



The Human Rights Advisory Panel

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DECISION

Date of adoption: 16 December 2011

Case No. 252/09

Verica PATRNOGIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 16 December 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 10 April 2009 and registered on 30 April 2009.
2. On 23 December 2009, the Panel requested additional information from the complainant. However, no response was received.
3. On 13 October 2010, the Panel reiterated its request for additional information to the complainant. The Panel received the complainant's response on 25 October 2010.

4. On 19 April 2011, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the case. UNMIK submitted its response on 31 May 2011.

II. THE FACTS

5. The complainant is the wife of Mr Mlađan Mavrić. The complainant states that her husband was kidnapped by unknown persons on 12 October 1999 while he was returning with his vehicle from the Serbian part of Rahovec/Orahovac town to the village of Hoçë e Madhe/Velika Hoča. According to the complainant, Mr Mavrić had left in the morning to buy food supplies in Rahovec/Orahovac, where he was last seen at about 11.00 hours.
6. The complainant states that her husband's kidnapping was reported on the day of his disappearance to the German KFOR and to the UNMIK Police. According to the complainant, she did not receive any information on her husband's fate for four years following his disappearance.
7. The mortal remains of Mr Mavrić were located by the Missing Persons Unit of the UNMIK Police on 22 November 2002, positively identified through DNA analysis on 12 November 2003, and handed over to his family on 29 November 2003. An autopsy ascertained that Mr Mavrić's death was caused by gunshot wounds to the head.
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 abduction and murder of her husband. She also complains about the mental pain and suffering allegedly caused to herself by this situation.
10. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of her husband, 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

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 an adequate criminal investigation into the kidnapping and murder of her husband.
13. In his comments, the SRSJ does not raise any objection to the admissibility of this part of the complaint.
14. 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.
15. No other ground for declaring this part of the complaint inadmissible has been established.

Alleged violation of Article 3 of the ECHR

16. The complainant alleges mental pain and suffering caused to herself by the situation surrounding the disappearance of her husband.
17. The Panel notes that according to the case law of the European Court of Human Rights a member of the family of a disappeared person can under certain conditions be considered the victim of treatment by the authorities contrary to Article 3 of the ECHR, which prohibits inhuman treatment. Where the disappeared person is later found dead, the applicability of Article 3 is in principle limited to the distinct period during which the member of the family sustained the uncertainty, anguish and distress appertaining to the specific phenomenon of disappearances (see, *e.g.*, European Court of Human Rights (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).
18. In the present case, the relevant period lasted until 29 November 2003 when Mr Mavrić's mortal remains were handed over to his family.
19. The Panel recalls that, according to Section 2 of UNMIK Regulation No. 2006/12, it has jurisdiction only over "complaints relating to alleged violations of human rights that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights".
20. The Panel has no doubts as to the profound suffering caused to the complainant by the disappearance and death of her husband. Nevertheless, the Panel must conclude that this part of the complaint lies outside its jurisdiction *ratione temporis*.

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