



The Human Rights Advisory Panel

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DECISION

Date of adoption: 9 June 2012

Case No. 48/09

P. S.

against

UNMIK

The Human Rights Advisory Panel, sitting on 9 June 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 27 March 2009 and registered on 14 April 2009.
2. On 27 April 2011, the Panel requested further information from the complainant. On 5 August 2011, the complainant provided his response.
3. On 16 April 2012, the complaint was communicated to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on admissibility. On 16 May 2012, the Panel received UNMIK's response.

II. THE FACTS

4. The complainant is the son of Mrs D.S.
5. The complainant states that sometime between 23 and 25 July 1999, Mrs D.S. was abducted near her home in Novobërde/Novo Brdo municipality by unidentified persons. Since that time her whereabouts have remained unknown.
6. The disappearance was reported to KFOR and to UNMIK Police.
7. The International Committee of the Red Cross (ICRC) opened a tracing request for Mrs D.S, which remains open until now. Likewise, her name appears in the database compiled by the UNMIK Office on Missing Persons and Forensics.
8. 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

9. The complainant complains about UNMIK's alleged failure to properly investigate the abduction of his mother. The complainant in essence also complains about the fear, pain and anguish that he suffered because of this situation.
10. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of Mrs D.S., 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

11. 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.
12. The complainant alleges the lack of an adequate criminal investigation into the abduction of his mother and mental pain and suffering caused to him by the situation surrounding her abduction.
13. In his comments, the SRSG raises no objection to the admissibility of the complaint.
14. The Panel considers that the complaint raises serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.

15. No other ground for declaring the complaint inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member