



# *The Human Rights Advisory Panel*

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## **DECISION**

**Date of adoption: 8 November 2011**

**Case Nos. 101/09 & 107/09**

**Milijana MINIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 8 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 complaints, 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 complaints were both introduced and registered on 30 April 2009.
2. On 24 October 2009, the Panel decided to join the cases, pursuant to Rule 20 of the Panel's Rules of Procedure.
3. On 9 December 2009, the Panel requested the complainant to provide additional information. On 11 March 2010, the Panel received a response from the complainant attaching supporting documentation.

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

## **II. THE FACTS**

5. The complainant is a former resident of Kosovo, currently living in Serbia.
6. The complainant states that on 5 June 2000, her brother, Mr Velimir Simić, went missing while tending cattle on land between the municipalities of Istog/Istok and Zubin Potok. Her father, Mr Stojan Simić, also disappeared on the same day in the same area while attempting to locate his son. Their whereabouts remain unknown to date.
7. The complainant submitted reports of their disappearances to the International Committee of the Red Cross, and to the Yugoslav Red Cross Society, and also alleges that her brothers submitted reports to the UNMIK Office in Zubin Potok. She has not received any information from these organisations about the disappearances.
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 disappearances of her father and brother.
10. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of her father and brother, 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**

11. 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**

12. The complainant alleges in substance the lack of adequate criminal investigations into the disappearances of her father and brother.
13. In his comments, the SRSG does not raise any objection to the admissibility of these parts of the complaints.

14. The Panel considers that the complaints under Article 2 of the ECHR raise serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that these parts of the complaints are not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
15. No other ground for declaring these parts of the complaints inadmissible have been established.

### **Alleged violation of Article 3 of the ECHR**

16. The complainant is alleged to have suffered mental pain and anguish caused to her by the situation surrounding the disappearances of her father and brother.
17. In his comments, the SRSG argues that the “complainant does not allege that she has personally suffered mental anguish and pain, or inhuman and degrading treatment as a result of the disappearance of MrStojanSimić and MrVelimirSimić. Rather, the mental pain and anguish is stated to be the result of the alleged human rights violations suffered by MrStojanSimić and MrVelimirSimić and, therefore, the complaints appear to be inadmissible on the ground that they are manifestly ill-founded.”
18. 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).
19. 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).
20. The Panel considers that these parts of the complaints raise serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that these parts of the complaints are 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.

21. No other ground for declaring these parts of the complaints inadmissible have been established.

**FOR THESE REASONS,**

The Panel, unanimously,

**DECLARES THE COMPLAINTS ADMISSIBLE.**

Andrey ANTONOV  
Executive Officer

MarekNOWICKI  
Presiding Member