The Human Rights Advisory Panel
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DECISION

Date of adoption: 5 April 2012

Case No. 277/09

Luka ANĐELKOVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 5 April 2012,
with the following members taking part:

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, 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 1 April 2009 and registered on 30 April 2009.

2. On 29 December 2011, the complaint was communicated to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on admissibility. On 31 January 2012, the Panel received UNMIK's response.

II. THE FACTS

3. The complainant is the son of Mr Stajko Anđelković.

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4. The complainant states that Mr Stajko Anđelković was abducted by members of the Kosovo Liberation Army (KLA) on 5 May 1999 in the Zojiq/Zojić village, Prizren municipality, during a KLA assault on the village. Since that time his father's whereabouts have remained unknown.

5. The complainant states that the disappearance was reported to the International Committee of the Red Cross (ICRC) and to the Yugoslav Red Cross. An ICRC tracing request for Mr Stajko Anđelković remains open. Likewise, his name appears in a list of missing persons, communicated by the ICRC to UNMIK Police on 12 October 2001, and in the database maintained by the UNMIK Office of Missing Persons and Forensics. The complainant also states that the matter was reported to the International Public Prosecutor in Prishtinë/Priština, but presents no specific details.

6. 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

7. The complainant complains about UNMIK's alleged failure to properly investigate the abduction and probable killing of his father. The complainant in essence also complains about the fear, pain and anguish suffered by himself because of this situation.

8. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of Mr Stajko Anđelković, guaranteed by Article 2 of the European Convention on Human Rights (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

9. 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

10. The complainant alleges in substance the lack of an adequate criminal investigation into the abduction and probable killing of his father.

11. In his comments, the SRSG raises no objection to the admissibility of this part of the complaint.

12. 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.

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

Alleged violation of Article 3 of the ECHR

14. The complainant alleges mental pain and suffering caused to him by the situation surrounding the abduction of his father.

15. In his comments, the SRSG notes that the complainant raises absolutely no issue, either express or implied, with respect to Article 3 of the ECHR, as the complainant does not allege that he has been subjected to inhuman treatment, or exposed to suffering and mental pain, in relation to the disappearance of Mr Stajko Anđelković. According to the SRSG, the complaint is to the contrary focused solely on the treatment sustained by the complainant's father, which can in no way be attributed to UNMIK. Therefore, the SRSG opines that the complaint in this regard is clearly inadmissible and entirely without merit.

16. The Panel considers that, despite the lack of express allegations put forward by the complainant in this respect, the complaint sets forth relevant facts relating to the abduction of the complainant's father upon which the alleged violation of the complainant's rights under Article 3 of the ECHR may be based.

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 of Human Rights 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, *Radisavljević*, no. 156/09, decision of 17 February 2012, § 18).

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 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.

19. 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.

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20. 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

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