



The Human Rights Advisory Panel

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DECISION

Date of adoption: 6 August 2010

Case No. 04/09

D. P.

against

UNMIK

The Human Rights Advisory Panel on 6 August 2010,
with the following members present:

Mr Marek NOWICKI, Presiding Member
Mr Paul LEMMENS
Ms Christine CHINKIN

Assisted by
Mr Rajesh TALWAR, 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 1 December 2008 and registered on 21 January 2009.
2. On 27 April 2009, the Panel communicated the case to the SRSG for UNMIK's comments on the admissibility of the case.

3. On 15 July 2009, UNMIK provided its response on the admissibility of the case. The response included a substantial amount of confidential information which, in UNMIK's estimation, could not be released to any third party, including the complainant.
4. On 5 August 2009, the Panel sent UNMIK's response to the complainant for comments, with the confidential sections omitted. On 21 November 2009, the Panel amended its Rules of Procedure to include Rule 39*bis*, which clarified the procedure for requesting and granting requests for confidentiality. On 25 November 2009, the Panel formally granted UNMIK's request for confidentiality of certain information.
5. Having received no reply from the complainant, the Panel re-communicated UNMIK's response to the complainant on 2 December 2009. On 30 December 2009, the complainant provided his response.
6. On 26 February 2010, the Panel forwarded the complainant's reply to UNMIK for information and provided the opportunity to reply if it so wished. UNMIK has not availed itself of the opportunity to provide further comments.

II. THE FACTS

7. The complainant, Mr D.P., is the son of Ms P.P. Ms P.P. resided in Prishtinë/Priština while Mr D.P. resided outside of Kosovo.
8. According to Ms S.J., a neighbour, at around 16.00 hours on 28 June 1999 three men in black Kosovo Liberation Army (KLA) uniforms abducted Ms P.P. from her flat in Prishtinë/Priština. During the abduction, another neighbour, Mr Z.Đ., attempted to intervene and was also abducted.
9. After being informed of the abduction, the complainant approached governmental authorities in Belgrade, embassies of those states with a military presence in Kosovo, non-governmental organisations, religious organisations, and the media. The complainant states that he contacted UNMIK and KFOR a number of times between the abduction and the date when he was informed that Ms P.P.'s mortal remains had been located (see below, § 13).
10. In a letter to the Mayor of Niš dated 14 July 1999, the interim Special Representative of the Secretary-General (SRSG) indicated that UNMIK would do its best in conjunction with KFOR to determine the fate of Ms P.P.
11. On 18 August 1999, the Serbian Ministry of the Interior submitted the complainant's case to KFOR. KFOR provided the case to UNMIK on 16 September 1999.
12. UNMIK Police formally initiated the investigation of the case at the beginning of 2000 after UNMIK Police in Mitrovica/Mitrovicë took a statement from a relative of the complainant. The Mitrovica/Mitrovicë Regional Investigation Unit then forwarded the case to the Prishtinë/Priština Town Investigation Unit, which commenced its investigation of the case.
13. On 18 July 2000, the body of Ms P.P. was located by investigators and was positively identified by 15 November 2000. UNMIK handed over the mortal remains of Ms P.P. to the complainant on 15 August 2001 at the Merdare KFOR checkpoint.

14. In August 2001, the case was taken over by the Central Criminal Investigation Unit (CCIU) of UNMIK Police, which had been established in November 1999.
15. The CCIU continued the investigation during 2001 and 2002, and the police investigation was closed in 2003 due to insufficient evidence. The complainant was notified of the closure of the UNMIK police investigation during the course of the Panel's examination of his complaint (in August 2009).
16. 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.
17. Although UNMIK Police ceased to actively investigate the case in 2003, the investigation remains open under the responsibility of a EULEX International Prosecutor at the District Court in Prishtinë/Priština.

III. COMPLAINTS

18. The complainant complains about UNMIK's alleged failure to properly investigate the kidnapping and murder of his mother. He also complains about the mental pain and suffering allegedly caused by this situation.
19. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of his mother's right to life, protected by Article 2 of the European Convention on Human Rights (ECHR) and a violation of his right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the ECHR.

IV. THE LAW

20. 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.
21. Section 3.1 of UNMIK Regulation No. 2006/12 provides that the Panel may only deal with a matter after it determines that all other available avenues for review of the alleged violations have been pursued.
22. The complainant alleges in substance the lack of an adequate criminal investigation into the kidnapping and murder of his mother, and the way he as a next-of-kin has been treated by the authorities. The Panel notes that Ms P.P. was abducted on 28 June 1999, which is more than ten years ago.
23. The SRSB argues that the case is *prima facie* inadmissible. He is of the view that all other avenues for review have not been exhausted because the complainant's case is pending with a EULEX International Prosecutor at the District Court in Prishtinë/Priština.

24. The Panel notes that in his comments the SRSG has not indicated any specific legal remedy available to the complainant with regard to the effectiveness of the investigation itself. 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.
25. The Panel therefore concludes that the complaint cannot be rejected for non-exhaustion of remedies within the meaning of Section 3.1 of UNMIK Regulation No. 2006/12.
26. The Panel furthermore considers that the complaints under Articles 2 and 3 of the ECHR raise serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that this complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
27. No other ground for declaring the complaint inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member