



# *The Human Rights Advisory Panel*

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## **DECISION**

**Date of adoption: 11 May 2012**

**Case No. 219/09**

**Olivera BUDIMIR**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 11 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 6 April 2009 and registered on 30 April 2009.
2. On 23 December 2009, the Panel requested the complainant to provide additional information. The Panel received the complainant's response on 27 May 2010.
3. On 25 July 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. On 5 September 2011, the Panel received UNMIK's response.

## **II. THE FACTS**

4. The complainant is the widow of Mr Rade Budimir.
5. The complainant states that on 2 August 1999, Mr Rade Budimir was abducted from his mother's apartment in Prishtinë/Priština.
6. The complainant states that the disappearance was reported to KFOR, UNMIK, the International Committee of the Red Cross (ICRC), the Yugoslav Red Cross, and the Serbian Ministry of Internal Affairs.
7. On 13 October 1999, the ICRC opened a tracing request for Mr Rade Budimir. Likewise, his name appeared in the database compiled by the UNMIK Office on Missing Persons and Forensics (OMPF).
8. In June 2000, the mortal remains of Mr Budimir were exhumed from Dragodan cemetery in Prishtinë/Priština. They were identified by the OMPF on 12 September 2002 and were handed over to the family on 13 September 2002. According to the death certificate issued by the OMPF, the cause of death of Mr Budimir was unascertained.
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 abduction and killing of her husband. 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 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**

12. Before considering its 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**

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

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 husband, including the manner of the return of his mortal remains.
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 husband. 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 notes that according to the case law of the European Court of Human Rights a member of the family of a disappeared person can under certain conditions be considered the victim of treatment by the authorities contrary to Article 3 of the ECHR, which prohibits inhuman treatment. Where the disappeared person is later found dead, the applicability of Article 3 is in principle limited to the distinct period during which the member of the family sustained the uncertainty, anguish and distress appertaining to the specific phenomenon of disappearances (see, *e.g.*, European Court of Human Rights (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).
20. In the present case, the relevant period lasted until September 2002 when Mr Budimir's mortal remains were handed over to his family.
21. The Panel recalls that, according to Section 2 of UNMIK Regulation No. 2006/12, it has jurisdiction only over "complaints relating to alleged violations of human rights that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights".
22. The Panel has no doubts as to the profound suffering caused to the complainant by the disappearance and death of her husband. Nevertheless, the Panel must conclude that this part of the complaint lies outside its jurisdiction *ratione temporis* (see Human Rights Advisory Panel (HRAP) *Patrnogić* no. 252/09, decision of 16 December 2011, §§ 16-20).

### **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