



The Human Rights Advisory Panel

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DECISION

Date of adoption: 21 August 2012

Case No. 41/09

R. A.

against

UNMIK

The Human Rights Advisory Panel, sitting on 21 August 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 30 March 2009.
2. On 21 May 2009, the Panel requested additional information from the complainant. The complainant responded on 8 June 2009.
3. On 25 September 2009, the Panel wrote to the Public Prosecutor of the District Public Prosecutor's Office (DPPO) in Prishtinë/Priština. The Panel received the DPPO's response on 9 October 2009.
4. On 30 October 2009, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the complaint. The SRSG provided UNMIK's response on 23 November 2009.

5. On 13 January 2010, the Panel forwarded the SRSG's comments to the complainant and invited him to submit further comments if he so wished. Additional comments from the complainant were received on 15 February 2010.
6. On 30 November 2010, the Panel re-communicated the case to the SRSG for comments on admissibility, in light of the additional information received. On 26 January 2011, the SRSG provided UNMIK's further comments on the admissibility of the complaint.
7. On 12 August 2011, the Panel forwarded the SRSG's comments to the complainant and requested him to submit his counter-comments, if any. The complainant provided his response on 16 September 2011.
8. On 9 November 2011, the Panel requested additional information in relation to the case from the Chief Prosecutor at the DPPO in Prishtinë/Priština. The Chief Prosecutor responded on 14 November 2011.
9. On 21 December 2011, in light of the additional information received, the Panel again re-communicated the case to the SRSG for UNMIK's comments on the admissibility of the complaint. On 13 January 2012, the SRSG provided UNMIK's response.
10. On 18 July 2012, the Panel obtained further information in relation to the case from the Chief Prosecutor at the DPPO in Prishtinë/Priština.

II. THE FACTS

11. The complainant is the uncle of a Mr A, who was found dead on 1 February 2006 in the apartment of a friend, Mr B.
12. According to the information gathered by the investigators, Mr A had arrived the evening before at Mr B's apartment and asked to spend the night there. The following morning, at about 10 am, Mr B noticed that Mr A was feeling unwell and called a neighbour, Ms C for help. They called for medical assistance and a first aid team arrived shortly after. However, Mr A had already passed away.
13. On the day of Mr A's death, an investigation into the case was initiated by the Kosovo Police Service (KPS). On 2 February 2006, an autopsy was conducted on Mr A's body by a pathologist from the Medical Examiner's Office of UNMIK's Office on Missing Persons and Forensics (OMPF). The pathologist report, which was finalised on 15 March 2006, stated that Mr A died of acute respiratory failure and gross haemorrhagic pulmonary oedema probably due to toxicity. The report also noted that the cause of death could only be confirmed through a proper toxicological analysis. The report advised the police "[t]o make arrangements for toxicology." However, this was not done due to the lack of toxicology laboratory facilities in Kosovo at that time.
14. From 19 March 2006 onwards, further investigation activities were carried out by the KPS under the supervision of the DPPO in Prishtinë/Priština.
15. On 31 January 2008, the public prosecutor requested a pre-trial judge to issue a written order for DNA tests to be conducted on samples and evidence gathered at the crime scene and during the autopsy in 2006. The prosecutor specified that such an order had been requested by the KPS in order to ascertain the cause of death of Mr A.

16. On 1 February 2008, the prosecutor's request was granted by the pre-trial judge, who ordered the KPS forensic laboratory to carry out the above-mentioned tests.
17. On 3 November 2008 and again on 18 March 2009, the public prosecutor submitted requests for toxicological analysis to the OMPF toxicology laboratory, which had been installed between the end of 2006 and the beginning of 2007, becoming operational in March 2007.
18. The toxicological report dated 6 April 2009, did not establish any clear result with regard to the cause of death.
19. On 7 October 2009, an expert was appointed by the District Court of Prishtinë/Priština in order to give a technical opinion on Mr A's death in light of the autopsy report of 15 March 2006 and the toxicological report of 6 April 2009.
20. Following the expert's advice, on 23 December 2009, a team of four experts was appointed to provide their technical opinion on the case. The experts gave their opinion on 5 July 2010.
21. The investigation into the death of Mr A is still ongoing.

III. THE COMPLAINT

22. The complainant complains about UNMIK's alleged failure to properly investigate the death of his nephew. In particular, he claims that the investigation into his nephew's death was unduly delayed by the authorities and that, due to this delay, the definitive cause of death of Mr A could not yet be ascertained.
23. The Panel considers that the complainant may be deemed to invoke a violation of the right to life of his nephew, guaranteed by Article 2 of the European Convention on Human Rights (ECHR).

IV. THE LAW

24. 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.

A. Whether all avenues for review have been pursued

25. In his comments on the admissibility of the complaint, the SRSG argues that the complaint is *prima facie* inadmissible pursuant to Section 3.1 of UNMIK Regulation No. 2006/12. The SRSG is of the view that all remedies have not been exhausted as an investigation is still pending at the DPPO in Prishtinë/Priština.
26. In this regard, the Panel notes that the SRSG has not indicated any specific legal remedy available to the complainant with regard to the effectiveness of the investigation. For its part, the Panel does not see any such remedy. The fact that the matter is currently under investigation has no bearing on the object of the complaint: the effectiveness of the investigation itself (see Human Rights Advisory Panel (HRAP), *D.P.*, no. 04/09, decision

of 6 August 2010; see also HRAP, *Stojković*, no. 87/09, decision of 11 August 2011). The Panel therefore rejects the objection raised by the SRSG.

B. Whether the complaint is not manifestly ill-founded

27. Furthermore, the SRSG argues that the complaint is unsubstantiated, as the complaint does not contain sufficient evidence that UNMIK acted in a non-diligent manner with respect to the duty to investigate Mr A's death. According to the SRSG, the death of Mr A was not described as a "violent death" in the autopsy report. Moreover, UNMIK authorities fulfilled their duties in connection with the investigation, whereas the delay in carrying out the toxicological test was due to the fact that, at the time of the event, there was no facility in Kosovo to carry out such tests.
28. In this regard, the Panel refers to the case law of the European Court of Human Rights stating the duty of relevant authorities under Article 2 of the ECHR to conduct an effective investigation in all cases of killing and other suspicious deaths. The Court has established that such duty to investigate extends beyond violent death to all cases of death other than natural causes, whether the perpetrators are private persons or State agents or are unknown (see European Court of Human Rights (ECtHR), *Kolevi v. Bulgaria*, no. 1108/02, judgment of 5 November 2009, § 191; see also ECtHR (Grand Chamber), *Silih v. Slovenia*, no. 71463/01, judgment of 9 April 2009, §§ 155-156; see also HRAP, *Canhasi*, no. 04/08, opinion of 12 November 2008, § 29).
29. The Panel notes that Mr A died on 1 February 2006 and that a criminal investigation was initiated on the same date. The Panel also notes that the investigation is still open. In this regard, the Panel considers that the complainant has put forward relevant facts upon which the alleged violation of Mr A's right to life under Article 2 of the ECHR may be based. For this reason, the Panel rejects the SRSG's objection that the complaint is unsubstantiated and therefore manifestly ill-founded.
30. Moreover, 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.
31. No other ground for declaring this part of the complaint inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member