



The Human Rights Advisory Panel

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DECISION

Date of adoption: 12 August 2011

Case No. 123/09

Slavica RISTANOVIĆ

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 11 December 2009 the Panel received additional documents from the complainant.
3. On 21 December 2009 the Panel requested further information regarding the complaint. The complainant responded on 12 March 2010.
4. On 29 April 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. On 3 June 2011, UNMIK provided its response.

II. THE FACTS

5. The complainant is the wife of Mr Momčilo Ristanović. According to her, Mr Ristanović was kidnapped from their family flat in Prizren on 17 June 1999.
6. The complainant states that she immediately reported the disappearance of her husband to the UNMIK Police. She also contacted KFOR, the International Committee of the Red Cross, the International Criminal Tribunal for the former Yugoslavia, the Humanitarian Law Fund and several government authorities of the Republic of Serbia, but she did not receive any answer.
7. The mortal remains of Mr Ristanović, discovered on 8 October 2000 by the UNMIK Police Missing Persons Unit, were identified through DNA testing on 1 October 2002. However it is unclear whether they were returned to the family.
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. THE COMPLAINT

9. The complainant complains about UNMIK's alleged failure to properly investigate the disappearance and murder of her husband, Mr Momčilo Ristanović. She also complains about the mental pain and suffering allegedly caused to her and her family by this situation.
10. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of her husband's right to life, 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 an adequate criminal investigation into the disappearance and death of her husband.
13. In his comments, the SRSG 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 her and her family by the situation surrounding the disappearance and the death of her husband.

17. The SRSG argues that this part of the complaint is manifestly ill-founded, as there is no express allegation that the mental pain suffered by the complainant was a result of UNMIK's response to the disappearance of Mr Ristanović.

18. 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).

19. In the present case, the relevant period lasted until 11 October 2002, when the complainant received the certificate of identification of the mortal remains of Mr Ristanović.

20. 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".

21. The Panel has no doubts as to the profound suffering caused to the complainant by the disappearance and death of her husband. 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