



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: 12 August 2011

Case No. 79/09

Katica ĐURICA

against

UNMIK

The Human Rights Advisory Panel, sitting on 12 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 2 April 2009 and registered on 30 April 2009.
2. On 25 March 2011 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 6 June 2011, the Panel received UNMIK's response.

II. THE FACTS

4. The complainant states that her son Jovan Đurica was a conscript in the Yugoslav Army. He was last seen on 13 June 1999 while on duty at Military Post 9650 in the Vranjevac suburb of Prishtinë/Pristina. Mr. Đurica's whereabouts remain unknown to date.
5. On 2 October 2001 the International Committee of the Red Cross opened a tracing request in respect of Mr. Đurica.
6. On 21 September 2006, the Fourth Municipal Court of Belgrade declared Mr. Đurica legally dead, indicating the date when he was last seen as the date of death.
7. On 2 July 2008, the Second Municipal Court of Belgrade partially approved the claim filed by the complainant against the Republic of Serbia and ordered the sum of 1,400,000 dinars to be paid to the complainant's family as compensation for immaterial damage caused by the death of their family member.
8. 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

9. The complainant complains about UNMIK's alleged failure to properly investigate into the disappearance of her son. She also complains about the mental pain and suffering allegedly caused to her by this situation.
10. 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

11. 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

12. The complainant alleges in substance the lack of adequate criminal investigation into the disappearance of her son.
13. The SRSB does not raise any objection to the admissibility of this part of the complaint.

14. 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.
15. No other ground for declaring this part of the complaint inadmissible has been established.

Alleged violation of Article 3 of the ECHR

16. The complainant alleges mental pain and suffering caused to herself and her family by the situation surrounding the disappearance of her son.
17. The SRSG argues that this part of the complaint is manifestly ill-founded as there are no facts asserted in the complaint that could evidence a violation of Article 3.
18. The Panel considers that, despite the lack of express allegations put forward by the complainant in this respect, the complaint sets forth relevant facts upon which the alleged violation of Article 3 of the ECHR may be based.
19. The Panel also 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).
20. 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.
21. 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.
22. 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