



# **The Human Rights Advisory Panel**

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## **DECISION**

**Date of adoption: 7 November 2011**

**Case No. 89/09**

**Milorad PEJČINOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 7 November 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 8 April 2009 and registered on 30 April 2009.
2. On 9 December 2009, the Panel requested the complainant to provide additional information. On 30 November 2010 the Panel repeated that request. On 14 December 2010, the Panel received a response from the complainant's wife (the mother of the victim), which was presented on behalf of the complainant.

3. On 20 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 2 August 2011 UNMIK provided its response.

## **II. THE FACTS**

4. The complainant is a former resident of Kosovo, currently living in Serbia.
5. The complainant states that on 26 March 1999, three neighbors agreed to take his son, Mr Slobodan Pejčinović, to Montenegro, ostensibly to find work. Before they reached Montenegro, they were captured in Rugova valley, near Pejë/Peć, by members of the Kosovo Liberation Army (KLA). The complainant alleges that, according to eyewitness reports, upon learning that Mr Slobodan Pejčinović was Serbian, he was separated from the others by the KLA. Since then, Mr Pejčinović's whereabouts are unknown.
6. On 15 December 2010, the victim's mother, Ms Desanka Pejčinović, submitted a statement to the Panel corroborating the story provided by the complainant. She also stated that she has submitted numerous reports to various agencies and organizations about her son's disappearance, but received no responses from any of them. This included reporting to the Italian KFOR, the UNMIK Police, the International Committee of the Red Cross, the Yugoslav Red Cross in Belgrade, the UN Office in Belgrade, the International Criminal Tribunal for the former Yugoslavia Office in Belgrade, the Office of the War Crimes Prosecutor in Serbia, and the EULEX Police.
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 his son and about the fear, mental pain and suffering that was caused to him by this situation.
9. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of his son, guaranteed by Article 2 of the European Convention on Human Rights (hereinafter ECHR), and a violation of his 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 his son.
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 him by the situation surrounding the disappearance of his son.
16. In his comments, the SRSG argues that, while the complainant asserts that he has suffered “pain and torture on the grounds of mental pain” as a result of the disappearance and possible death of Mr Slobodan Pejčinović, there is no express allegation that this pain and torture were a result of UNMIK’s response to the disappearance. For that reason, 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 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 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 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).

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

MarekNOWICKI  
Presiding Member