



The Human Rights Advisory Panel

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DECISION

Date of adoption: 1 October 2012

Case No. 149/09

Uroš BARAĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 1 October 2012,
with the following members present:

Mr Marek NOWICKI, Presiding Member
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, including through electronic means, in accordance with Rule 13 § 2 of its Rules of Procedure, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 1 April 2009 and registered on 30 April 2009.
2. On 13 January 2010, 30 November 2010 and 5 September 2012, the Panel requested additional information from the complainant. The complainant's response was received on 27 December 2010 and on 5 September 2012 by telephone.
3. On 27 May 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. On 13 September 2011, the SRSG provided UNMIK's response.

II. THE FACTS

4. The complainant's brother, Mr Tomislav Barać, suffered from a medical condition that required regular dialysis. As a consequence of the lack of suitable medical facilities in Mitrovicë/Mitrovica, on 11 June 1999, Mr Tomislav Barać was transferred to the Hospital Clinical Centre in Prishtinë/Priština.
5. The complainant states that after Mr Tomislav Barać had been moved to Prishtinë/Priština and following the withdrawal of Serbian military units, he had not been able to contact hospital staff to ascertain his brother's condition.
6. On 13 July 1999, the complainant discovered that his brother had died on 2 July 1999. The complainant believes that the death was caused by Mr Tomislav Barać not receiving the dialysis treatment he required. However, it is noted that the complainant never raised his suspicion to any judicial or police authorities.
7. The complainant further states that on 15 July 1999, with the assistance of KFOR, he went to the Hospital Clinical Centre in Prishtinë/Priština where his brother had died, to collect a death certificate and to be informed where he had been buried. The information he received at that stage was that Mr Tomislav Barać had been buried on 8 July 1999. However the complainant was unsuccessful in locating the grave of his brother.
8. As a consequence, Mr Hranislav Barać, another brother of Mr Tomislav Barać, wrote to KFOR in Leposaviq/Leposavić requesting their assistance in locating the mortal remains of his brother. The same letter was sent to the French Gendarmerie in Leposaviq/Leposavić, UNMIK, the OSCE, the Red Cross in Leposaviq/Leposavić, the Red Cross in Mitrovicë/Mitrovica, UNMIK Police in Leposaviq/Leposavić, the Red Cross in Belgrade, the Human Rights Committee in Belgrade and other organisations. The only response received was from the OSCE, which informed Mr Hranislav Barać that Mr Tomislav Barać was buried in the Dragodan cemetery in Prishtinë/Priština.
9. Subsequently, Mr Hranislav Barać learnt that exhumations of around 20 bodies had taken place in the Dragodan cemetery in Prishtinë/Priština and that they had been sent for DNA analysis. On 25 January 2006, an Identification Certificate was issued by the UNMIK Office on Missing Persons and Forensics (OMPF), identifying the cause of death as "natural death" (lung disease). On 4 April 2006, OMPF returned the mortal remains of Mr Tomislav Barać to the Barać family.

III. COMPLAINT

10. The complainant complains in substance about the failure of UNMIK to properly investigate the circumstances surrounding the death of his brother and to notify him about the location of his brother's grave, causing him mental pain and suffering.
11. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of his brother, guaranteed by Article 2 of the European Convention on Human Rights (ECHR) and a violation of his right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the ECHR.

IV. LAW

12. 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

13. The complainant alleges in substance the lack of an adequate investigation into the circumstances surrounding the death of Mr Tomislav Barač.
14. In his comments the SRSG does not object to the admissibility of the complaint in relation to the obligations under Article 2 of the ECHR.
15. The Panel refers to the case law of the European Court of Human Rights (ECtHR) which sets out the obligations under Article 2 in both cases in which the competent authority must conduct an investigation into deaths in suspicious circumstances and when the death was caused unintentionally. In either case this responsibility to investigate is only triggered once the matter has come to their attention (e.g. ECtHR (Grand Chamber), *Silih v Slovenia*, no. 71463/01, § 157; ECtHR (Grand Chamber), *Calvelli and Ciglio*, no. 32967/96 § 51; ECtHR (Grand Chamber), *Vo v France*, no. 53924/00 § 91).
16. The Panel notes, however, that nothing in the information submitted by the complainant demonstrates that he ever filed any complaint with the relevant UNMIK authorities with regard to his suspicions about the circumstances surrounding the death of his brother. Therefore, the Panel considers that under the circumstances of the present case UNMIK did not have an obligation to carry out an effective investigation into Mr Tomislav Barač's death under Article 2 of the ECHR.
17. It follows that this part of the complaint is manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12, and therefore inadmissible.

Alleged violation of Article 3 of the ECHR

18. The complainant also alleges mental pain and suffering he has endured subsequently as a result of the disappearance of his brother's mortal remains.
19. In his comments, the SRSG argues that the complainant does not allege that he has suffered mental anguish and pain or inhuman and degrading treatment as a result of the disappearance and death of his brother. However, the mental pain and anguish is stated to be the result of the alleged human rights violation suffered by Mr Tomislav Barač. This is not sufficient for an alleged human rights violation by UNMIK based on a failure to respond to the quest of family members for information. For that reason, this part of the complaint is inadmissible as manifestly ill-founded.
20. The question arises however 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.

21. The Panel notes that after his exhumation and identification the mortal remains of Mr Tomislav Barać were handed over to the family on 4 April 2006. It is at that moment, that the six month time period would have started to run.
22. The complaint was introduced to the Panel on 1 April 2009, that is, almost two and half years after the expiration of the six-month period.
23. The Panel has no doubts as to the profound suffering caused to the complainant by the disappearance and death of his brother. Nevertheless, the Panel must conclude that this part of the complaint falls outside the time limit set by Section 3.1 of the UNMIK Regulation No. 2006/12.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member