



# *The Human Rights Advisory Panel*

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## **DECISION**

**Date of adoption: 16 December 2011**

**Case No. 249/09**

**Cica JANKOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 16 December 2011,  
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 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 14 April 2009 and registered on 30 April 2009.
2. On 23 December 2009 the Panel requested additional information from the complainant. The complainant responded on 17 March 2010.
3. On 8 September 2011, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on admissibility. On 20 October 2011, UNMIK provided its response.

## II. THE FACTS

4. The complainant is the mother of Mr Marjan Melonaši. According to the complainant, on 6 September 2000 at around 14.10, Mr Melonaši left the premises of the Serbian Language Editorial Service of the Radio and Television of Kosovo, where he worked as a journalist, apparently heading home. Since that time his whereabouts have remained unknown.
5. The complainant indicates that the disappearance of Mr Melonaši was reported to UNMIK, the International Committee of the Red Cross (ICRC), the Yugoslav Red Cross, the Ministry of Internal Affairs of the Republic of Serbia, but with no results.
6. 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

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

9. Before considering the case on the 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**

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

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

14. The complainant alleges mental pain and suffering caused to herself and her family by the situation surrounding the disappearance of her son.
15. 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 of her son, there is no assertion that mental pain was the result of any alleged acts or omissions attributable to UNMIK, and that the mental pain and suffering does not meet “the threshold required to fall within the rubric of Article 3.” The SRSG concludes that there is no claim in fact that could give rise to any issue under Article 3 in this regard, and that “to impute such facts to and on behalf of the complainant would constitute an artificial construction of the complaint itself”. Thus, according to the SRSG, this part of the complaint appears to be *prima facie* inadmissible.
16. The Panel considers that, despite the lack of express allegations put forward by the complainant in this respect, the complaint sets forth relevant facts upon which the alleged violation of Article 3 of the ECHR may be based.
17. The Panel also 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).
18. 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.
19. 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.

24. 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

Marek NOWICKI  
Presiding Member