

**DECISION**

**Date of adoption: 29 May 2014**

**Case No. 352/09**

**V. M. and M. M.**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 29 May 2014,

with the following members present:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

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, decides as follows:

**I. PROCEEDINGS BEFORE THE PANEL**

1. The complaint was introduced on 7 January 2009 and registered on 6 March 2009. In the proceedings before the Panel, the complainants are represented by Mr Živojin Jokanović, an attorney based in Prishtinë/Priština.
2. On 2 June 2009, the complainants submitted additional information to the Panel.
3. On 29 July 2009, the Panel requested the complainants to provide further additional information. The complainants’ response was received on 10 October 2009.
4. On 26 October 2009, the Panel communicated the case to the SRSG, inviting UNMIK’s comments on the admissibility of the complaint. The SRSG submitted UNMIK’s response on 15 March 2010.
5. On 19 April 2010, the Panel decided to disjoin the case from case no. 35/09.
6. On 10 October 2010, the Panel requested additional information from the complainants’ representative. No response was received.
7. On 9 October 2011 and, again, on 3 October 2012, the Panel reiterated its request for further information to the complainants’ representative. No response was received.
8. On 27 November 2012, the Panel re-communicated the case to the SRSG for UNMIK’s comments on the admissibility of the complaint. Upon UNMIK’s request, on 26 December 2012, additional documentation was forwarded by the Panel to UNMIK.
9. On 7 February 2013, the Panel requested information concerning the case from the Basic Courts (formerly known as Municipal Courts) of Prishtinë/Priština and Lipjan/Lipljan respectively.
10. On 13 February 2013, the SRSG provided UNMIK’s response to the Panel request dated 27 November 2012.
11. On 13 February and 28 February 2013 respectively, the Panel received a response from the Courts of Prishtinë/Priština and Lipjan/Lipljan.
12. On 25 November 2013, the Panel re-communicated the complaint to the SRSG and invited UNMIK’s additional comments on the admissibility of the complaint, in light of the information received from the Courts in Prishtinë/Priština and Lipjan/Lipljan. The SRSG provided UNMIK’s response on 6 December 2013.
13. On 30 January 2014, the Panel requested information from the Appellate Prosecution Office (formerly known as the District Public Prosecutor’s Office) in Prishtinë/Priština, which provided its response on 3 February 2014.
14. On 5 February 2014, the Panel requested information from the Basic Prosecution Office in Prishtinë/Priština, which forwarded its response on 14 February 2014.
15. On 26 March 2014, the Panel requested information from the Kosovo Customs. A response was received on 3 April 2014.

**II. THE FACTS**

1. The complainants are the wife and the father respectively of R.M., who was shot dead by unknown persons in Graçanicë/Gračanica on 3 December 2002 while in a vehicle registered under the first complainant’s name. The complainants state that R.M. was targeted because he was a Serb, in the context of the violence against non-Albanian communities which erupted in Kosovo after the arrival of the international forces.
2. *On the lawsuit for damage compensation related to the killing of R.M.*
3. The complainants state that, on 27 July 2007, they submitted a claim to the then Municipal Court of Prishtinë/Priština against the Municipality of Prishtinë/Priština, the Provisional Institutions for Self-Government of Kosovo, UNMIK and KFOR, requesting compensation for failure to prevent the death of R.M. However, by November 2009, they had received “no answer” from the court concerning the claim.
4. 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.
5. On 13 February 2013, the Basic Court (formerly known as the Municipal Court) of Prishtinë/Priština informed the Panel that on 17 October 2011 the Court had issued a decision on the complainants’ claim, rejecting the claim as “impermissible” and that no appeal had been filed by the complainants.
6. *On the confiscation of R.M.’s vehicle*
7. The complainants also state that in the course of the investigation into R.M.’s killing, his vehicle was seized by the investigative authorities for the purpose of securing evidence, along with his belongings and personal documents. While the latter were returned to the complainants, the vehicle was allegedly retained until the second half of 2007. The complainants state that, at some time in 2007, they received a decision that the vehicle had been confiscated by the customs authorities.
8. The complainant submitted to the Panel a copy of a document of the “Ministry of Public Services - Registration Services Division” which reads “Vehicle Registration Details”. The document, issued on 18 August 2009 in Graçanicë/Gračanica, states that the vehicle mentioned above, belonging to the first complainant, had been first registered in Zveçan/Zvečan in 2001, and then insured in Graçanicë/Gračanica from 15 October 2002 to 15 October 2003.
9. According to the information received by the Panel from the Kosovo Customs, on 13 March 2007, a decision was issued by the UNMIK Customs Service to confiscate the vehicle. The decision states that on 10 October 2006 the Investigation Unit of the Kosovo Police Service in Prishtinë/Priština had first confiscated the vehicle. The decision further reads: “According to police report … the last KS registration of the said vehicle … expired on 15 October 2003. The vehicle also has registration document issued by the former Yugoslavia, on 5 November 2001, in Zveçan/Zvečan, with serial number … and registration plates KM-544-40 named to [Z.V.] … the vehicle was checked by the Vehicle Anti-Smuggling Unit for Pristina region, which established that the owner of this vehicle had cheated the Vehicle Registration Centre in Graçanicë/Gračanica and registered the vehicle to KS plates without paying the customs duties”. Therefore, in accordance with Article 26.1 of UNMIK Regulation No. 2005/32 *On the Excise Tax Code of Kosovo* and Article 62.4 of UNMIK Regulation No. 2004/01 *On the Customs Code of Kosovo*, the vehicle was being confiscated. The decision stated that the “unsatisfied party” may file a complaint to UNMIK Customs Service Review Panel within 60 days from the day of receipt of the decision.
10. The complainants claim that the decision of the UNMIK Customs Service is invalid as “at that time there was no Kosovo Customs Service and all customs fees were paid to the Serbian Customs Office”. The complainants further state that customs fees on the vehicle had been “duly paid”, as shown by the fact that the vehicle had been registered.
11. The complainants state that, as the vehicle was subsequently sold to a private individual, they filed a claim with the then Municipal Court of Lipjan/Lipljan against the individual mentioned above requesting the court, as a temporary measure, to prohibit the respondent to use or alienate the vehicle. However, there is no indication that the complainants appealed the decision of the UNMIK Customs Service to confiscate the vehicle.

**III. THE COMPLAINT**

1. The complainants complain that civil proceedings at the then Municipal Court of Prishtinë/Priština concerning damage compensation related to the killing of R.M. have been unreasonably protracted in violation of Article 6 (right to a fair trial) of the European Convention on Human Rights (ECHR).
2. The complainants also complain that their vehicle has been unduly confiscated by the Kosovo Police and the Customs Service.

**IV. THE LAW**

1. 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. Complaint on the length of civil proceedings related to the killing of R.M.**

1. As regards the compensation proceedings before the then Municipal Court of Prishtinë/Priština, the Panel considers that, insofar as the complainants invoke a violation of Articles 6 § 1, they complain about the length of the proceedings before the competent court, due to the fact that the proceedings were instituted in 2007, and that this claim was not examined until 17 October 2011. This complaint may raise an issue of right to a judicial decision within a reasonable time, in the sense of Article 6 § 1 of the ECHR.
2. The Panel notes that as of November 2009, the date of the complainants’ submission to the Panel in this regard, the then Municipal Court of Prishtinë/Priština had not contacted the complainants and no hearing had been scheduled concerning the aforementioned lawsuit. The Panel also notes that the lawsuit for compensation for damages was decided upon by the then Municipal Court of Prishtinë/Priština on 17 October 2011.
3. The Panel notes that, as indicated above, on 9 December 2008, UNMIK’s responsibility with regard to the judiciary in Kosovo ended (see § 18). Accordingly, the period of delay attributable to UNMIK lasted from 27 July 2007 until 9 December 2008, less than 17 months.
4. Therefore, the Panel considers this part of the complaint manifestly ill-founded and therefore inadmissible pursuant to Section 3.3. of UNMIK Regulation No. 2006/12.

**B. Complaint on the confiscation of the vehicle**

1. As regards this part of the complaint, the Panel recalls that, according to Section 3.1. of UNMIK Regulation No. 2006/12, it may only deal with a complaint after all other available avenues for review of the alleged violations have been exhausted.
2. The Panel notes that, insofar as the complainants complain against the decision of the UNMIK Customs Service confiscating the vehicle, this decision was issued on 13 March 2007 and was appealable by the complainants. However, there is no indication that the complainants availed themselves of the right to appeal.
3. For this reason, the Panel considers that this part of the complaint is inadmissible pursuant to Section 3.1. of UNMIK Regulation No. 2006/12.

**FOR THESE REASONS,**

The Panel, unanimously,

**DECLARES THE COMPLAINT INADMISSIBLE.**

Andrey Antonov Marek Nowicki

Executive Officer Presiding Member