



The Human Rights Advisory Panel

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DECISION

Date of adoption: 10 May 2012

Case No. 324/09

Veska MAJMAREVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 10 May 2012,
with the following members present:

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, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 29 September 2009 and registered on 4 December 2009.
2. On 24 November 2010, the Panel requested additional information from the complainant. However, no response was received.
3. On 6 and 9 September 2011, the Panel tried to contact the complainant by phone, without success.
4. On 7 February 2012, 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 19 March 2012, UNMIK submitted its response.

II. THE FACTS

6. The complainant is the mother of Mr Aleksandar Majmarević.
7. The complainant states that in the afternoon of 18 July 1998, her son was shot dead by members of the Kosovo Liberation Army (KLA) in the village of Rahovec/Orahovac during a KLA attack on the village. The complainant states that they were able to retrieve Mr Aleksandar Majmarević's body only late at night in order to bury him.
8. The complainant states that nobody was apprehended and punished in relation to the killing of her son. However, no statement is made by the complainant that Mr Aleksandar Majmarević's killing was ever reported to UNMIK Police or to other UNMIK authorities.

III. THE COMPLAINT

9. The complainant complains about UNMIK's alleged failure to properly investigate into the killing of her son.
10. The Panel considers that the complainant may be deemed to invoke a violation of the right to life of her son guaranteed by Article 2 of the European Convention on Human Rights (ECHR).

IV. THE LAW

11. 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.
12. The complainant alleges in substance the lack of adequate criminal investigation into the killing of her son.
13. The SRSG argues that Mr Aleksandar Majmarević was killed on 18 July 1998, almost a year before UNMIK took responsibility for the territorial administration of Kosovo under the mandate of United Nations Security Council Resolution 1244 of 10 June 1999. The SRSG further states that no file on the matter has been found and that the complainant does not provide any information as to whether the killing was reported to UNMIK in order to commence an investigation by the UNMIK Police to attempt to identify 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 the complaint is inadmissible.
14. 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; see also Human Rights Advisory Panel, *Bulatović*, no. 165/09, decision of 21 December 2011 § 17).

15. The Panel notes, however, that there is no indication that in the instant case UNMIK authorities were informed or otherwise became aware of Mr Aleksandar Majmarević'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 Aleksandar Majmarević's death under Article 2 of the ECHR.
16. 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