



The Human Rights Advisory Panel

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

DECISION

Date of adoption: 05 April 2012

Case No. 100/09

Vesna ANTIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 05 April 2012,
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 30 April 2009 and registered on the same date.
2. On 1 December 2010, the Panel requested the complainant to provide additional information. The Panel received the complainant's response on 23 December 2010.
3. On 30 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 complaint.
4. On 16 September 2011, UNMIK provided its response stating that it was unable to provide comments at that time due to the unavailability of any files on the matter.
5. On 31 January 2012, UNMIK provided its comments on the admissibility of the complaint.

II. THE FACTS

6. The complainant is the wife of Mr Randel Antić. The complainant states that her husband was killed in an ambush by members of the Kosovo Liberation Army in the morning of 17 April 1999 near the village of Sopijë/Sopina, Suharekë/Suva Reka municipality. At the moment of the ambush, Mr Antić was travelling on board of a vehicle along with three other people. All of them were allegedly killed.
7. It appears from information submitted by the complainant that the mortal remains of Mr Antić and his clothing were brought to the family house shortly after the incident, although it is not specified by whom or through which institution.
8. The SRSG states that Mr Antić was never classified as a missing person by the UNMIK Office on Missing Persons and Forensics (OMPF), probably because the mortal remains of Mr Antić were located shortly after his death. For this reason, no relevant records of the UNMIK OMPF were found with regard to Mr Randel Antić.
9. 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

10. The complainant complains about UNMIK's alleged failure to properly investigate the killing of her husband. She also complains about the pain and anguish allegedly caused to herself by this situation.
11. 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.

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 an adequate criminal investigation into the killing of her husband.
14. The SRSG does not raise any objection to the admissibility of this part of the complaint.
15. 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.

16. No other ground for declaring this part of the complaint inadmissible has been established.

Alleged violation of Article 3 of the ECHR

17. The complainant alleges mental pain and suffering allegedly caused to herself and her family by the situation surrounding the killing of her husband, including the manner of the return of his mortal remains.
18. 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 the complaint does not contain any facts from which an inference can be drawn that the complainant herself has been the victim of inhuman treatment attributable to UNMIK. Therefore this part of the complaint is manifestly ill-founded.
19. 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; see also Human Rights Advisory Panel, *Filipović*, no. 92/09, decision of 11 August 2011 §§ 21-22).
20. Applying the same principles, and while having no doubts as to the profound suffering caused to the complainant by the death of her husband and the return of his mortal remains the following day, the Panel finds no appearance of a violation of Article 3 of the ECHR by UNMIK.
21. 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