



The Human Rights Advisory Panel

Building D, UNMIK HQ Prishtinë/Priština, Kosovo | E-mail: hrap-unmik@un.org | Tel: +381 (0)38 504-604, ext. 5182

DECISION

Date of adoption: 16 December 2011

Case No. 267/09

Mira OŽEGOVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 16 December 2011, with the following members present:

Mr Marek NOWICKI
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 9 April 2009 and registered on 30 April 2009.
2. On 24 November 2010 the Panel requested the complainant to submit additional information. No response to this request was received.

3. On 19 April 2011, the complaint was communicated to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on admissibility. On 31 May 2011, UNMIK provided its response.

II. THE FACTS

4. The complainant is the mother of Mr Aleksandar Ožegović. From March 1999 Mr Ožegović served as a volunteer with the Yugoslav Army and was stationed in Kosovo. On 18 April 1999 he went missing while participating in a military action near Belanicë/Belanica, Malishevë/Mališevo municipality.
5. The complainant states that she reported her son's disappearance to the Yugoslav Army, the Yugoslav Red Cross, and the International Committee of the Red Cross (ICRC).
6. According to the death certificate issued by the Office of the Medical Examiner of the Office of the Missing Persons and Forensics (OMPF) of the UNMIK Department of Justice on 18 June 2007, the mortal remains of Mr Ožegović were found on 4 December 2006 at an unidentified location in Malishevë/Mališevo municipality. An autopsy was conducted on 24 January 2007, which could establish only that the death had occurred "prior (to) 4 December 2006". The cause of death was established as "gunshot to the chest and right leg". The mortal remains were later identified and handed over to the complainant on 6 July 2007.
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 and killing of her son and about the fear, pain and anguish suffered by herself because of this situation.
9. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of Mr Ožegović, 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

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 and killing of Mr Ožegović.
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 allegedly caused to her by the situation surrounding the disappearance and subsequent killing of her son.
16. The SRSG argues that the complainant does not expressly allege that the mental pain and anguish suffered is a result of UNMIK's response to the disappearance and death of Mr Ožegović and that therefore this part of the complaint is manifestly ill-founded, and thus inadmissible.
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 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).
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. However, where the disappeared person is later found dead, the applicability of Article 3 of the ECHR is in general 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., 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).
20. In this respect, the question arises whether the complaint has been filed in time. Section 3.1 of UNMIK Regulation No. 2006/12 states that the Panel “may only deal with a matter ... within a period of six months from the date on which the final decision was taken”. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the complainant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act, or its effect on or prejudice to the complainant (ECtHR (Grand Chamber), *Varnava and Others v. Turkey*, nos. 16064/90 and others, judgment of 18 September 2009, § 157). Where the complaint relates to a continuing situation, which has come to an end, the six-month time limit starts to run from the date on which the situation has come to an end.
21. The Panel notes that the mortal remains of Mr Ožegović were returned to the complainant on 6 July 2007. It is at that moment that the period during which an issue could arise under Article 3 of the ECHR came to an end. For the purpose of Section 3.1 of UNMIK Regulation No. 2006/12, the six-month time limit therefore started to run from that date.
22. The complaint was filed with the Panel on 9 April 2009, that is after the expiration of the above-referred six-month period.
23. The Panel therefore must conclude that this part of the complaint falls outside the time-limit set by Section 3.1 of UNMIK Regulation No. 2006/12.

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