



The Human Rights Advisory Panel

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DECISION

Date of adoption: 15 September 2011

Case No. 147/09

Dobriła ANTIĆ-ŽIVKOVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 15 September 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 1 April 2009 and registered on 30 April 2009.
2. By letter dated 13 January 2010, the Panel requested additional information from the complainant. On 13 May 2010, the Panel received the complainant's response.
3. On 4 March 2011, the Panel asked the Special Representative of the Secretary-General (SRSG) whether UNMIK could comment on information published in the media, which could have some bearing on the case. The SRSG responded on 24 March 2011.

4. On 19 April 2011, the Panel decided to communicate the case to the SRSG for UNMIK's comments on the admissibility of the complaint. The SRSG responded on 15 June 2011.

II. THE FACTS

5. The complainant states that on 28 July 1999 her son, Mr Zlatko Antić, left Brezovicë/Brezovica. He stopped at the family apartment in Prizren, to check the situation, and whether it would be safe to return to the apartment. He went to his neighbours, to whom he had given the keys of his apartment. A few minutes after he had entered the neighbours' flat, six men in Kosovo Liberation Army (KLA) uniform allegedly entered the flat and forced Mr Antić and one of the neighbours to leave with them. At the time of the occurrence, the KLA was occupying one apartment at the ground floor of the apartment building where the complainant's family and the aforementioned neighbours lived.
6. The complainant states that her son and the neighbour were taken to a student centre located behind the city cemetery of Prizren. While the neighbour was later released, the complainant's son was held by the KLA. He was never seen again, and his whereabouts remain unknown to date. Upon her release, the neighbour out of fear chose not to report the abduction to the authorities.
7. The complainant states that she reported her son's abduction the same day to KFOR in Shtërpçë/Štrpce. The disappearance was also reported to the International Committee of the Red Cross (ICRC) and to the Yugoslav Red Cross Society, which opened tracing requests on 9 November 1999 and 26 November 1999, respectively. The complainant further indicates that she reported her son's abduction to UNMIK Police, specifically in 2001 to the Missing Persons Unit in Belgrade, in 2002 to the War Crimes Unit office in Belgrade, and in 2003 to the Office of Missing Persons and Forensics in Prishtinë/Priština.
8. A report was allegedly also filed with the Serbian Ministry of Internal Affairs and the International Prosecutor's Office in Kosovo.
9. From information provided by the SRSG it appears that on 12 November 2003 the complainant reported her son's disappearance to the UNMIK Police unit in Prizren. On the same day, another neighbour who had witnessed the abduction made a witness statement with UNMIK Police.
10. 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

11. The complainant complains about UNMIK's alleged failure to properly investigate the disappearance of her son and about the fear, mental anguish and suffering caused to her by this situation.

12. 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

13. 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

14. The complainant alleges in substance the lack of an adequate criminal investigation into the disappearance of her son.
15. In his comments, the SRSJ does not raise any objection to the admissibility of this part of the complaint.
16. 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.
17. No other ground for declaring this part of the complaint inadmissible has been established.

Alleged violation of Article 3 of the ECHR

18. The complainant alleges mental pain and suffering caused to her by the situation surrounding the disappearance of her son.
19. In his comments, the SRSJ 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 Antić. For that reason, this part of the complaint is inadmissible as manifestly ill-founded.
20. 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 (HRAP), *Zdravković*, no. 46/08, decision of 17 April 2009, § 41).

21. 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 (see HRAP, *Mladenović*, no. 99/09, decision of 11 August 2011, § 22).
22. 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.
23. 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