



The Human Rights Advisory Panel

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DECISION

Date of adoption: 27 October 2011

Case No. 69/09

Verica NIĆETIĆ

against

UNMIK

The Human Rights Advisory Panel, on 27 October 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 including through electronic means, in accordance with Rule 13 § 2 of its Rules of Procedure, 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 5 August 2009, the Panel requested the complainant to provide additional information. On 23 September 2009, the Panel received a response which was missing some relevant documents from the complainant. On 16 March 2011, the Panel reiterated its request. On 19 March 2011, the complainant responded to the Panel, attaching supporting documentation.

3. On 29 April 2011, the complaint was communicated to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on the admissibility of the complaint. On 15 June 2011, UNMIK provided its response.

II. THE FACTS

4. The complainant is Ms Verica Nićetić, who is the wife of the victim. She states that on 4 July 1999, her husband Mr Ljubiša Grković disappeared, after last being seen walking in downtown Rahovec/Orahovac. Since then, Mr Grković's whereabouts are unknown.
5. The complainant reported Mr Grković's disappearance to the Red Cross of Bačka Topola in Serbia. Additionally, the International Committee of the Red Cross took blood samples for DNA testing.
6. In 2001, UNMIK Police opened an investigation file on the case.
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 husband and about the fear, mental pain, and suffering that was caused to her by this situation.
9. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of the victim, guaranteed by Article 2 of the European Convention on Human Rights (hereinafter 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 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

11. The complainant alleges in substance the lack of an adequate criminal investigation into the disappearance of her husband.
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 is alleged to have suffered mental pain and anguish caused to her by the situation surrounding the disappearance of her husband.
16. In his comments, the SRSG argues that “the complainant has not asserted that she has suffered ‘mental pain and anguish’ and has not made an express allegation that there was fear and anguish resulting from UNMIK’s response to the disappearance of Mr Ljubiša Grković.” For that reason, the SRSG advocates that the part of the complaint related to this or any other element under Article 3 is inadmissible as manifestly ill-founded.
17. 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 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 emphasizes “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).
18. 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 the passivity of the authorities and the absence of information given to the complainant may also be indicative of inhuman treatment of the complainant by the authorities (see HRAP, *Mladenović*, no. 99/09, decision of 11 August 2011, § 22).
19. 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.
20. 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