



The Human Rights Advisory Panel

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DECISION

Date of adoption: 10 May 2012

Case No. 124/09

Miluša JOŠANOVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 10 May 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 7 April 2009 and registered on 30 April 2009.
2. On 3 November 2009, the Panel requested additional information from the complainant. No response was received.
3. On 8 December 2010 and subsequently on 20 April 2011, the Panel reiterated its request for additional information to the complainant. The complainant responded on 20 October 2011.
4. On 8 November 2011, the Panel communicated the case to the Special Representative of the Secretary-General (SRS) for UNMIK's comments on admissibility.

5. On 13 December 2011, UNMIK provided its response.

II. THE FACTS

6. The complainant is the wife of Mr Krunislav Jošanović.
7. The complainant states that her husband was abducted on 10 or 11 June 1999 by unknown persons in the area of Orllan/Orlane, in Podujevë/Podujevo Municipality. The complainant states that Mr Jošanović left his house in the afternoon of 10 June 1999 to visit an uncle and never returned home. Two days later, the family was allegedly informed that Mr Jošanović had been abducted by members of the Kosovo Liberation Army. His whereabouts remain unknown to date.
8. The complainant states that Mr Jošanović's disappearance was reported to "all competent institutions", including the Yugoslav Red Cross, the International Committee of the Red Cross (ICRC), the Serbian Ministry of Internal Affairs and the International Prosecutor of the District Public Prosecutor's Office in Prishtinë/Priština. The complainant maintains that she did not receive any feedback by relevant institutions on the status of investigations.
9. An ICRC tracing request for Mr Jošanović remains open. Likewise, his name appears in the database compiled by the UNMIK Office on Missing Persons and Forensics. Mr Jošanović's name also appears in a list of missing persons, communicated by the ICRC to UNMIK Police on 11 February 2002.
10. 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

11. The complainant complains about UNMIK's alleged failure to properly investigate the disappearance of her husband. She also complains about the mental pain and suffering allegedly caused to herself and her family by this situation.
12. 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

13. Before considering the case on the 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 abduction of her husband.
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 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 caused to herself and her family by the situation surrounding the disappearance of her husband.
19. In his comments, the SRSG argues that, while the complainant states that she has suffered mental pain and anguish as a result of the disappearance, there is no express allegation that this fear and anguish were a result of UNMIK's response to the disappearance of Mr Jošanović. For that reason, this part of the complaint is inadmissible as manifestly ill-founded.
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, *Zdravković*, no. 46/08, decision of 17 April 2009, § 41, and HRAP, *Radisavljević*, no. 156/08, decision of 17 February 2012, § 18).
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; HRAP, *Petković*, no. 133/09, decision of 16 December 2011, § 20).

22. 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, and rejects the objection raised by the SRSG.

24. 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