



The Human Rights Advisory Panel

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DECISION

Date of adoption: 9 June 2012

Cases nos 14/09, 15/09, 18/09, 19/09, 20/09 and 21/09

Muharem IBRAJ

against

UNMIK

The Human Rights Advisory Panel, sitting on 9 June 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 complaints were all introduced on 24 December 2008 and registered on 21 January 2009.
2. On 4 March 2009 the Panel requested the complainant to provide additional information. The complainant responded by a letter dated 24 March 2009.
3. On 22 June 2009, the complaints were communicated to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on admissibility. On 10 August 2009, UNMIK provided its response.

4. On 9 September 2010 the Panel decided to join the cases, pursuant to Rule 20 of the Panel's Rules of Procedure.
5. On 12 August 2010, the complainant submitted additional information to the Panel.
6. On 26 January 2011 the Panel requested the complainant to provide additional information. The complainant responded by a letter dated 28 January 2011.
7. On 25 March 2011, all complaints were re-communicated to the SRSG, for UNMIK's comments on admissibility. On 10 June 2011, UNMIK provided its response.

II. THE FACTS

8. The complainant is a former resident of Kosovo. On 13 June 1999, he had to leave his home, for security reasons. He is currently living in Serbia proper.
9. The complainant informs the Panel that after his departure, six close members of his family were abducted by members of the Kosovo Liberation Army (KLA). The details of these abductions are as follows.
10. His brother, Mr Isa Ibraj (case no. 14/09), was abducted on 22 June 1999 from his home in Osek Hilë/Osek Hile village, Gjakovë/Đakovica municipality. Since that time his whereabouts have remained unknown.
11. His nephew, Mr Muhamet Ibraj (case no. 15/09), was abducted on 19 June 1999 from his home in Osek Hilë/Osek Hile village, Gjakovë/Đakovica municipality. His mortal remains were later found in Junik village, Deçan/Dečani municipality, handed over to the family on 9 November 2006, and buried on the same day in Damjan/Damjane village, Gjakovë/Đakovica municipality.
12. His son, Mr Kujtim Ibraj (case no. 18/09), was abducted on 20 June 1999 from his home in Osek Hilë/Osek Hile village, Gjakovë/Đakovica municipality. His mortal remains were found on 18 December 2000 in Shishman I Bokes/Šišman village, Gjakovë/Đakovica municipality, handed over to the complainant on 27 November 2007, and buried on the same day in Prizren. His death is confirmed by a death certificate issued by an authorised authority of the Republic of Serbia on 14 January 2008.
13. His brother, Mr Isuf Ibraj (case no. 19/09), was abducted on 22 June 1999 from his home in Osek Hilë/Osek Hile village, Gjakovë/Đakovica municipality. His mortal remains were found on 13 December 1999 in Shishman I Bokes/Šišman village, Gjakovë/Đakovica municipality, and buried on 9 November 2006 in Damjan/Damjane village, Gjakovë/Đakovica municipality.
14. His nephew, Mr Jakup Ibraj (case no. 20/09), was abducted on 22 June 1999 from his home in Osek Hilë/Osek Hile village, Gjakovë/Đakovica municipality. His mortal remains were found on 13 December 2000 in Shishman I Bokes/Šišman village, Gjakovë/Đakovica municipality, handed over to the family on 9 November 2006, and buried on the same day in Damjan/Damjane village, Gjakovë/Đakovica municipality.
15. His brother, Mr Iber Ibraj (case no. 21/09), was abducted on 19 June 1999 from his home in Osek Hilë/Osek Hile village, Gjakovë/Đakovica municipality. His mortal remains were found on 13 December 1999 in Shishman I Bokes/Šišman village, Gjakovë/Đakovica

municipality, handed over to the family on 9 November 2006, and buried on the same day in Damjan/Damjane village, Gjakovë/Đakovica municipality.

16. The complainant submits that the abduction of his relatives was reported to the International Committee of the Red Cross (ICRC), the Red Cross of Serbia, the Red Cross Organisation of the city of Niš (Serbia proper), Serbian Ministry of Internal Affairs (MUP), and other relevant organisations.
17. A certificate dated 7 April 2006, issued by a relevant department of the MUP, confirms that all the listed above individuals were abducted by the KLA between 18 and 22 June 1999, from Osek Hilë/Osek Hile village, Gjakovë/Đakovica municipality, and that a criminal report was filed with the Office of the District Public Prosecutor of Pejë/Peć, located in Leskovac, Serbia proper.
18. The names of all victims appear in the database compiled by the UNMIK Office on Missing Persons and Forensics. The names of Messrs Isa Ibraj, Kujtim Ibraj and Iber Ibraj also appear in a list of missing persons, communicated by the ICRC to UNMIK Police on 12 October 2001. The ICRC tracing request with regard to Mr Isa Ibraj remains open.
19. 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 COMPLAINTS

20. The complainant complains about UNMIK's alleged failure to properly investigate the disappearance and killing or probable killing of his close family members. The complainant in essence also complains about the fear, pain and anguish suffered by himself because of this situation.
21. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of his relatives, guaranteed by Article 2 of the European Convention on Human Rights (hereinafter 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

22. Before considering the cases on their merits, the Panel must first decide whether to accept the cases, considering the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.

A. Alleged violation of Article 2 of the ECHR

23. The complainant alleges in substance the lack of an adequate criminal investigation into the disappearance and killing or probable killing of his close relatives.

24. In his comments, the SRSG does not object to the admissibility of the complaint in relation to the procedural obligations under Article 2 of the ECHR.
25. The Panel considers that the complaint under Article 2 of the ECHR raise 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.
26. No other ground for declaring this part of the complaint inadmissible has been established.

B. Alleged violation of Article 3 of the ECHR

27. The complainant alleges mental pain and suffering allegedly caused to him by the situation surrounding the abduction and killing or probable killing of his close relatives.
28. In his comments, the SRSG argues that the complainant raises an issue under Article 3 of the ECHR only with regard to the treatment and death of the victims themselves, and that there is no express or implied assertion of any mental suffering resulting from any dealings with UNMIK. E further argues that there is no indication that the complainant ever contacted UNMIK, requesting information on the status of the case. Therefore, the SRSG opines that this part of the complaints, with regard to all victims, is inadmissible.
29. The Panel considers that, despite the lack of express allegations put forward by the complainant in this respect, the complaints set forth relevant facts related to the abduction of his relatives upon which the alleged violation of Article 3 of the ECHR may be based.
30. 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).
31. 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.

1. *With regard to the abduction and probable killing of Mr Isa Ibraj (case no. 14/09)*
32. The Panel considers that the analysis presented in §§ 29-31 fully applies to the situation surrounding the abduction and probable killing of Mr Isa Ibraj, as his whereabouts remain unknown. The Panel also 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 complaints is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12 and rejects the objection of the SRSB
33. No other ground for declaring this part of the complaint inadmissible has been established.
2. *With regard to the abduction and killing of Messrs Muhamet Ibraj (case no. 15/09), Kujtim Ibraj (case no. 18/09), Isuf Ibraj (case no. 19/09), Jakup Ibraj (case no. 20/09) and Iber Ibraj (case no. 21/09)*
34. Where the disappeared person is later found dead, as in the case of Messrs Muhamet Ibraj, Kujtim Ibraj, Isuf Ibraj, Jakup Ibraj and Iber Ibraj, 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).
35. In this respect, the question arises whether the complaints have 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.
36. The Panel notes that the mortal remains of the identified victims were handed over to their family on 9 November 2006 (those of Messrs Muhamet Ibraj, Isuf Ibraj, Jakup Ibraj and Iber Ibraj) and 27 November 2007 (those of Mr Kujtim Ibraj). It is at those two moments that the periods 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 those two dates (see HRAP, *Petković*, no. 133/09, decision of 16 December 2011, § 23; HRAP, *Marković*, no. 06/10, decision of 19 February 2012, § 27).
37. All complaints were filed with the Panel on 24 December 2008, that is after the expiration of the above-referred six-month period.
38. The Panel therefore must conclude that this part of the complaints 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 COMPLAINTS RELATING TO THE RIGHT TO LIFE;**
- **DECLARES ADMISSIBLE THE COMPLAINT RELATING TO THE RIGHT TO BE FREE FROM INHUMAN AND DEGRADING TREATMENT WITH RESPECT TO MR ISA IBRAJ (CASE NO. 14/09);**
- **DECLARES INADMISSIBLE THE REMAINDER OF THE COMPLAINTS.**

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member