



The Human Rights Advisory Panel

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DECISION

Date of adoption: 17 August 2012

Cases Nos 153/09 and 181/09

Lidija MILENKOVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 17 August 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 two complaints were filed on 8 April 2009 and registered on 30 April 2009.
2. On 2 February 2011, the Panel requested further information from the complainant. No response was received.
3. On 6 April 2012, the Panel decided to join the cases pursuant to Rule 20 of the Panel's Rules of Procedure.
4. On 23 April 2012, the Panel communicated the cases to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the complaints.

5. On 4 June 2012, the SRSG submitted UNMIK's response.

II. THE FACTS

6. The complainant is the daughter of Mr Miloš Radunović (case no. 181/09) and Mrs Milica Radunović (case no. 153/09).
7. The complainant states that the victims, her parents, were kidnapped from their home in the village of Dashinoc/Dašinovac in Dečan/Dečani Municipality on 23 April 1998.
8. She states that the abductions were reported to the Serbian Ministry of Internal Affairs, the OSCE, the International Committee of the Red Cross (ICRC), KFOR and the Yugoslav Red Cross, as well as to the International Prosecutor's Office in Prishtinë/Priština.
9. A tracing request was opened for Mrs Milica Radunović with the ICRC on 5 May 1998 and with the Yugoslav Red Cross on 10 April 2001. Her name appears in the database compiled by the UNMIK Office on Missing Persons and Forensics. The whereabouts of Mrs Milica Radunović remain unknown.
10. The mortal remains of Mr Miloš Radunović were found in September 1998 and handed over to officials of the Serbian Ministry of Internal Affairs on 11 September 1998. They were formally identified on 5 October 2005. The death certificate issued by the UNMIK Department of Justice on 7 June 2006 indicates that Mr Miloš Radunović died prior to 5 October 2005 and that the cause of death could not be ascertained. On 17 August 2006, the victim's mortal remains, clothing and personal items were handed over to the complainant.
11. The disappearance and killing of Mr Miloš Radunović were investigated by the International Criminal Tribunal for the former Yugoslavia (ICTY).
12. 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

13. The complainant complains about UNMIK's alleged failure to properly investigate the abduction and killing or probable killing of her parents. The complainant in essence also complains about the fear, pain and anguish suffered by herself because of this situation.
14. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of Mr Miloš Radunović and Mrs Milica Radunović, 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

15. 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

16. The complainant alleges in substance the lack of an adequate criminal investigation into the abduction and killing or probable killing of her parents.

17. In his comments, the SRSG does not object to the admissibility of the complaints in relation to the procedural obligations under Article 2 of the ECHR.

18. The Panel considers that the complaints 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 complaints is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.

19. No other ground for declaring this part of the complaints inadmissible has been established.

B. Alleged violation of Article 3 of the ECHR

20. The complainant alleges mental pain and suffering caused to her by the situation surrounding the abduction and killing or possible killing of her parents.

21. 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).

22. In this respect, a distinction should be made between the situations in the two cases.

1. *With regard to the abduction and killing of Mr Miloš Radunović (case no. 181/09)*

23. Where the disappeared person is later found dead, as in the case of Mr Miloš Radunović, 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).
24. 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.
25. The Panel notes that the mortal remains of Mr Miloš Radunović were handed over to his family on 17 August 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 (see HRAP, *Petković*, no. 133/09, decision of 16 December 2011, § 23; HRAP, *Marković*, no. 06/10, decision of 19 February 2012, § 27).
26. The complaint was filed with the Panel on 8 April 2009, that is after the expiration of the above-referred six-month period.
27. 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.

2. *With respect to the abduction and probable killing of Mrs Milica Radunović (case no. 151/09)*

28. 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 and death of her mother, there is no assertion that this suffering was a result of any acts or omissions attributable to UNMIK. According to the SRSG, this part of the complaint is therefore inadmissible as manifestly ill-founded.
29. The Panel considers that the analysis presented in § 21 applies to the situation surrounding the abduction and probable killing of Mrs Milica Radunović, as her whereabouts remain unknown.
30. The Panel further recalls 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*, mentioned in § 25 above, at § 20).

31. 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.
32. No other ground for declaring this part of the complaint inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

- **DECLARES ADMISSIBLE THE COMPLAINTS RELATING TO THE RIGHT TO LIFE (CASES NOS 153/09 AND 181/09);**
- **DECLARES INADMISSIBLE THE COMPLAINT RELATING TO THE RIGHT TO BE FREE FROM INHUMAN AND DEGRADING TREATMENT WITH RESPECT TO MR MILOŠ RADUNOVIĆ (CASE NO. 153/09);**
- **DECLARES ADMISSIBLE THE COMPLAINT RELATING TO THE RIGHT TO BE FREE FROM INHUMAN AND DEGRADING TREATMENT WITH RESPECT TO MRS MILICA RADUNOVIĆ (CASE NO. 181/09).**

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member