



The Human Rights Advisory Panel

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DECISION

Date of adoption: 21 October 2010

Case No. 44/09

J. D.

against

UNMIK

The Human Rights Advisory Panel on 21 October 2010,
with the following members taking part:

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, 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 31 March 2009 and registered on 17 April 2009.
2. On 27 May 2009, the Panel requested further information from the complainant. The complainant responded on 15 June 2009.

3. On 26 February 2010, 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 April 2010, UNMIK provided its response.
5. On 19 May 2010, the Panel sent UNMIK's response to the complainant for comments. The complainant did not reply by the deadline of 9 June 2010.

II. THE FACTS

6. The complainant states that her husband, Mr Z.D., left from his home in the Municipality of Lipjan/Lipljan for work on 2 November 1999. Mr Z.D. never returned home.
7. The complainant states that she reported the disappearance to "all institutions in [Kosovo and Metohija]" and submits a certificate confirming that the International Committee of the Red Cross opened a tracing request for Mr Z.D. on 11 November 1999. According to the complainant, the mortal remains of Mr Z.D. were located and identified in March/April 2000.
8. UNMIK's response states that, according to documents from the former UNMIK Office on Missing Persons and Forensics (OMPF), there appears to have been a "proper and thorough forensic investigation and examination" which led to the "handover of the mortal remains of the abducted person approximately four (4) months following his disappearance."
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. COMPLAINT

10. The complainant complains about UNMIK's alleged failure to properly investigate the kidnapping and murder of her husband. She also complains about the mental pain and suffering allegedly caused by this situation.
11. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of her husband's right to life, guaranteed by Article 2 of the European Convention on Human Rights (ECHR) and a violation of her own right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the 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. In his comments, the SRSG does not raise any objection to the admissibility of the complaint.
14. The Panel 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.
15. The Panel does not see any other ground for declaring it inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member