



The Human Rights Advisory Panel

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DECISION

Date of adoption: 21 October 2010

Case No. 77/09

Živorad OGAREVIĆ

against

UNMIK

The Human Rights Advisory Panel on 21 October 2010,
with the following members taking part:

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

Assisted by
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,

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 15 April 2009 and registered on 30 April 2009.
2. On 24 July 2009, the 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.

3. On 5 August 2009, UNMIK provided its initial response.
4. On 21 December 2009, the Panel re-communicated the case to the SRSG for UNMIK's comments on the admissibility of the complaint.
5. On 29 January 2010, the SRSG provided UNMIK's second response.
6. On 21 July 2010, the Panel sent UNMIK's comments to the complainant, providing an opportunity for him to provide a response. The complainant did not reply by the deadline of 25 August 2010.

II. THE FACTS

7. The complainant states that his father, Mr Božidar Ogarević left his house in Prizren on 29 October 1999 to purchase bread. The complainant states that his father never returned home and that he has no information to date regarding his father's fate. The complainant's grandmother (the mother of Mr Božidar Ogarević) was at home at the time of the abduction, but does not appear to have witnessed it.
8. The complainant states that the disappearance was reported to KFOR, the International Committee of the Red Cross (ICRC), the Yugoslav Red Cross, the Ministry of Internal Affairs (former Yugoslavia), UNMIK, the United Nations High Commissioner for Refugees, and "other international and governmental institutions in Kosovo and Metohija." The complainant also submits a certificate confirming that the ICRC opened a tracing request for Mr Božidar Ogarević on 1 December 1999. In addition, the complainant attaches a criminal complaint addressed to the "International Prosecutor of the District Public Prosecutor's Office of Prizren" which was allegedly filed in Kosovo on 15 February 2004 as well as a certificate that a criminal complaint was filed with the "District Public Prosecutor's Office of Prizren in Požarevac."
9. In his comments, the SRSG notes that the UNMIK Police file contains an "UNMIK Police enquiry *pro forma* and an UNMIK Police Missing Persons Unit report," both dated 7 December 1999. The SRSG also states that an active investigation took place from 2 March 2004 through 12 June 2005. According to the SRSG, the investigation did not lead to the location of Mr Ogarević or to the identification of any possible suspects due to the lack of available information. The investigation remains open and pending however.
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. COMPLAINT

11. The complainant complains about UNMIK's alleged failure to properly investigate the kidnapping and murder of his father. He also complains about the mental pain and suffering allegedly caused by this situation.

12. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of his father's right to life, 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

13. Before considering the case on its 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.

14. UNMIK contested the admissibility of the complaint in its initial response of 5 August 2009, stating that the complainant had not substantiated the claim against UNMIK since he did not provide enough information on which to base a complaint. The Panel was of the opinion that the SRSG did not take into account a criminal complaint to the International Prosecutor of the District Public Prosecutor's Office of Prizren, attached to the complaint. The Panel therefore re-communicated the complaint to the SRSG, drawing his attention to that document. In his second response, the SRSG does not raise any objection to the admissibility of the complaint and focuses on the substance of the claim. While the SRSG raises certain issues he sees as mitigating factors in the present complaint, none of his arguments directly contest the admissibility of the complaint.

15. It follows then that the Panel rejects the SRSG's initial challenge to admissibility in the present complaint, as the complainant did in fact provide enough factual information to raise a *prima facie* allegation that UNMIK is responsible for a human rights violation in the present matter.

16. Furthermore, the Panel considers that the complaints under Articles 2 and 3 of the ECHR raise serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that this complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.

17. The Panel does not see any other ground for declaring it inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member