



DECISION

Date of adoption: 13 March 2010

Case No. 56/08

Haki DEDA and Vahide DEDA

against

UNMIK

The Human Rights Advisory Panel sitting on 13 March 2010,
with the following members present:

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

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, as amended,

Having deliberated, decides as follows:

I. THE FACTS

1. The complainant Mr. Haki Deda is the father of A.D. The complainant Ms. Vahide Deda is the mother of E.D.
2. According to the complainants, the facts can be summarized as follows.
3. On 18 October 2002, an UNMIK international police officer was involved in a traffic accident in Doganaj/Doganović village, Kaçanik/Kacanik Municipality.

The UNMIK international police officer was driving a private vehicle. According to witness statements given to the Kosovo Police Service (KPS) the UNMIK international police officer overtook another vehicle and shortly thereafter struck two children. The UNMIK international police officer stopped and assisted the injured children, accompanying one of them to the hospital.

4. The accident resulted in the death of E.D. and the serious injury of A.D. Both E.D. and A.D. were seven years old at the time of the accident.
5. The KPS secured the accident site while the investigative judge conducted an investigation pursuant to the Law on Criminal Proceedings (Official Gazette no. 26/86) in force at the time of the filing of the claim by virtue of UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo. Although not explicitly stated in the documents provided by the complainant, it is clear that criminal charges were not pursued against the UNMIK international police officer.
6. The first complainant, Mr. Haki Deda, and Mr. Beqir Deda, father of E.D., thereafter filed a motion to carry out an investigation against the UNMIK international police officer under Article 171(5) of the Criminal Law of the Socialist Autonomous Province of Kosovo (CL SAPK), Severe Criminal Acts against Traffic Security, in conjunction with Article 165(3) of the CL SAPK, Endangering Public Traffic.
7. The Municipal Court of Kaçanik/Kacanik refused the motion in a decision dated 11 January 2005 (Hp. No. 92/02). In its reasoning, the court noted that UNMIK Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo prohibited the court from conducting proceedings against the UNMIK international police officer.
8. The 11 January 2005 decision of the Municipal Court of Kaçanik/Kacanik noted that Messrs Haki and Beqir Deda could file an appeal with the District Court of Prishtinë/Priština within eight days of the decision. After consulting their attorneys, Messrs Haki and Beqir Deda did not file an appeal against that decision.
9. The 11 January 2005 decision also noted that Messrs Haki and Beqir Deda could “realize compensation with UNMIK and KFOR Offices through administrative procedures.” Similarly, after consulting their attorneys, Messrs Haki and Beqir Deda decided not to approach UNMIK regarding compensation for the death and injury of the two children.

II. COMPLAINTS

10. The complainants allege that the inability to bring legal proceedings against the UNMIK international police officer on the basis of UNMIK Regulation No. 2000/47 resulted in a violation of Article 3 of the Universal Declaration of Human Rights (UDHR), the right to life, liberty and security of person, of Article 2 of the European Convention on Human Rights (ECHR), the right to

life, Article 5 of the ECHR, the right to liberty and security, Article 6 of the ECHR, the right to a fair trial in civil proceedings, as well as Article 6 §1 of the Convention on the Rights of the Child (CRC), the child's right to life.

III. PROCEEDINGS BEFORE THE PANEL

11. The complaint was initially introduced by Mr. Haki Deda on 11 December 2008 and registered by the Panel on 12 December 2008.
12. On 1 April 2009 and 12 June 2009 the Panel wrote to the complainant requesting further information.
13. The complainant responded through his lawyer, Mr. Albert Islami, with additional information on 2 July 2009. On that occasion counsel stated that he appeared also on behalf of Ms. Vahide Deda, wife of Mr. Beqir Deda.

IV. THE LAW

14. Before considering the case on its merits, the Panel has to decide whether to accept the case taking into account the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.

A. Right to life

15. The complainants invoke a violation of Article 2 of the ECHR, Article 3 of the UDHR, as well as Article 6 §1 of the CRC, to argue that UNMIK violated the procedural aspect of the right to life of E.D. and A.D. because they were unable to prosecute the UNMIK international police officer for the alleged criminal offences that resulted in the death of E.D. and the serious injury of A.D. as subsidiary prosecutors.
16. Article 2 of the ECHR states, in relevant part, that "everyone's right to life shall be protected by law. No one shall be deprived of life intentionally."
17. Article 3 of the UDHR states, in relevant part, that "everyone has the right to life."
18. Article 6 § 1 of the CRC states that "States parties recognize that every child has the inherent right to life."
19. Of the invoked provisions above, the Panel notes that, at least insofar as their wording is concerned, the protection in Article 2 of the ECHR is the most expansive since that provision not only prohibits the taking of life, but it also obliges the authorities to protect the right to life by law. As such, the Panel will review the admissibility of the complaint under the right to life under the said provision of the ECHR.
20. Article 2 of the ECHR, which safeguards the right to life, ranks as one of the most fundamental provisions in the ECHR and enshrines one of the basic values of democratic societies. The Panel must subject allegations of breach of

this provision to the most careful scrutiny (see ECtHR, *Nachova and Others v. Bulgaria*, no. 43577/98 & 43579/98, judgment of 6 July 2005, § 93; ECtHR, *Angelova and Illiev v. Bulgaria*, no. 55523/00, judgment of 26 July 2007, § 91).

21. The obligation to protect the right to life under Article 2 of the EHCR, read in conjunction with a State's general duty under Article 1 of the ECHR to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see ECtHR, *McCann and Others v. United Kingdom*, no. 18984/91, judgment of 27 September 1995, § 161; ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, Reports 1998-I, p. 324, § 86; ECtHR, *Kelly v. the United Kingdom*, no. 30054, judgment of 4 May 2001, §§ 94-98; see also Human Rights Advisory Panel (hereafter HRAP), *Canhasi*, no. 04/08, opinion of 12 November 2008, §§ 27-28). Thus, Article 2 of the ECHR not only protects one's substantive right not to be deprived of his or her life, but also imposes on the State a procedural obligation to conduct an official investigation when a person is intentionally deprived of their life.
22. According to Section 2 of the Regulation the Panel has jurisdiction over complaints relating to alleged violations of human rights that have occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights.
23. Concerning the alleged violation of the right to life enshrined in the above-referenced instruments, the Panel notes that the death of E.D. and serious injury of A.D. occurred on 18 October 2002.
24. Likewise, the judgment of the Municipal Court of Kaçanik/Kacanik was issued on 11 January 2005. Because the complainants decided not to appeal that judgment, it became final eight days after the decision, *i.e.* on 19 January 2005.
25. Since the death, serious injury, and conclusion of the proceedings all occurred prior to 23 April 2005, the Panel must declare any complaints concerning the right to life, either in the procedural or substantive sense, inadmissible *ratione temporis*.

B. Right to a fair trial

26. The complainants allege that their right to a fair trial was violated due to their inability to proceed with their case against the UNMIK international police officer in violation of Article 6 § 1 of the ECHR.
27. However, since the proceedings complained of were concluded no later than 19 January 2005, the Panel holds that this aspect of the complaint is not admissible for the reasons stated above.

C. Right to liberty and security

28. The complainants also allege a violation of Article 3 of the Universal Declaration of Human Rights (UDHR), insofar as it concerns the right to liberty and security of person and Article 5 of the ECHR, the right to liberty and security.
29. The Panel notes that the provisions cited prohibit the relevant authorities from arbitrarily interfering with the personal liberty of individuals through incarceration, detention or other deprivations of liberty. As such, the cited provisions are not applicable to the facts presented by the complainants.
30. In the circumstances this part of the complaint must therefore be rejected as being manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member