



DECISION

Date of adoption: 15 February 2013

Case No. 342/09

Svetislav MIRIĆ

against

UNMIK

The Human Rights Advisory Panel on 15 February 2013,
with the following members taking part:

Mr Marek NOWICKI, Presiding Member
Ms Christine CHINKIN
Ms Françoise TULKENS

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 21 April 2009 and registered on 4 December 2009.
2. On 15 December 2010 and 29 December 2010, the Panel requested further information from the complainant. On 3 February 2011, the Panel received the complainant's response.
3. On 18 July 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. On 31 August 2011, the SRSG provided UNMIK's response.

4. On 18 May 2012, the Panel re-communicated the case to the SRSG for UNMIK's further comments on the admissibility of the complaint. On 28 December 2012, the SRSG provided UNMIK's response.

II. THE FACTS

5. The complainant is the son of Mrs Marta Mirić and the brother of Ms Marica Mirić.
6. The complainant states that on 26 June 1999, his mother was assaulted in their family home in Bellopole/Belo Polje village, Pejë/Peć municipality, by numerous Albanian men, including one wearing KLA insignia. The attackers assaulted his mother, blindfolded her and tied her to a chair, and then in her hearing, three of them raped his sister who had mental and physical disabilities and killed her by slitting her throat with a razor.
7. The complainant states that the assault, rape and murder were reported to KFOR and to an investigative judge of the District Court of Belgrade. According to documents provided by UNMIK, it was made aware of these allegations in December 2003.
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 rape and murder of his sister and assault of his mother.
10. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of Ms Marica Mirić, guaranteed by Article 2 of the European Convention on Human Rights (ECHR), violations of Ms Marica Mirić and Mrs Marta Mirić's rights to be free from torture and inhuman or degrading treatment, guaranteed by Article 3 of the ECHR and by Article 7 of the International Covenant on Civil and Political Rights (ICCPR), and violations of Ms Marica Mirić's right to be free from gender-based violence, guaranteed by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

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 rape and murder of his sister and torture of his mother.

13. In his comments, the SRSG argues that there is no information establishing that the complainant ever reported the matter to UNMIK and, as such UNMIK had no obligation to conduct an investigation capable of determining whether any death was caused unlawfully and leading to the identification and punishment of those responsible for the death of the victim.
14. The Panel rejects the SRSG's argument that, because the complainant never reported the matter to UNMIK, the latter did not have an obligation to carry out an investigation into Ms Marica Mirić's rape and murder and Mrs Marta Mirić's torture. In this regard, 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 [GC], *İlhan 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 [GC], *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, §§ 16- 17).
15. Although the SRSG did not put forth any arguments concerning the admissibility of Article 3 in these circumstances, the Panel refers to the case law of the European Court of Human Rights, which sets out that the duty to investigate serious violations of human rights, already accepted under Article 2 of the ECHR, extends to the alleged violations of the right to be free from torture and inhuman or degrading treatment, guaranteed by Article 3 of the ECHR (see among other authorities, ECtHR, *Koky and Others v. Slovakia*, no. 13624/03, judgment of 12 June 2012, § 215; *M. and Others v. Italy and Bulgaria*, no. 40020/03, judgment of 31 July 2012, § 100. Similarly, the Human Rights Committee has held that pursuant to Article 7 read in conjunction with Article 2(3) of the ICCPR, "complaints about ill-treatment must be investigated promptly and impartially by competent authorities" (see HRC, General Comment No. 20, 44th session, 1992 § 14). Further, under general international law and specific human rights instruments, States must act with due diligence to investigate and punish acts of gender-based violence (see Committee on the Elimination and Discrimination against Women General Recommendation No. 19, 1992).
16. The Panel notes that according to documents provided by UNMIK, UNMIK authorities became aware of these facts, at the latest in 2003. The Panel considers that from this moment onwards, UNMIK authorities were obliged to commence an effective investigation into these matters pursuant to Article 2 and Article 3 of the ECHR.
17. For these reasons, the Panel considers that the complaint in its entirety 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.

18. 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