



The Human Rights Advisory Panel

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DECISION

Date of adoption: 16 December 2011

Case No. 133/09

Slobodan PETKOVIĆ

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, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 24 December 2008 and registered on 30 April 2009.
2. On 9 December 2009, the Panel requested the complainant to submit additional information. The complainant's response was received on 4 March 2010.
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 17 June 2011, the Panel received UNMIK's response.

II. THE FACTS

4. The complainant is the father of Mr Nebojša Petković and the brother of Ms Dobrila Petković.
5. The complainant states that on 30 July 1999 Mr Nebojša Petković, an oral surgery specialist, was kidnapped by members of the Kosovo Liberation Army while on his way to work in Prishtinë/Priština. The mortal remains of Mr Nebojša Petković were returned to the complainant on 27 February 2007 at Merdare. The complainant relates that according to the pathologist's report, Mr Nebojša Petković was stabbed to death.
6. The complainant also states that his sister, Ms Dobrila Petković, a worker at the textile company "Kosovka", Prishtinë/Priština was kidnapped on 10 August 1999. However he is not able to provide further information on the circumstances surrounding her disappearance. Ms Petković's whereabouts remain unknown to date.
7. The complainant states that he reported his son's abduction to KFOR, UNMIK, the International Committee of the Red Cross (ICRC), and the UN Office of the High Commissioner for Human Rights in August 1999. He also states that criminal complaints concerning his son's disappearance were filed with the Serbian Ministry of Internal Affairs and the International Prosecutor of the District Prosecutor's Office in Prishtinë/Priština.
8. The complainant does not specify if and when his sister's kidnapping was reported to the authorities. However, Ms Petković's name appears in the lists of missing persons in Kosovo as prepared by the ICRC and the UNMIK Office of Missing Persons and Forensics (OMPF) respectively.
9. 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

10. The complainant complains about UNMIK's alleged failure to properly investigate the disappearance and murder of his son and the disappearance of his sister. The complainant also complains about the fear, pain and anguish suffered by himself because of this situation.
11. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of Mr Nebojša Petković and Ms Dobrila Petković, 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

12. 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.

a) Complaint concerning the disappearance and murder of Mr Nebojša Petković

Alleged violation of Article 2 of the ECHR

13. The complainant alleges in substance the lack of an adequate criminal investigation into the disappearance and murder of Mr Nebojša Petković.

14. In his comments, the SRSG does not raise any objection to the admissibility of this part of the complaint.

15. 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.

16. No other ground for declaring this part of the complaint inadmissible has been established.

Alleged violation of Article 3 of the ECHR

17. The complainant alleges mental pain and suffering allegedly caused to him by the situation surrounding the abduction and murder of his son.

18. 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 Nebojša Petković. The SRSG argues that this mental pain and anguish is stated to be the result of the human rights violation committed against the victim and that therefore this part of the complaint is manifestly ill-founded.

19. 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).

20. 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).
21. 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).
22. 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.
23. The Panel notes that the mortal remains of Mr Nebojša Petković were returned to the complainant on 24 February 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.
24. The complaint was filed with the Panel on 24 December 2008, that is after the expiration of the above-referred six-month period.
25. 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.

b) Complaint concerning the disappearance of Ms Dobrila Petković

Alleged violation of Article 2 of the ECHR

26. The complainant alleges in substance the lack of an adequate criminal investigation into the disappearance of his sister.
27. In his comments, the SRSG did not provide any comments on the admissibility of this part of the complaint. According to the SRSG the complaint does not contain sufficient information concerning the disappearance of Ms Petković.

28. The Panel nevertheless recalls the case law of the European Court for Human Rights with respect to the procedural obligation under Article 2 of the ECHR, stressing that it is for the competent authorities to investigate the circumstances surrounding an individual's disappearance once the matter has been brought to their attention (ECtHR (Grand Chamber), *Al-Skeini and Others v. United Kingdom*, no. 55721/07, judgment of 7 July 2011, § 165).
29. The Panel notes that at some stage UNMIK became aware of Ms Petković's disappearance as she was listed as a missing person by the UNMIK OMPF. At least from that moment UNMIK was bound by the procedural obligation under Article 2 of the ECHR to conduct an effective investigation into the matter.
30. Therefore the Panel considers that the complaint under Article 2 of the ECHR with respect to the disappearance of Ms Petković 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 unsubstantiated or manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
31. The Panel does not see any other ground for declaring this part of the complaint inadmissible.

Alleged violation of Article 3 of the ECHR

32. The complainant can be deemed to allege mental pain and suffering caused to him by the situation surrounding the abduction of his sister.
33. In his comments, the SRSG does not provide any comments on the admissibility of this part of the complaint. According to the SRSG the complaint does not contain sufficient information concerning the disappearance of Ms Petković.
34. The Panel considers that, despite the lack of express allegations put forward by the complainant in this respect, the complaint sets forth relevant facts upon which an alleged violation of Article 3 of the ECHR may be based.
35. The Panel also 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, *Zdravković*, no. 46/08, decision of 17 April 2009, § 41).

36. 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.
37. 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.
38. No other ground for declaring this part of the complaint inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

- **DECLARES ADMISSIBLE THE COMPLAINT RELATING TO THE RIGHT TO LIFE WITH RESPECT TO MR NEBOJŠA PETKOVIĆ;**
- **DECLARES ADMISSIBLE THE COMPLAINT RELATING TO THE RIGHT TO LIFE AND THE PROHIBITION OF INHUMAN AND DEGRADING TREATMENT WITH RESPECT TO THE DISAPPEARANCE OF MS DOBRILA PETKOVIĆ;**
- **DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.**

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member