The Human Rights Advisory Panel
Building D, UNMIK HQ Prishtinë/Priština, Kosovo | E-mail: hrap-unmik@un.org | Tel: +381 (0)38 504-604, ext. 5182

DECISION

Date of adoption: 23 August 2012

Cases Nos 148/09, 150/09, 151/09 and 161/09

Gordana BUCALO, Žaklina OMASTA-JOVANOVIĆ, Sofija BIJELIĆ and Vladislav BIJELIĆ and Milica RADUNOVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 23 August 2012,
with the following members taking part:

Mr Marek NOWICKI, Presiding Member
Mr Paul LEMMENS
Ms Christine CHINKIN

Assisted by
Mr Andrey ANTONOV, Executive Officer

Having considered the aforementioned complaints, 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 of Mrs Gordana Bucalo (case no. 148/09), Mrs Žaklina Omasta-Jovanović (case no. 150/09) and Mrs Sofija Bijelić and Mr Vladislav Bijelić (case no. 151/09) were introduced on 1 April 2009 and registered on 30 April 2009. The complaint of Mrs Milica Radunović, (case no. 161/09) was introduced on 7 April 2009 and registered on 30 April 2009.

2. On 23 December 2009, the Panel requested Mrs Milica Radunović, Mrs Sofija Bijelić and Mr Vladislav Bijelić to provide additional information. No response was received.

3. On 9 September 2010, the Panel decided to join the cases pursuant to Rule 20 of the Panel's Rules of Procedure.

4. On 13 January 2010, the Panel requested additional information from Mrs Gordana Bucalo and Mrs Žaklina Omasta-Jovanović. No response was received.

5. On 19 April 2012, the complaints were communicated to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on the admissibility of the complaints. On 25 May 2012, the SRSG provided UNMIK's response.

II. THE FACTS

6. Mrs Gordana Bucalo is the wife of Mr Dragan Bucalo. Mrs Žaklina Omasta-Jovanović is the wife of Mr Ivica Jovanović. Mrs Sofija Bijelić and Mr Vladislav Bijelić are the parents of Mr Mirko Bijelić. Mrs Milica Radunović is the sister of Mr Dragoljub Bojić.

7. The complainants state that on 13 June 1999 at around 18:00 near the village of Suharekë/Suva Reka, municipality of Suharekë/Suva Reka, Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić, whilst serving in the Yugoslav army, were abducted. Since that time their whereabouts have remained unknown.

8. Mrs Gordana Bucalo states that the abduction of Mr Dragan Bucalo was reported to the International Committee of the Red Cross (ICRC), the Yugoslav Red Cross, the Serbian Ministry of Internal Affairs and to an International Public Prosecutor.

   According to the complainants Mrs Sofija Bijelić and Mr Vladislav Bijelić the abduction of Mr Mirko Bijelić was reported to the Yugoslav Red Cross. The complainant Mrs Milica Radunović states that the abduction of Mr Dragoljub Bojić was reported to an International Public Prosecutor. Finally, the complainant Mrs Žaklina Omasta-Jovanović, does not refer to any reporting activity following the abduction of Mr Ivica Jovanović.

9. ICRC tracing requests for Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić remain open. The names of Mr Dragan Bucalo, Mr Mirko Bijelić and Mr Dragoljub Bojić appear in a list of missing persons, communicated by the ICRC to UNMIK Police on 12 October 2002. In addition, all four names appear in the database compiled by the UNMIK Office on Missing Persons and Forensics.

10. 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

11. The complainants complain about UNMIK's alleged failure to properly investigate the abduction and probable killing of their immediate relatives. The complainants, also in essence also, complain about the fear, pain and anguish suffered by themselves because of this situation.

12. The Panel considers that the complainants may be deemed to invoke, respectively, a violation of the right to life of Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić, guaranteed by Article 2 of the European Convention on Human Rights (ECHR), and a violation of their own right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the ECHR.

IV. THE LAW

13. Before considering the cases on their 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

14. The complainants allege in substance the lack of an adequate criminal investigation into the abduction and probable killing of their immediate family members.

15. In his comments, the SRSG raises no objection to the admissibility of this part of the complaints.

16. 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.

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

Alleged violation of Article 3 of the ECHR

18. The complainants allege mental pain and suffering caused to themselves by the situation surrounding the abductions.

19. In his comments, the SRSG argues that nothing in any of the complaints indicates a causal connection between the alledged violation and UNMIK's conduct. According to the SRSG this part of the complaints is therefore inadmissible.

20. The Panel considers that, despite the lack of express allegations put forward by the complainants in this respect, the complaints set forth relevant facts relating to the abductions of their relations upon which the alleged violation of the complainants' rights under Article 3 of the ECHR may be based.

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. 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).

23. The Panel considers that this part of the complaints 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 raised by the SRSG.

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

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINTS ADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member