



The Human Rights Advisory Panel

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DECISION

Date of adoption: 26 November 2011

Case No. 112/09

Mirjana BOGIĆEVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 26 November 2011,
with the following members present:

Mr Marek NOWICKI
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 30 April 2009 and registered on the same date.
2. On 9 December 2009, the Panel requested the complainant to submit further information. However, no response was received.
3. On 26 January 2011, the Panel reiterated its request to the complainant for additional information. The complainant responded on 27 January 2011.
4. On 16 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.

5. On 31 August 2011, UNMIK provided its response.

II. THE FACTS

6. The complainant is the sister of Mr Dušan Bogićević.
7. The complainant states that her brother disappeared from the town of Pejë/Peć on 17 June 1999. According to the account of a witness, Mr Bogićević was intercepted by some members of the Kosovo Liberation Army (KLA) before his disappearance.
8. The complainant states that her brother's disappearance was immediately reported to the International Committee of the Red Cross, to the Italian KFOR in Pejë/Peć and subsequently to the UNMIK Police.
9. The complainant relates that the mortal remains of Mr Bogićević were found near the village of Brezhanik/Brežanik and handed over to his wife and children upon identification in 2006. According to information provided by the SRSG, the mortal remains of Mr Bogićević were buried in Kraljevo on 25 March 2007.
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 COMPLAINT

11. The complainant complains about UNMIK's alleged failure to properly investigate the disappearance and murder of her brother. She also complains about the mental anguish and suffering allegedly caused to her by this situation.
12. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of her brother, 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

13. Before considering the 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

14. The complainant alleges in substance the lack of an adequate criminal investigation into the disappearance and murder of Mr Dušan Bogićević.
15. The SRSB does not raise any objection to the admissibility of this part of the complaint.
16. 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.
17. No other ground for declaring this part of the complaint inadmissible has been established.

Alleged violation of Article 3 of the ECHR

18. The complainant alleges mental pain and suffering caused to her by the situation surrounding the disappearance of her brother.
19. The SRSB argues that the complainant does not expressly allege that the mental pain and anguish suffered is a result of UNMIK's response to the disappearance and death of Mr Bogićević. The SRSB argues that this mental pain and anguish is stated to be the result of the human rights violation committed against the victim and that therefore this part of the complaint is manifestly ill-founded.
20. 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 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).
21. 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).

22. However, where the disappeared person is later found dead, 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).
23. 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.
24. The Panel notes that the mortal remains of Mr Bogićević were identified and returned to the complainant on an unspecified date, before 25 March 2007. 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.
25. The complaint was filed with the Panel on 30 April 2009, that is after the expiration of the above-referred six-month period.
26. 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.

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