



# *The Human Rights Advisory Panel*

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## **DECISION**

**Date of adoption: 17 August 2012**

**Cases Nos 343/09 and 344/09**

**Stanoje RISTIĆ**

**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's, 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 an undetermined date and registered on 4 December 2009.
2. On 6 October 2010, the Panel decided to join the cases, pursuant to Rule 20 of the Panel's Rules of Procedure.
3. On the same date, the Panel requested additional information from the complainant. On 2 November 2010, the complainant provided his response.

4. On 22 June 2011, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the case. On 5 September 2011, the SRSG submitted UNMIK's response.

## **II. THE FACTS**

5. The complainant is the son of Mrs Jovanka Ristić (case no. 343/09) and Mr Anđelko Ristić (case no. 344/09).
6. The complainant states that his parents were abducted from their flat in the village of Dvoran/Dvorane, in the municipality of Suhareke/Suva Reka, in June 1999. They were never seen alive again.
7. The complainant states that the abduction was reported to the UNMIK Police as well as to the International Committee of the Red Cross (ICRC) and the Serbian Red Cross. The names of Mrs Jovanka Ristić and Mr Anđelko Ristić appear in the database compiled by the UNMIK Office on Missing Persons and Forensics as well as in a list of missing persons communicated by the ICRC to UNMIK Police on 12 October 2001.
8. The mortal remains of Mrs Jovanka Ristić and Mr Anđelko Ristić were returned to the complainant on 25 March 2005.
9. 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**

10. The complainant complains about UNMIK's alleged failure to properly investigate the abduction and killing of his parents. He also complains about the pain and anguish allegedly caused to himself by this situation.
11. The Panel considers that the complainant may be deemed to invoke a violation of the right to life of his parents, guaranteed by Article 2 of the European Convention on Human Rights (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**

12. 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.

**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 his parents.
14. In his comments, the SRSG raises no objection to the admissibility of this part of the complaints.
15. 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 complaints 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 complaints inadmissible has been established.

**Alleged violation of Article 3 of the ECHR**

17. The complainant alleges mental pain and suffering caused to him by the situation surrounding the abduction of Mrs Jovanka Ristić and Mr Anđelko Ristić.
18. In his comments, the SRSG argues that, while the complainant states that he has suffered mental pain and anguish as a result of the disappearance of his parents, there is no express allegation that this fear and anguish were a result of UNMIK's response to the disappearance of Mrs Jovanka Ristić and Mr Anđelko Ristić. For that reason, this part of the complaints is inadmissible as 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 25 March 2005 when Mrs Jovanka Ristić's and Mr Anđelko Ristić's remains were handed over to the complainant.
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 his parents. Nevertheless, the Panel must conclude that this part of the complaints 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 COMPLAINTS RELATING TO THE RIGHT TO LIFE;**

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

Andrey ANTONOV  
Executive Officer

Marek NOWICKI  
Presiding Member