



The Human Rights Advisory Panel

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DECISION

Date of adoption: 11 August 2011

Case No. 132/09

Zorka RISTIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 11 August 2011,
with the following members taking part:

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

Assisted by
Mr Andrey ANTONOV, Executive Officer

Having considered the aforementioned complaints, 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 30 April 2009 and registered on the same date.
2. On 30 November 2009, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on admissibility. On 23 March 2010, UNMIK provided its response.
3. On 1 April 2010 UNMIK's observations were forwarded to the complainant for comments. However, no response was received.

II. THE FACTS

4. According to the complainant, she, her husband Svetozar Ristić, and her parents were forcibly taken by American KFOR soldiers on 23 July 1999 from their home in Kosovska Kamenica to the local post office, which was organised as a detention centre. While the complainant and her parents were released the same day, her husband was taken to a prison in Gjilan/Gnjilane. On 24 July 1999, Mr Ristić allegedly called the complainant from the prison to let her know that he would be transferred the next day to the American base Bondsteel in Ferizaj/Uroševac. According to the complainant, her husband was kept there until 27 July 1999, when he was brought back to the prison in Gjilan/Gnjilane. He called his wife that evening from the prison.
5. The complainant states that she learnt on 29 July 1999 from Russian KFOR soldiers that her husband and his brother had been abducted from the prison in Gjilan/Gnjilane. This was confirmed by American KFOR soldiers.
6. The complainant states that she reported the disappearance of her husband to the International Committee of the Red Cross. She states that she also contacted KFOR and UNMIK, but did not receive any answer. She states that she later reported the disappearance to the Ministry of Internal Affairs of the Republic of Serbia, the Red Cross of the Republic of Serbia and the Association of Missing and Kidnapped Persons.
7. In 2000 some bodies were found in Gjilan/Gnjilane. In 2006 the remains of one of these bodies were identified through DNA analysis as belonging to Mr Ristić. The mortal remains were handed over to the family, and according to the complainant her husband was buried on 8 April 2006.
8. According to information provided by UNMIK, the police investigation revealed the name of a possible suspect in relation to Mr Ristić's disappearance. A report of the UNMIK Office of Missing Persons of 2004 concludes that the case should remain open and be handed over to the unit in charge of war crime investigation. Reports have been made on the case of the disappearance and murder of Mr Ristić by the UNMIK Police War Crime Investigation Unit in 2005 and 2007. It is unclear what action has been undertaken with respect to the suspect.
9. In 2005 the complainant submitted a criminal complaint to the Municipal Public Prosecutor's Office in Gjilan/Gnjilane, directed against the commander-in-chief of the American contingent based in Camp Bondsteel, the KFOR Commander, and the manager and officers of the prison in Gjilan/Gnjilane. The Panel is not aware of the steps that may have been taken upon this complaint.
10. 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. THE COMPLAINT

11. The complainant complains in the first place about the actions of KFOR preceding the abduction of her husband.
12. She also complains about UNMIK's alleged failure to properly investigate the disappearance and murder of her husband. The Panel considers that the complainant may be deemed to invoke a violation of her husband's right to life, guaranteed by Article 2 of the European Convention on Human Rights (ECHR).

IV. THE LAW

13. Before considering the case on the 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.

Complaint directed against KFOR

14. According to Section 1.2 of the Regulation the Advisory Panel has jurisdiction over complaints relating to alleged violations of human rights by UNMIK.
15. As results clearly from operative paragraphs 5 to 11 of the UN Security Council Resolution 1244 (1999), a distinction is to be made between the international civil presence and the international security presence in Kosovo. UNMIK is established as the civil presence, KFOR as the security presence. The reference to UNMIK in Section 1.2 of the Regulation therefore cannot be interpreted so as to include KFOR.
16. Insofar as the complaint concerns acts allegedly committed by members of KFOR, it is outside the Panel's jurisdiction (see Human Rights Advisory Panel, *Sahiti*, no. 03/08, decision of 10 April 2008).
17. This reason suffices to declare this part of the complaint inadmissible *ratione personae*.

Complaint directed against UNMIK

18. In his comments, the SRSG does not raise any objection to the admissibility of the part of the complaint that is directed against UNMIK.
19. The Panel considers that this part of the complaint raises serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that this part of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
20. The Panel does not see any other ground for declaring this part of the complaint inadmissible *ratione personae*.

FOR THESE REASONS,

The Panel, unanimously,

- DECLARES ADMISSIBLE THE COMPLAINT DIRECTED AGAINST UNMIK;**
- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.**

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member