



The Human Rights Advisory Panel

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DECISION

Date of adoption: 12 August 2011

Case No. 223/09

Angelina BIŠEVAC

against

UNMIK

The Human Rights Advisory Panel, sitting on 12 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 23 December 2009 the Panel requested additional information from the complainant. The complainant however did not respond.
3. On 27 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 daughter of Mr Radota Gojković. According to the complainant, Mr Gojković disappeared from Pejë/Peć where he was staying after the rest of his family was forced to leave their home on 10 June 1999. The complainant tried to make contact with her father with no success. She then managed to make contact with a priest from the Patriarchate of Pejë/Peć. The priest, accompanied by KFOR soldiers, went to visit the complainant's father, but allegedly a group of Albanians did not allow them to pass by a school situated near the house. According to the complainant, this event happened around 20 June 1999. The complainant alleges that she later found that the school served as a detention centre for Serbs, Montenegrins and other non-Albanians.
5. The complainant informed the International Committee of the Red Cross about what was happening and requested them to contact her father. However, Mr Gojković could not be found. The complainant reported her father's disappearance to the Yugoslav Red Cross and also to the Ministry of Internal Affairs of the Republic of Serbia – Secretariat of Pejë/Peć. The latter, on 17 December 2002, submitted a criminal report with the Public Prosecutor in Pejë/Peć against unidentified persons. According to the complainant, a criminal complaint was also filed with the International Public Prosecutor's Office in Prishtinë/Priština. The complainant also states that she had verbal contacts with the Coordination Centre of Serbia and Montenegro and the Republic of Serbia for Kosovo and Metohija (Coordination Centre) and the Association of the Kidnapped and Missing Persons in Belgrade, seeking their advice with regard to her rights. She was told that she should wait since the search was still ongoing.
6. The complainant states that in May 2001 she learned that Kosovo Liberation Army troops had kidnapped both her father and his next-door neighbour. In February 2003, the complainant learned through the Coordination Centre and the Association of the Kidnapped and Missing Persons that her father had been found dead. She received his mortal remains on 18 February 2003 through the Coordination Centre.
7. 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

8. The complainant complains about UNMIK's alleged failure to properly investigate the disappearance of her father. She also complains about the mental pain and suffering allegedly caused by this situation.
9. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of her father, 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

10. 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

11. The complainant alleges in substance the lack of an adequate criminal investigation into the disappearance and death of her father.
12. In his comments, the SRSG does not raise any objection to the admissibility of this part of the complaint.
13. 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.
14. No other ground for declaring this part of the complaint inadmissible has been established.

Alleged violation of Article 3 of the ECHR

15. The complainant alleges mental pain and suffering caused to her by the situation surrounding the disappearance and death of her father.
16. The SRSG argues that this part of the complaint is manifestly ill-founded, as there is no express allegation that the fear and anguish suffered by the complainant was a result of UNMIK's response to the disappearance of Mr Gojković.
17. 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 found dead, the applicability of Article 3 is in principle limited to the distinct period during which the member of the family sustained 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).
18. In the present case, the relevant period lasted until 18 February 2003, when Mr Gojković's mortal remains were handed over to his family.
19. 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".
20. The Panel has no doubts as to the profound suffering caused to the complainant by the disappearance and death of her father. 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