



The Human Rights Advisory Panel

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DECISION

Date of adoption: 26 November 2011

Case Nos. 154/09 & 155/09

Biljana RADOVANOVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 26 November 2011,
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 introduced on 13 April 2009 and registered on 30 April 2009.
2. On 23 December 2009, the Panel requested additional information from the complainant in relation to both complaints. However, no response was received.
 1. On 19 April 2010, the Panel decided to join the two cases pursuant to Rule 20 of the Panel's Rules of Procedure.
 2. On 12 May 2010, the Panel reiterated its request for further information to the complainant. The Panel received the complainant's response on 17 June 2010.

3. On 19 April 2011, the Panel communicated the two complaints to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the cases.
4. On 31 May 2011, UNMIK submitted its response.

II. THE FACTS

3. The complainant is the daughter of Mrs Zorka Radovanović and Mr Milorad Radovanović.
4. The complainant states that her parents were abducted from their house in Osek Hilë/Osek Hilja, Gjakovë/Đakovica Municipality, in June 1999 and taken in unknown direction by members of the Kosovo Liberation Army (KLA). Their house was allegedly looted and burnt down.
5. The complainant states that the disappearance of her parents was reported to the KFOR, the International Committee of the Red Cross, UNMIK Police, the District Public Prosecutor's Office in Pejë/Peć, the International Prosecutor's Office in Prishtinë/Priština and the International Tribunal for the Former Yugoslavia.
6. The complainant also states that her family received information that Mrs and Mr Radovanović had been killed by members of the KLA and that their bodies had been brought back to the family house, burnt with the house and then buried in the courtyard. According to the complainant, this information was forwarded to UNMIK, with a request for verification, which has not been forthcoming.
7. In any event, Mrs and Mr Radovanović's whereabouts remain unknown to date.
8. 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

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

11. Before considering the cases on the 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

12. The complainant alleges in substance the lack of an adequate criminal investigation into the disappearance of her parents.
13. In his comments, the SRSG does not raise any objection to the admissibility of this part of the complaints.
14. 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.
15. No other ground for declaring this part of the complaints inadmissible has been established.

Alleged violation of Article 3 of the ECHR

16. The complainant alleges mental pain and suffering caused to herself by the situation surrounding the disappearance of her parents.
17. 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, there is no express allegation that this fear and anguish were a result of UNMIK's response to the disappearance of Mrs and Mr Radovanović. For that reason, this part of the complaints is inadmissible as manifestly ill-founded.
18. 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, *Zdravković*, no. 46/08, decision of 17 April 2009, § 41).

19. 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.
20. 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.
21. 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