainant may invoke a violation of Article 3 of the ECHR with respect to Victim “E” (see explanation in § 19 above).
23. The Panel further considers that this part of the complaint in the case no. 330/09 raises serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that it is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
24. No other ground for declaring these parts of the complaints inadmissible has been established.

Alleged violation of Article 1 of Protocol No. 1 to the ECHR

25. With regard to the material damage allegedly sustained by the complainant’s family, the Panel has already considered that damages and destruction of the property are instantaneous acts, which do not give rise to a continuing violation (see HRAP, *Lajović*, no. 09/08, decision of 16 July 2008, § 7). The Panel notes that the property loss in the present case allegedly occurred between 15 and 22 June 1999. It follows that this part of the complaints lies outside the Panel’s jurisdiction *ratione temporis*.

FOR THESE REASONS,

The Panel, unanimously,

- DECLARES THE COMPLAINTS ADMISSIBLE WITH REGARD TO THE RIGHT TO LIFE (ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS);

- DECLARES ADMISSIBLE THE COMPLAINT WITH REGARD TO THE PROHIBITION OF INHUMAN OR DEGRADING TREATMENT (ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS) IN RELATION TO THE DISAPPEARANCE OF VICTIM “E”;

- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINTS.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member