



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: 11 May 2012

Case No. 82/09

R. Š.

against

UNMIK

The Human Rights Advisory Panel, on 11 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 16 April 2009 and registered on 30 April 2009.
2. On 27 April 2011 and 4 January 2012, the Panel requested additional information from the complainant. However, no response was received.
3. On 29 December 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.
4. On 30 March 2012, UNMIK submitted its response.

II. THE FACTS

5. The complainant is the widow of Mr D.Š.
6. The complainant states that on 27 February 1999, Mr D.Š. was abducted and killed by members of the Kosovo Liberation Army in the area of Hoca i Madhe/Velika Hoča in Rahavec/Orahovec.
7. Mr D.Š.'s mortal remains were found shortly thereafter by the OSCE Verification Mission in Kosovo and immediately buried.
8. No statement is made by the complainant that the killing of Mr D.Š. 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. THE COMPLAINT

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

IV. THE LAW

12. 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.
13. The complainant alleges the lack of an adequate criminal investigation into the killing of her husband.
14. The SRSG argues that Mr D.Š. was killed before UNMIK took responsibility for the territorial administration of Kosovo under the mandate of 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 D.Š.'s killing was made to UNMIK in order to facilitate the investigation by 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 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).
16. The Panel notes, however, that there is no indication that in the instant case UNMIK authorities were informed or otherwise became aware of Mr D.Š.'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 D.Š.'s death under Article 2 of the ECHR.
17. It follows that 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