



The Human Rights Advisory Panel

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OPINION

Date of adoption: 13 December 2013

Case No. 41/09

R. A.

against

UNMIK

The Human Rights Advisory Panel, on 13 December 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, makes the following findings and recommendations:

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 requested information from the Prishtinë/Priština District Public Prosecutor. The Panel received his 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.
5. The SRSG provided UNMIK's response on 23 November 2009.
6. 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.
7. Additional comments from the complainant were received on 15 February 2010.
8. On 30 November 2010, the Panel re-communicated the case to the SRSG for comments on admissibility, in light of the additional information received.
9. On 26 January 2011, the SRSG provided UNMIK's response.
10. On 12 August 2011, the Panel forwarded the SRSG's comments to the complainant and requested him to submit his counter-comments, if any.
11. The complainant provided his response on 16 September 2011.
12. On 9 November 2011, the Panel requested additional information in relation to the case from the Prishtinë/Priština District Public Prosecutor.
13. The District Public Prosecutor responded on 14 November 2011.
14. On 9 December 2011, the Panel received a copy of the investigative file from the Prishtinë/Priština District Public Prosecutor's Office (DPPO). According to the DPPO, the case file was complete.
15. On 21 December 2011, the Panel provided the SRSG with a copy of the investigative file and requested him to provide additional UNMIK's comments on the admissibility of the complaint.
16. On 13 January 2012, the SRSG provided UNMIK's response.
17. On 18 July 2012, the Panel obtained further information in relation to the case from the Prishtinë/Priština District Public Prosecutor.
18. On 21 August 2012, the Panel declared the complaint admissible.
19. On 7 September 2012, the Panel forwarded its decision to the SRSG requesting UNMIK's comments on the merits of the complaint.
20. On 8 October 2012, the SRSG provided UNMIK's response.

II. THE FACTS

21. The facts of the matter have been established based on the complainant's submissions and the investigative files presented to the Panel. In the present case, the Panel received

investigation documents previously held by the UNMIK Office on Missing Persons and Forensics (OMPF) and the investigative case file held by the Prishtinë/Priština DPPO.

22. Concerning disclosure of information contained in the files, the Panel recalls that the Prishtinë/Priština DPPO has made available investigative files for the Panel's review under a pledge of confidentiality. In this regard, the Panel must clarify that although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of relevant investigation steps taken by investigative authorities is provided in the paragraphs to follow.
23. The complainant is the uncle of E.A., who was found dead on 1 February 2006 in the apartment of a friend, Mr A., in Prishtinë/Priština.
24. The investigative file shows that E.A. had arrived at Mr A's apartment in the evening of 31 January 2006 and asked to stay overnight. The following morning, at about 10:00, Mr A noticed that E.A. was unwell and apparently asked a neighbour, Ms B, for help. As the situation appeared serious, they called an ambulance. Even though a first aid team arrived shortly, E.A. had already passed away.
25. On the same day, several teams of the Kosovo Police Service (KPS) visited and inspected Mr A's apartment. The KPS immediately opened an investigation into the death of E.A. Also on that day, a forensic team that included officers from the KPS Regional Forensic Unit and from the Medical Examiner's Office of the UNMIK OMPF, examined E.A.'s body and the room where he had died. The OMPF scene examination report, dated 1 February 2006, states, among other things, that a pack of natural anti-depressants "Kantarion" and a brown bottle with red pills inside had been found in a cupboard in the room. The report also states that the victim had "vomiting substance" in his mouth and some injuries on the left temporal side, at the end of the right eyebrow, over the arms and hands. The report states that the death appeared to be "suspicious". It also describes additional evidence gathered at the crime scene, including blood and urine samples, finger prints, cut nails and cigarette butts.
26. On 1 February 2006, the KPS took statements from three witnesses, Mr A, Ms B and the victim's father, and filed a criminal report with the Prishtinë/Priština DPPO.
27. On 2 February 2006, an autopsy on E.A.'s body was conducted by UNMIK OMPF, the only agency authorised to conduct examinations in the field of forensic medicine in Kosovo at that time. The autopsy report, which was finalised on 15 March 2006, states that E.A. had died because of "acute respiratory failure and gross haemorrhagic pulmonary oedema" which was "probably due to toxicity". The report states that the deadly toxicity was most likely a result of the abuse of narcotic drugs; this conclusion was supported by circumstantial evidence, including a powdered substance found in E.A.'s stomach and the presence of "scars of previously sustained incised injuries" of the kind of those seen in cases of drug abuse. The report also states that, apart from the injuries resulting from the therapeutic intervention during the perimortem period, the body did not present "significant fresh injuries", or "evidence or marks of violence" purported against E.A. In the same report, the OMPF pathologist advised the police "[t]o make arrangements for toxicology", as such analysis could confirm the cause of death.
28. The complainant states that between February and the beginning of March 2006 he complained to the pathologist that the autopsy report was too general. The pathologist

reportedly informed him that the report's findings could only be clarified through toxicology analysis, which had to be done through a laboratory outside Kosovo and therefore would require some time.

29. On 19 March 2006, the public prosecutor of the Prishtinë/Priština DPPO in charge of the case requested the KPS to gather further information in relation to the death of E.A. In particular, he requested that samples and other evidence that had been gathered were examined and potential witnesses were heard.
30. On 27 March 2006, the KPS provided the prosecutor with an update on the investigation and stressed that the cause of death could be definitely established only through toxicology analysis.
31. On 31 March 2006, the prosecutor again addressed the KPS with the same request to gather further information, as in the request of 19 March 2006.
32. Between 6 and 23 May 2006, the KPS interviewed three individuals, whose documents had been found in E.A.'s possession. However, these interviews provided no new leads.
33. On 15 August 2007, the complainant requested the Prishtinë/Priština District Public Prosecutor to reassign this case to an international prosecutor. The complainant alleged that the prosecutor in charge of the case was intentionally delaying the investigation and maintained an "arrogant" behaviour towards the complainant. No action with respect to this request is reflected in the file.
34. On 15 October 2007, the public prosecutor of the Prishtinë/Priština DPPO in charge of the case sent another request for additional investigation to the KPS, with the same content as the two previous requests of 19 and 31 March 2006 (see §§ 29 and 31 above).
35. On 5 December 2007, the KPS interviewed Mr A as a suspect in relation to the offence of Facilitating Acquisition or Use of Dangerous Narcotics Drugs, Psychotropic Substances or Analogues, pursuant to Article 231 of the Provisional Criminal Code of Kosovo. Mr A stated that E.A. had extensively used antidepressants, but rejected the suggestion that he had consumed any poisonous substance while at Mr A's place.
36. On 28 January 2008, the KPS updated the prosecutor about the progress of the investigation.
37. On 31 January 2008, the same public prosecutor requested a pre-trial judge of the Prishtinë/Priština District Court to issue an order for DNA analyses on the samples and evidence collected by the forensics at the scene on 1 February 2006 and during the autopsy. According to the prosecutor, such analyses were needed to ascertain the cause of death of E.A. On 1 February 2008, the requested order was issued.
38. On 22 February 2008, the KPS interviewed Mr B. for the second time, but no new information transpired.
39. On 3 November 2008, the public prosecutor of the Prishtinë/Priština DPPO in charge of the case requested the OMPF laboratory, which had in the meantime been set up and had become fully operational in March 2007, to conduct the necessary toxicology analysis. However, the file reflects no action in respect of this request at that time.

40. 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.
41. On 19 March 2009, the same public prosecutor submitted another request for toxicology analysis to the EULEX OMPF. The complainant states that this request was issued after he had followed up on the case with the prosecutor and that he had personally delivered the prosecutor's request to the OMPF, to ensure that it was safely received.
42. The OMPF toxicology report, dated 30 March 2009, indicated the presence of a commonly used drug in E.A.'s blood; however it did not clarify the cause of death.
43. On 14 September 2009, the prosecutor requested the pre-trial judge to nominate an expert to evaluate the autopsy report of 15 March 2006 and the toxicology report of 30 March 2009, in order to clarify cause of E.A.'s death. The expert was accordingly appointed on 7 October 2009.
44. On 15 December 2009, the expert advised that this examination had been assigned to a group of experts, for a complex expert examination. On 23 December 2009, a team comprising four experts, a forensic expert, a toxicologist, a forensic medical examiner, and a pharmacologist was appointed.
45. On 5 July 2010, the team of experts delivered their report. They stated that all evidence gathered thus far indicated that the death was caused by intoxication (poisoning). According to the experts, there is a high probability that the immediate cause of E.A.'s death (see § 27 above) was the toxic effect of reactions to the combination of different medications. However, their findings were not conclusive as the level of the medical substances in the deceased's blood could not be ascertained.

III. THE COMPLAINT

46. The complainant complains about UNMIK's alleged failure to properly investigate the death of his nephew. In this regard, the Panel deems that he invokes a violation of the procedural limb of Article 2 of the ECHR.

IV. THE LAW

A. Alleged violation of the procedural obligation under Article 2 of the ECHR

1. The Parties' submissions

47. The complainant complains that the circumstances surrounding the death of his nephew are still unascertained. He claims that, according to the autopsy report, the cause of death could only be established through toxicology analysis; however, the delay in obtaining this analysis, which lasted from 2006 to 2009, compromised the ability of the authorities to ascertain the circumstances surrounding the death.

48. The complainant states that on several occasions he followed up with the pathologist and with the DPPO on the status of the investigation. He adds that in March 2009, because of the inactivity of the relevant investigative authorities, he had to personally deliver the request for toxicology analysis from the DPPO to the forensic laboratory. The complainant claims that the pathologist and the prosecutor behaved arrogantly towards him.
49. The complainant also complains that the investigators' assumption that his nephew was a drug addict is not based on evidence. He claims that his nephew's death might have very well occurred as result of violence or premeditated murder, and that evidence in this regard has not been sufficiently scrutinised by the investigators.
50. In his comments on the merits of the complaint, the SRSG at the outset states that the case at issue "is significantly distinctive from cases where a person was subject to clear violence and was killed as a result of such violence" as the death of E.A. "appeared not to be of such nature". The SRSG states that the circumstances of E.A.'s death indicated a self-inflicted death caused by acute respiratory failure, which was confirmed by the presence of a narcotic substance in the blood of the deceased (see § 42 above). The SRSG further states that the complainant's allegations that his nephew's death may have occurred as a result of violence is not supported by the autopsy (see § 27 above).
51. Nonetheless, the SRSG does not contest that UNMIK had an obligation under Article 2 to investigate the death of E.A. The SRSG considers that the complaint is mainly directed against the UNMIK OMPF and states that the designated pathologist exercised due diligence when conducting the autopsy on E.A.'s body. If it is true that obtaining further toxicology analysis was recommended by the pathologist in order to establish the cause of death, this could not be done at that time, due to the lack of a forensic laboratory in Kosovo, which had only started functioning in March 2007. In this regard the SRSG refers to the case law of the European Court of Human Rights on Article 2 stating that the obligation to investigate shall not be interpreted in a such a way that would impose an "impossible or disproportionate burden" on the authorities involved.
52. With regard to the actions of the police, the SRSG states that the KPS duly conducted an investigation into the death of E.A. He acknowledges that there were delays on the side of the KPS in responding to the prosecutor's requests in that the police undertook the required actions "at the latest in December 2007"; however, those periods of "possible inaction cannot be considered as over lengthy, taking into account the particular circumstances on the ground in Kosovo."
53. For these reasons, the SRSG argues that there was no violation of Article 2 and that the allegations against UNMIK in this regard are unmerited.

2. The Panel's assessment

54. The Panel considers that the complainant invokes a violation of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the ECHR in that UNMIK did not conduct an effective investigation into his nephew's death.
 - a) *General principles on the procedural obligation under Article 2*
55. In order to address the complainant's allegations, the Panel refers to the well-established case-law of the European Court of Human Rights on Article 2 of the ECHR. The Court

has held that “[The] obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, 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 European Court of Human Rights (ECtHR), *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and *Kaya v. Turkey*, judgment of 19 February 1998, § 105, Reports 1998-I; see also ECtHR, *Jasinskis v. Latvia*, no. 45744/08, judgment of 21 December 2010, § 71). The Court has further held that “the obligation to conduct an effective official investigation also arises where death occurs in suspicious circumstances not imputable to State agents” (see ECtHR, *Rantsev v. Cyprus and Russia*, no. 25965/04, judgment of 7 January 2010, § 232; see also, ECtHR, *Menson v. United Kingdom* (dec.), no. 47916/99, ECHR 2003-V; ECtHR, *Kolevi v. Bulgaria*, no. 1108/02, judgment of 5 November 2009, § 191; ECtHR, *Angelova and Iliev v. Bulgaria*, no. 55523/00, judgment of 26 July 2007, §§ 92 - 93). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. The European Court has likewise held that the authorities must act of their own motion once the matter has come to their attention and that they 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, among others, ECtHR, *Rantsev v. Cyprus and Russia*, cited above, at § 232; ECtHR, *Angelova and Iliev v. Bulgaria*, cited above, § 96; ECtHR [GC], *Ilhan v. Turkey*, no. 22277/93, § 63, ECHR 2000-VII; and ECtHR [GC], *Nachova and Others v. Bulgaria*, nos. 43577/98 and 43579/98, judgment of 6 July 2005, § 111, ECHR 2005-VII).

56. When establishing the requirements of such investigation, the Court has held that it must be capable of establishing the cause of the injuries and the identification of those responsible with a view to their punishment. (ECtHR, *Angelova and Iliev v. Bulgaria*, cited above, § 94). While the obligation to investigate is of means only and there is no absolute right to obtain a prosecution or conviction, the authorities must take the reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eye witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death, or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Angelova and Iliev v. Bulgaria*, cited above, § 95; ECtHR [GC], *Nachova and Others v. Bulgaria*, cited above, § 113; and ECtHR, *Ognyanova and Choban v. Bulgaria*, no. 46317/99, judgment of 23 February 2006, § 105). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation’s effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigative work (see ECtHR, *Velcea and Mazăre v. Romania*, no. 64301/01, judgment of 1 December 2009, § 105).
57. A requirement of promptness and reasonable expedition is implicit in the context of an effective investigation within the meaning of Article 2 (see ECtHR, *Rantsev v. Cyprus and Russia*, cited in § 55 above, at § 233, and cases cited therein). In all cases it must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation.

58. The European Court has further stated that there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see ECtHR, *Rantsev v. Cyprus and Russia*, cited above, *ibid.*).

b) Compliance with Article 2 in the present case

59. At the outset, the Panel notes that the SRSB states that the death of E.A. "appeared" not to be of a violent nature, although he does not explicitly contest the existence of UNMIK's obligation to investigate his death. In this regard, the Panel holds that the obligation under Article 2 extends to cases of deaths which occurred in suspicious circumstances. Having regard to the facts, such as the unexplained circumstances surrounding this death (critically recorded by the investigators as being "suspicious"), as well as the inability of the experts to establish unequivocally the cause of his death, the Panel considers that the investigative authorities were obliged to conduct an effective investigation into E.A.'s death.

60. The complainant complains that the actions carried out by UNMIK to investigate his nephew's death were inadequate. In particular he claims that there was an unreasonable delay in carrying out toxicological analysis after the autopsy and that the investigative authorities did not follow all lines of enquiry concerning his nephew's death. The complainant further complains that he did not have proper access to the investigation.

61. The Panel notes that the investigation into E.A.'s case was initiated on the same day as his death, 1 February 2006, and it is still ongoing. However, the period under the Panel's jurisdiction ends on 9 December 2008 (see § 40 above).

62. As to the requirements of promptness and expeditiousness, the Panel again notes that the investigation was commenced on the same day as E.A.'s death and that a number of essential investigative steps were undertaken by the investigative authorities in the immediate aftermath of his death. In particular, immediately after the death had been reported to them, several police teams, including a forensic team, arrived at the scene; photographs were taken, evidence and samples were gathered. The police without delay interviewed the three identified witnesses. As the death was "suspicious", a full autopsy was conducted by a pathologist on the next day, 2 February 2006. The autopsy report released on 15 March 2006 provided a detailed analysis of the clinical findings, identified the immediate cause of death and the most likely reason for it (abuse of drugs).

63. In May 2006, other lines of enquiry were explored by the investigators (see § 32 above); Mr A was interviewed as a suspect and Mr B was re-interviewed as a witness, but no further leads emerged from that activity (see § 35 and 38 above).

64. The Panel notes that there have been flaws and delays in the investigation with respect to the review of some of the evidence gathered. In particular, as the complainant points out, the toxicology analysis which had been recommended by the pathologist in March 2006, was only performed in March 2009, under the authority of EULEX. Furthermore, the Panel notes that on several occasions (February and March 2006, October 2007) the prosecutor of the Prishtinë/Priština DPPO in charge of the case requested the KPS to undertake additional activities, including DNA testing, with regard to the collected evidence. However, there was no response to these requests until January 2008.

65. The SRSG argues that Article 2 shall not be interpreted as imposing a “disproportionate” or “impossible” burden on investigative authorities and that, given the “particular circumstances on the ground in Kosovo”, including the lack of a toxicology laboratory at the moment of E.A.’s death, these delays cannot be considered excessive.
66. The Panel has already held that what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and contexts of the case (see Human Rights Advisory Panel, *Tomanović and Others*, nos. 248/09 and others, opinion of 23 April 2013 § 70; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 70; ECtHR, *Brecknell v. The United Kingdom*, no. 32457/04, judgment of 27 November 2007, § 62). Having assessed the activity carried out by the investigators in the immediate aftermath of the incident, the impossibility of conducting the toxicology analysis in Kosovo until at least March 2007, as well as the limited part of the investigation which falls under its temporal jurisdiction, the Panel considers the above mentioned delays not to be excessive in the circumstances of the case.
67. As regards the complainant’s allegations that the investigation was not adequate in that not all lines of enquiries were followed, the Panel, again, notes that E.A.’s death had been correctly considered as suspicious. However, the autopsy report strongly suggested to the investigative authorities that E.A.’s death was most probably not inflicted on him. The Panel also notes that, although with some delay, all other available leads were explored. However, no additional evidence to suggest that this death was criminal was discovered. For this reason, the Panel finds that the investigation, considered as a whole, cannot be considered ineffective within the meaning of Article 2 of the ECHR.
68. Concerning the complainant’s statement that investigative authorities had showed an arrogant behavior towards him and that for this reason the investigation was not accessible to him, the Panel notes from the complainant’s submissions that he was informed about the status of the investigation, in particular that the investigation was at a stalemate due to the lack of toxicology analysis, to the point that he forwarded on several occasions a request to the authorities to expedite that process. For this reason, the Panel finds that the complainant, as E.A.’s next-of-kin, was sufficiently involved in the investigation and finds no violation of the requirement for an investigation to be open to public scrutiny.
69. The Panel therefore concludes that in the present case there has been no violation of Article 2, procedural limb, of the ECHR.

FOR THESE REASONS,

The Panel, unanimously,

FINDS THAT THERE HAS BEEN NO VIOLATION OF THE PROCEDURAL OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member