



The Human Rights Advisory Panel

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DECISION

Date of adoption: 11 August 2011

Case No. 87/09

Nenad STOJKOVIĆ

against

UNMIK

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

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 7 April 2009 and registered on 30 April 2009.
2. On 26 February 2010, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the case.
3. On 28 May 2010, UNMIK provided its response, which was forwarded to the complainant on 9 June 2010.

II. THE FACTS

4. The complainant's brother, Mr Dragan Stojković, was an UNMIK national staff member working for the Building and Management Services in Prishtinë/Priština. Mr Dragan Stojković left for work on 28 August 1999 and never returned home. His mortal remains were discovered by UNMIK in June 2000 and identified in July 2003.
5. The complainant states that on 27 August 1999 he spent the night at Mr Dragan Stojković's flat. On 28 August 1999, after Mr Dragan Stojković had departed to work, two Albanian males allegedly knocked at the apartment's door on two separate occasions asking for an Albanian man. The second time, the two individuals asked also for Mr Stojković and enquired if he intended to sell his flat. They allegedly intimated that it was not fair that Mr Stojković had a whole apartment for himself while two Albanian families were living in tents.
6. The complainant states that on 29 August 1999 he reported Mr Dragan Stojković's disappearance to an UNMIK staff member, as advised by one of his brother's colleagues. On 30 August 1999 the complainant provided a statement to UNMIK Security on his brother's disappearance. The complainant reported that in the last weeks before the disappearance, Mr Dragan Stojković's flat was broken into three or four times by a group of non-identified Albanians. On one occasion, Mr Dragan Stojković allegedly managed to stop one of the intruders and take him to an UNMIK Police officer living in the same apartment building. The complainant also mentioned in his statement that Mr Dragan Stojković had recently acted as translator for KFOR in a case involving an Albanian family illegally occupying a flat.
7. In his comments the SRSG states that investigations into Mr Dragan Stojković's disappearance were started as of 29 August 1999 by the Special Investigation Unit of UNMIK Security as Mr Stojković was an UNMIK staff member. The victim was last seen by his supervisor on 28 August 1999 at 11.00 hours in the UNMIK headquarters premises. At 12.00 hours Mr Stojković spoke on the phone to a colleague and at around the same time the UN vehicle he drove was seen parked on Roberta Gajdika Street No. 48 in front of a paint store.
8. From information provided by the SRSG on 29 August 1999, as part of the efforts to locate the victim, UNMIK Security and Police conducted searches at several locations, including the interior of a house situated by the aforementioned paint store, which had been set on fire on the night of 28 August 1999. UNMIK found Mr Dragan Stojković's flat occupied by two Albanian men, who were arrested by UNMIK Police and escorted to the police station for questioning.
9. According to the SRSG further investigation activities were carried out by UNMIK Security as documented in an investigation report submitted on 11 October 1999. UNMIK Security learnt that the two Albanian individuals previously arrested for illegally occupying Mr Dragan Stojković's flat had been released. They had returned to the flat and thrown out Mr Stojković's brother and father. On 15 September 1999 UNMIK Security contacted the victim's wife. Allegedly due to lack of further leads, UNMIK Security's investigation was suspended.
10. On 1 December 1999 the International Committee of the Red Cross issued a tracing request for Mr Dragan Stojković.

11. The SRSG states that on 25 January 2000 the Special Adviser to the Deputy SRSG for Civil Administration requested UNMIK Police to revert with information on Mr Dragan Stojković's case. Following this request, UNMIK Missing Persons Unit supposedly contacted a number of UN personnel on the case and requested from UNMIK Police all data pertaining to the two individuals arrested for illegally occupying Mr Dragan Stojković's flat on 29 August 1999.
12. In February 2000, the UNMIK Police Regional Intelligence Unit informed the Missing Person Unit that the remains of a male person found on 13 November 1999 were believed to be those of Mr Dragan Stojković. However no match with Mr Dragan Stojković was found. On 4 March 2000, the Missing Person Unit requested the Central Criminal Investigation Unit of UNMIK Police to investigate into the disappearance of Mr Dragan Stojković.
13. On 10 June 2000, UNMIK discovered the mortal remains of Mr Dragan Stojković in Prishtinë/Priština. An UNMIK autopsy of 28 June 2000 indicated a "gunshot wound to the back of chest" as the cause of Mr Dragan Stojković's death. On 7 July 2003 the mortal remains of Mr Dragan Stojković were positively identified by UNMIK though DNA analysis and on 13 August 2003 handed over to his family.
14. 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.
15. On 10 June 2009, the Prosecutor of the Special Prosecution Office of the Republic of Kosovo (SPRK) reviewed Mr Dragan Stojković's case and requested further investigation into his murder to be conducted. The investigation remains ongoing to date.

III. COMPLAINT

16. The complainant complains about UNMIK's alleged failure to properly investigate the abduction and murder of his brother. He also complains about the mental pain and suffering allegedly caused to himself by this situation.
17. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of his brother, 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

18. 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.

Alleged violation of Article 2 of the ECHR

19. The complainant alleges in substance the lack of an adequate criminal investigation into the kidnapping and murder of his brother. The Panel notes that Mr Dragan Stojković went missing on 28 August 1999, which is more than ten years ago.
20. The SRSB argues that the complaint is *prima facie* inadmissible. He is of the view that all other avenues for review have not been exhausted because the complainant's case is pending with a SPRK Prosecutor.
21. The Panel notes that the SRSB has not indicated any specific legal remedy available to the complainant with regard to the effectiveness of the investigation itself. For its part, the Panel does not see any such remedy. The fact that the matter is currently under investigation has no bearing on the object of the complaint: the effectiveness of the investigation itself (see Human Rights Advisory Panel, *D.P.*, case no. 04/09, decision of 6 August 2010).
22. The Panel therefore concludes that this part of the complaint cannot be rejected for non-exhaustion of remedies within the meaning of Section 3.1 of UNMIK Regulation No. 2006/12.
23. The Panel furthermore 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.
24. No other ground for declaring this part of the complaint inadmissible has been established.

Alleged violation of Article 3 of the ECHR

25. The complainant alleges mental pain and suffering caused to himself by the situation surrounding the disappearance of his brother.
26. The Panel notes that according to the case law of the European Court of Human Rights a member of the family of a disappeared person can under certain conditions be considered the victim of a treatment by the authorities contrary to Article 3 of the ECHR, which prohibits inhuman treatment. Where the disappeared person is later been found dead, the applicability of Article 3 is in principle limited to the distinct period during which the member of the family sustained the uncertainty, anguish and distress appertaining to the specific phenomenon of disappearances (see, *e.g.*, European Court of Human Rights (ECtHR), *Luluyev and Others v. Russia*, no. 69480/01, judgment of 9 November 2006, §§ 114-115, *ECHR*, 2006-XIII; see also ECtHR, *Gongadze v. Ukraine*, no. 34056/02, judgment of 8 November 2005, § 185, *ECHR*, 2005-XI).
27. In the present case, the relevant period lasted until 13 August 2003, when Mr Dragan Stojković's mortal remains were handed over to his family.
28. The Panel recalls that, according to Section 2 of UNMIK Regulation No. 2006/12, it has jurisdiction only over "complaints relating to alleged violations of human rights that had

occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights”.

29. The Panel has no doubts as to the profound suffering caused to the complainant by the disappearance and death of his brother. Nevertheless, the Panel must conclude that this part of the complaint lies outside its jurisdiction *ratione temporis*.

FOR THESE REASONS,

The Panel, unanimously,

- DECLARES ADMISSIBLE THE COMPLAINT RELATING TO THE RIGHT TO LIFE;

- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member