



The Human Rights Advisory Panel

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DECISION

Date of adoption: 17 March 2012

Case No. 233/09

Petar JOVIČIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 17 March 2012,
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 14 April 2009 and registered on 30 April 2009.
2. On 12 May 2010, the Panel requested the complainant to provide additional information. The complainant's response was received on 14 October 2010.
3. On 10 November 2010, the Panel requested the complainant to provide more information. The complainant's response to this request was received on 25 November 2010.

4. On 10 November 2011, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on the admissibility of the complaint.
5. On 14 December 2011, the SRSG provided his response.

II. THE FACTS

6. The complainant is the husband of Mrs Krasenka Aljinović. The complainant states that on 20 March 1999 Mrs Aljinović was admitted to the city hospital in Prizren. On 15 June 1999 the complainant left Prizren for security reasons, and was accommodated in a collective center for internally displaced persons in Fushë Kosovë/Kosovo Polje. His wife stayed in hospital since she required constant medical care.
7. The complainant states that he attempted to arrange a transfer of his wife from Prizren hospital to the hospital in Fushë Kosovë/Kosovo Polje. He sought assistance from KFOR, the Red Cross of Serbia and Montenegro and the International Committee of the Red Cross (ICRC), but no assistance was provided.
8. On 14 August 1999, through an ICRC staff member he learned that Mrs Aljinović had passed away in the hospital on 8 August 1999 and that she was buried in the Serbian part of the Prizren city cemetery. The same ICRC staff member provided the complainant with a copy of the death certificate and a photograph of Mrs Aljinović's grave.
9. The complainant also submits that he later discovered that the mortal remains of his wife, together with the mortal remains of other persons (from that location), had been exhumed and apparently transported to Rahovec/Orahovac. In April 2005 he visited the location where his wife was reportedly initially buried and found that the whole site had been excavated.
10. The complainant has never been officially notified about Mrs Aljinović's death, and has never received any of her personal belongings or related documentation. It is unknown where Mrs Aljinović's mortal remains are now located.

III. THE COMPLAINT

11. The complainant complains about the failure by UNMIK to properly notify him about the death of his wife and about the displacement of her mortal remains, causing him pain and suffering.
12. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of his right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the European Convention on Human Rights (ECHR), and his right to respect for private life and family life, guaranteed by Article 8 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 3 of the ECHR

14. The complainant alleges mental pain and suffering caused to him by the situation surrounding the death of his wife and the subsequent disappearance of her mortal remains.
15. In his comments, the SRSG does not raise any objection to the admissibility of this part of the complaint.
16. The Panel considers that this aspect of the complaint raises complex issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that this aspect 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 8 of the ECHR

18. The complainant alleges the violation of his right to private and family life, caused by the disappearance of his wife's mortal remains.
19. In his comments, the SRSG does not raise any objection to the admissibility of this part of the complaint.
20. The Panel refers to the case law of the European Court of Human Rights, which recognises that the concept of private and family life is wide and not capable of precise definition (see, e.g., European Court of Human Rights (ECtHR), *Pretty v. United Kingdom*, no. 2346/02, judgment of 29 April 2002, § 61, ECHR, 2002-IV; ECtHR, *Girard v. France*, no. 22590/04, judgment of 30 June 2011, § 99). The Panel considers that the disappearance of a person's mortal remains, thereby denying the possibility of burial in the family tomb and marking the grave, falls within this wide notion (see, e.g., ECtHR, *Hadri-Vionnet v. Switzerland*, no. 55525/00, judgment of 14 February 2008, § 51). Article 8 of the ECHR is therefore applicable.
21. The Panel also notes that there may be positive obligations under Article 8 of the ECHR (see, e.g., ECtHR (Grand Chamber), *von Hannover v. Germany (no. 2)*, nos. 40660/08 and 60641/08, judgment of 7 February 2012, § 98). It further notes that there are different ways of ensuring respect for private and family life, and that the nature of the State's positive obligations arising under Article 8 depends on the particular aspect of private and family life that is in issue (see, e.g., ECtHR, *X and Y v. Netherlands*, no. 8978/80, judgment of 26 March 1985, Publications of the Court, Series A, no. 91, § 24; ECtHR, *Stubbings and Others v. United Kingdom*, nos. 22083/93 and 22095/93, judgment of 22 October 1996, Reports of Jurisprudence and Decisions, 1996-IV, § 63; ECtHR, *Girard v. France*, referred in § 20 above, at § 99).
22. The Panel considers that this aspect 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 aspect of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
23. 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