



# *The Human Rights Advisory Panel*

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## **DECISION**

**Date of adoption: 10 May 2012**

**Case No. 71/09**

**Dijana ŽIVKOVIĆ**

**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 16 April 2009 and registered on 30 April 2009.
2. On 22 June 2011, the Panel requested the complainant to provide additional information. The Panel received the complainant's response on 28 September 2011.
3. On 30 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.
4. On 28 December 2011, UNMIK provided its comments on the admissibility of the complaint.

## **II. THE FACTS**

5. The complainant is the daughter of Mr Ilija Živković. The complainant states that on 14 August 1999 her father was abducted from his vehicle while travelling with a Kosovo Albanian man from Podujevë/Podujevo to Prishtinë/Priština. The Kosovo Albanian man was apparently released ten days later, but Mr Ilija Živković was never seen alive again.
6. The complainant states that the abduction was reported to the International Committee of the Red Cross (ICRC), KFOR, the Office of the Serbian Ministry of Internal Affairs, UNMIK and the International Prosecutor's Office in Prishtinë/Priština.
7. On 28 September 1999, the ICRC issued a tracing request for Mr Ilija Živković, and according to information provided by the SRSG, an investigation file concerning Mr Živković was opened by the Missing Persons Unit of UNMIK Police in 2000.
8. On 10 July 2006, the mortal remains of Mr Živković were identified by the UNMIK Office on Missing Persons and Forensics (OMPF), and on 13 October 2006, they were handed over to his family. A copy of the death certificate issued by the OMPF on 10 July 2006 states that the cause of death was not ascertained.
9. On 9 December 2008, UNMIK's responsibility with regard to the judiciary 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 killing of her father. She also complains about the pain and anguish allegedly caused to herself by this situation.
11. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of her father, 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**

12. 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**

13. The complainant alleges the lack of an adequate criminal investigation into the abduction and killing of her father.

14. 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 herself and her family by the situation surrounding the abduction and killing of her father.
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 abduction and killing of her father. The SRSG argues that the complaint does not contain any facts from which an inference can be drawn that the complainant herself has been the victim of inhuman treatment attributable to UNMIK. 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 and HRAP, *Radisavljević*, no. 156/09, decision of 17 February 2012, § 18).
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; HRAP, *Petković*, no. 133/09, decision of 16 December 2011, § 20).
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; HRAP, *Petković*, referred in § 20 above, at § 21).

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 Ilija Živković were returned to the complainant on 13 October 2006. 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 30 April 2009, 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.

**FOR THESE REASONS,**

The Panel, unanimously,

**- DECLARES ADMISSIBLE THE COMPLAINT RELATING TO THE RIGHT TO LIFE;**

**- DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINT.**

Andrey ANTONOV  
Executive Officer

Marek NOWICKI  
Presiding Member