



The Human Rights Advisory Panel

Building D, UNMIK HQ Prishtinë/Priština, Kosovo | E-mail: hrap-unmik@un.org | Tel: +381 (0)38 504-604, ext. 5182

DECISION

Date of adoption: 13 April 2011

Case No. 85/09

Ruhan RUHANI

against

UNMIK

The Human Rights Advisory Panel on 13 April 2011
with the following members taking part:

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

Assisted by
Ms Anila PREMTI, Acting 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 8 April 2009 and registered on 30 April 2009.
2. On 24 July 2009, the Human Rights Advisory Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility and the merits of the case. On 3 August 2009, UNMIK provided its response.
3. On 9 December 2009, the Panel requested further information from the complainant.

4. On 18 December 2009, the Panel requested information from the European Union Rule of Law Mission in Kosovo (EULEX).
5. On 4 March 2010, the complainant provided a response to the Panel's letter of 9 December 2009.
6. On 23 March 2010, EULEX provided a response to the Panel's request of 18 December 2009.
7. On 30 November 2010, the Panel re-communicated the case to the SRSG for UNMIK's comments on the admissibility of the case in light of the additional comments from the complainant. On 24 February 2011, UNMIK provided its response.

II. THE FACTS

8. The complainant is the father of Mr Nehat Ruhani. According to the complainant, a group of armed Kosovo Liberation Army (KLA) soldiers entered the complainant's house in Shtime/Štimlje and threatened the complainant and his family with firearms and explosive devices. They allegedly took Mr Nehat Ruhani with them by force of arms to ask him some questions, indicating that they would return with him later.
9. The complainant states that he recognised Mr A.H., who allegedly led the KLA group and personally threatened the complainant and the wife of Mr Nehat Ruhani with firearms. During the same incident, Mr A.H. allegedly told the complainant that he and the rest of his family had until the following day to leave their home or they would all be killed.
10. The complainant states that immediately after the incident, he reported what happened to UNMIK Police stationed in Shtime/Štimlje. According to the complainant, UNMIK Police responded that they would see what they could do. The complainant states that he specifically mentioned the name of Mr A.H. when reporting the abduction. Thereafter, the complainant and his family left Kosovo.
11. The complainant also reported the abduction to the International Committee of the Red Cross, which opened a tracing request for Mr Nehat Ruhani. The whereabouts of Mr Nehat Ruhani remain unknown to date.
12. On 9 December 2008, UNMIK's responsibility with regard to police and justice in Kosovo ended with 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.
13. Information obtained from EULEX indicates that the case remains open with the EULEX Office on Missing Persons and Forensics. According to information obtained by UNMIK, EULEX issued a report on 21 February 2011, which indicated that the abduction of Mr Nehat Ruhani was the subject of an ongoing investigation led by the EULEX War Crimes Investigation Unit.

III. THE COMPLAINT

14. The complainant complains about UNMIK's alleged failure to properly investigate the abduction of his son and about the mental pain and suffering allegedly caused by this situation.
15. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of his son, guaranteed by Article 2 of the European Convention on Human Rights (ECHR), and a violation of his own right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the ECHR.

IV. THE LAW

16. 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.
17. The complainant alleges in substance the lack of an adequate criminal investigation into the abduction of his son and the way that he as next-of-kin has been treated. The Panel notes that Mr Nehat Ruhani was last seen on 22 June 1999, which is more than ten years ago.
18. The SRSG argues that the case is *prima facie* inadmissible. He is of the view that all other avenues for review have not been exhausted because the EULEX report of 21 February 2011 indicates that the complainant's case is under investigation by the EULEX War Crimes Investigation Unit.
19. Although the SRSG raises these issues during the admissibility stage of the proceedings, the exhaustion of remedies issue is closely linked to the question of the effectiveness of the investigation itself. The Panel recalls that where an admissibility issue is closely linked to the merits of the complaint, the Panel may join the issue to the merits, provided that there is no other obstacle to the admissibility, pursuant to Rule 31*bis* of the Panel's Rules of Procedure.
20. The Panel therefore concludes that the issue of non-exhaustion of remedies within the meaning of Section 3.1 of UNMIK Regulation No. 2006/12 must be joined to the merits of the complaint. No other ground for declaring it inadmissible has been established (see Human Rights Advisory Panel, *R.P.*, nos. 120/09 & 121/09, decision of 26 November 2010).

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Anila PREMTI
Acting Executive Officer

Marek NOWICKI
Presiding Member