



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: 16 September 2011

Case No. 81/09

Milivoje TODOROVSKI

against

UNMIK

The Human Rights Advisory Panel, sitting on 16 September 2011,
with the following members present:

Mr Paul LEMMENS
Ms Christine CHINKIN

Assisted by
Mr Andrey ANTONOV, Executive Officer

Having noted Mr Marek NOWICKI's withdrawal from sitting in the case pursuant to Rule 12 of the Rules of Procedure,

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 17 April 2009 and registered on 30 April 2009.
2. On 24 July 2009 the complaint was communicated to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on admissibility. In the response provided on 3 August 2009 the SRSG asked for additional information.
3. On 9 December 2009, the Panel requested the complainant to provide additional information. On 8 December 2010 the Panel repeated that request. On 28 February 2011,

the Panel received a response from the complainant's son (the brother of the victim), which was presented on behalf of the complainant.

4. On 25 March 2011, the Panel re-communicated the cases to the SRSG, for comments on the admissibility of the complaint. On 30 June 2011 UNMIK provided its response.

II. THE FACTS

5. The complainant states that Mr Aleksandar Todorovski was abducted on 25 June 1999 from his workplace in Prishtinë/Priština hospital by armed members of the Kosovo Liberation Army (KLA), and that since then his whereabouts are unknown.
6. On that day, while on duty at the emergency centre of the Prishtinë/Priština hospital, in presence of other employees, Mr Aleksandar Todorovski was detained for questioning by a self-appointed "new security" officer. The reason allegedly was that he possessed a personal ID card issued in Belgrade, which made him a "Serbian spy". After being held for a short time in one of the offices, Mr Aleksandar Todorovski was taken out of the building, with his hands tied behind him, and handed over to two uniformed KLA members, who then escorted him through the KFOR checkpoint, put him into an ambulance and drove away. There were eye-witnesses to the detention and the abduction. The identity of the ambulance driver was also known.
7. Mr Aleksandar Todorovski's brother immediately reported his abduction to KFOR. On 26 June 1999, the complainant reported the abduction of his son to UNMIK Headquarters, and in the following few days to the Yugoslav Red Cross in Belgrade and personally to the KFOR Commander. During the following months, the complainant submitted detailed statements to the International Commission on Missing Persons in Belgrade, the International Committee of the Red Cross in Belgrade, the Serbian State Prosecutor's Office in Belgrade, and the Public Prosecutor's Office in Prishtinë/Priština.
8. Despite all that, the complainant claims to have received no official information from any authorities about the investigation until the beginning of 2004, when he came to know about the lack of progress in his case.
9. During the years 2004 and 2005 the complainant was in occasional contact with different UNMIK police officers, providing detailed statements, at least four times. The complainant asserts that the last communication regarding the case was on 5 July 2005, when an UNMIK International Judge informed him that some more steps would be taken in the case.
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 of his son and about the fear, mental pain and suffering caused to himself by this situation.
12. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of his son, guaranteed by Article 2 of the European Convention on Human Rights (hereinafter 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

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 of his son.
15. In his comments, the SRSG 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 him by the situation surrounding the disappearance of his son.
19. In his comments, the SRSG argues that, while the complainant asserts that he has suffered "pain and torture on the grounds of mental pain" as a result of the disappearance and possible death of Mr Aleksandar Todorovski, there is no express allegation that this pain and torture were a result of UNMIK's response to the disappearance. For that reason, the part of the complaint related to this or any other element under Article 3 is inadmissible as 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. 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.
23. No other ground for declaring this part of the complaint inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Andrey ANTONOV
Executive Officer

Paul LEMMENS
Presiding Member