



The Human Rights Advisory Panel

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DECISION

Date of adoption: 11 August 2011

Case No. 99/09

Milica MLADENović

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 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 30 April 2009 and registered on the same date.
2. On 9 December 2009 the Panel requested additional information from the complainant. The complainant responded on 28 January 2010. Further information was received from the complainant's daughter on 20 January 2011.
3. On 29 April 2011, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on admissibility. On 8 June 2011, UNMIK provided its response.

II. THE FACTS

4. The complainant is the mother of Mr Vladimir Mladenović. According to the complainant and her daughter, Ms Milena Parlić, Mr Vladimir Mladenović was kidnapped in the village of Gojbulë/Gojbulja (Vushtri/Vučitrn Municipality), on 25 June 1999. On that day, he was at the place of his friend Mr Branimir Mihajlović from Gojbulë/Gojbulja, who was abducted together with him. Also his friend's father and two brothers were abducted, but they later managed to escape.
5. The complainant indicates that the abduction was immediately reported to KFOR, UNMIK, the International Committee of the Red Cross, the Ministry of Internal Affairs of the Republic of Serbia and all embassies of countries that had their contingents deployed in Kosovo. The complainant's daughter states that none of the above made any effort to arrange for an investigation into the kidnapping or to find any trace of her brother and his friends.
6. In October 1999, the father of Mr Vladimir Mladenović found out that his son was kept in the basement of a department store in Vushtri/Vučitrn that was allegedly used as a detention centre for Serbian captives. On that same day, the father of Mr Vladimir Mladenović passed the information to the French KFOR which according to the complainant's daughter did not check the premises.
7. The family of Mr Vladimir Mladenović suspected that he and the Mihajlović brothers were kidnapped by a named person, who was arrested by KFOR in 2001, but was released shortly afterwards for an alleged lack of evidence, even though he had admitted that he committed the abduction. When asked where the kidnapped Serbs who were kept in the basement of the department store in Vushtri/Vučitrn were taken, the suspect allegedly answered that he handed them over to the "Protection Corps".
8. The complainant's daughter further states that the complete documentation on the kidnapping of Serbs in Kosovo has been sent to the International Criminal Tribunal for the former Yugoslavia through the Association of Families of the Kidnapped and Murdered in Kosovo, including the report relating to her brother, with all details and descriptions of the circumstances.
9. The International Committee of the Red Cross opened a tracing request in relation to Mr Vladimir Mladenović on 18 August 1999. However his whereabouts remain unknown.
10. The complainant's daughter submitted to the Panel a photo allegedly taken in 1999 showing a group of men in a camp in Albania. She believes that one of the men in the photo is her brother.
11. 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

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

IV. THE LAW

14. 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.

Alleged violation of Article 2 of the ECHR

15. The complainant alleges in substance the lack of an adequate criminal investigation into the kidnapping of her son.
16. In his comments, the SRSG does not raise any objection to the admissibility of this part of the complaint.
17. The Panel considers that the complaint under Article 2 of the ECHR 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.
18. No other ground for declaring this part of the complaint inadmissible has been established.

Alleged violation of Article 3 of the ECHR

19. The complainant alleges mental pain and suffering caused to herself and her family by the situation surrounding the disappearance of her son.
20. In his comments, the SRSG argues that, while the complainant states that she has suffered mental pain and anguish as a result of the disappearance, there is no express allegation that this fear and anguish were a result of UNMIK's response to the disappearance of Mr Vladimir Mladenović. For that reason, this part of the complaint is inadmissible as manifestly ill-founded.
21. The Panel refers to the case law of the European Court of Human Rights with respect to the question whether a member of the family of a disappeared person can be considered the victim of a treatment contrary to Article 3 of the ECHR, which prohibits inhuman treatment. The European Court accepts that this may be the case, depending on the existence of "special factors which give the suffering of the [family member] a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation". The Court further holds that "relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the

events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries”. It also emphasises “that the essence of such a violation does not so much lie in the fact of the disappearance of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention” (see, e.g., European Court of Human Rights (ECtHR) (Grand Chamber), *Çakici v. Turkey*, no. 23657/94, judgment of 8 July 1999, § 98, *ECHR*, 1999-IV; ECtHR (Grand Chamber), *Cyprus v. Turkey*, no. 25781/94, judgment of 10 May 2001, § 156, *ECHR*, 2001-IV; ECtHR, *Orhan v. Turkey*, no. 25656/94, judgment of 18 June 2002, § 358; ECtHR, *Bazorkina v. Russia*, no. 69481/01, judgment of 27 July 2006, § 139; see also Human Rights Advisory Panel, *Zdravković*, no. 46/08, decision of 17 April 2009, § 41).

22. The Panel considers that a complainant may invoke a violation of Article 3 of the ECHR even if there is no explicit reference to specific acts of the authorities involved in the investigation, since also the passivity of the authorities and the absence of information given to the complainant may be indicative of inhuman treatment of the complainant by the authorities.
23. 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, and rejects the objection raised by the SRSG.
24. No other ground for declaring this part of the complaint inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member