



The Human Rights Advisory Panel

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DECISION

Date of adoption: 19 February 2012

Case No. 06/10

Ivica MARKOVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 19 February 2012,
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 1 December 2009 and registered on 4 March 2010.
2. On 12 May 2010, the Panel requested the complainant to submit additional information. The complainant's response was received on 17 June 2010.
3. On 8 November 2011, the complaint was communicated to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on admissibility. On 22 December 2011, the Panel received the response from the SRSG.

II. THE FACTS

4. The complainant is the brother of Mr Zoran Marković.
5. The complainant states that on 11 July 1999, Mr Zoran Marković was apprehended in Prishtinë/Priština by four armed Kosovo Albanians in front of the building where he lived, and taken away in a vehicle.
6. The complainant indicates that he reported his brother's abduction to the International Committee of the Red Cross (ICRC), which on 3 August 1999 opened a tracing request for Mr Zoran Marković, still open on the date of submission of the complaint to the Panel. Likewise, his name appears in the list of missing persons, maintained by the UNMIK Office of Missing Persons and Forensics (OMPF). The complainant also claims to have filed a criminal complaint against unidentified perpetrators with an International Public Prosecutor in Prishtinë/Priština, in August 2004.
7. The mortal remains of Mr Zoran Marković were located on 6 March 2007. The autopsy conducted by the OMPF, on 26 April 2007, established that the cause of death was firearm injuries 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.
9. According to the SRSG on the basis of the OMPF file, the Commission for missing persons of the Republic of Serbia visited family members of Mr Zoran Marković on 1 April 2009, and presented them with the results of UNMIK's investigation, in particular the Ante Mortem/Post Mortem data comparison. The OMPF issued a confirmation of identity of Mr Zoran Marković on 9 April 2009.
10. The identification certificate for Mr Zoran Marković was issued by the OMPF on 12 December 2009. The same institution issued the death certificate on 4 March 2010. The hand-over declaration confirming the receipt of the mortal remains of Mr Zoran Marković and the belongings found with them, was signed by the complainant on 5 March 2010.

III. THE COMPLAINT

11. The complainant complains about UNMIK's alleged failure to properly investigate the disappearance and murder of his brother and about the fear, pain and anguish suffered by himself because of this situation.
12. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of Mr Zoran Marković, 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

13. 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

14. The complainant alleges in substance the lack of an adequate criminal investigation into the disappearance and murder of Mr Zoran Marković.
15. In his comments, the SRSG does not object to the admissibility of the complaint in relation to the procedural obligations under Article 2 of the ECHR.
16. 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.
17. No other ground for declaring this part of the complaint inadmissible has been established.

Alleged violation of Article 3 of the ECHR

18. The complainant alleges mental pain and suffering allegedly caused to him by the situation surrounding the abduction and murder of his brother.
19. The SRSG argues in the first place that this part of the complaint is inadmissible as it is not possible to ascertain what its precise object is. The SRSG argues in particular that the complaint contains vague allegations already made in the criminal complaint filed with the International Prosecutor. In that complaint the complainant refers to lack of information about the actions taken to find his brother and the kidnappers.
20. 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, and HRAP, *Petković*, no. 133/08, decision of 16 December 2011, § 35).

21. 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).
22. In the present case, it appears from the criminal complaint referred to by the SRSG that the complainant argues that he has been completely prevented from obtaining information about the actions taken to find the kidnapped person and the perpetrators of this act. This suffices to indicate that the complainant complains about the treatment of himself by the authorities.
23. Insofar as the SRSG raises an objection based on the vagueness of the complaint, the objection is unfounded.
24. The SRSG further argues that this part of the complaint has been filed outside the six-month time limit set by Section 3.1 of UNMIK Regulation No. 2006/12. According to the SRSG, the alleged suffering and fear came to an end on 1 April 2009, when the Commission on missing persons of the Republic of Serbia visited family members of Mr Zoran Marković and presented them with the results of UNMIK's investigation, in particular the Ante Mortem/Post Mortem data comparison. According to the SRSG, it is on the basis of that information that the family formally accepted the identification of the mortal remains as those of Mr Zoran Marković. It ensues that the six-month time limit started to run from 1 April 2009. The complaint was filed on 1 December 2009, that is outside that time-limit.
25. The Panel recalls that 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).
26. It follows that in this respect the question may indeed arise 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 act or measure 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.
27. The Panel notes that in the present case the identification certificate for Mr Zoran Marković was issued on 12 December 2009, and the death certificate on 4 March 2010. The mortal remains of Mr Zoran Marković were returned to the family on 5 March 2010. 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 (see HRAP, *Petković*, no. 133/09, decision of 16 December 2011, § 23).

28. The Panel cannot accept the argument of the SRSG that the six-month time limit already started to run already on 1 April 2009. Even assuming that on that day the family of Mr Zoran Marković was effectively informed of certain results of the investigation carried out by UNMIK, this was not sufficient to put an end to their alleged suffering. For the relatives of a missing person, it is important that the mortal remains are handed over to them, so that they can properly start the mourning process.
29. The present complaint was filed with the Panel on 1 December 2009, three months prior to the start of the six-month time limit. The objection of the SRSG is therefore unfounded.
30. The Panel considers, moreover, 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.
31. 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

Marek NOWICKI
Presiding Member