



The Human Rights Advisory Panel

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DECISION

Date of adoption: 21 October 2010

Case No. 127/09

Milko Milenković

against

UNMIK

The Human Rights Advisory Panel on 21 October 2010,
with the following members present:

Mr Marek NOWICKI, Presiding Member
Mr Paul LEMMENS
Ms Christine CHINKIN

Assisted by
Mr Rajesh TALWAR, 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 30 April 2009 and registered on the same date.
2. On 11 December 2009, the Panel requested further information from the complainant. On 21 December 2009, the complainant provided his response.

3. On 29 April 2010, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the case.
4. On 12 July 2010, UNMIK provided its response.
5. On 31 August 2010, the Panel sent UNMIK's response to the complainant for comments. The complainant did not reply by the stipulated deadline of 28 September 2010.

II. THE FACTS

6. The complainant states that his son, Mr Stanko Milenković, was a border guard in the Yugoslav Army, stationed in Gjakovë/Đakovica beginning in December 1998. The last time the complainant spoke to his son was during a telephone call on 13 April 1999. Despite inquiries with the armed forces of Yugoslavia and later those of Serbia, the complainant has not seen or heard from Mr Stanko Milenković since that time.
7. According to UNMIK Police files, summarised by the SRSG in his response for UNMIK, there are contradictory accounts concerning the fate of the missing person, one states that Mr Milenković deserted from the Yugoslav Army on 13 April 1999 while another indicates that he was discharged and sent home at the end of his service. His whereabouts remain unknown to date.
8. The complainant indicates that he reported the disappearance to the Ministry of the Interior in Serbia, the Yugoslav Red Cross, the Coordination Centre of the Government of Serbia, the International Criminal Tribunal for the former Yugoslavia, and the Humanitarian Law Centre. He also attaches a certificate confirming that the International Committee of the Red Cross opened a tracing request for Mr Stanko Milenković on 22 September 1999.
9. 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. COMPLAINT

10. The complainant complains about UNMIK's alleged failure to properly investigate the disappearance of his son. He also complains that the situation caused mental pain and suffering to himself.
11. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of his son's right to life, guaranteed by Article 2 of the European Convention on Human Rights (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

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.
13. In his comments, the SRSG does not raise any objection to the admissibility of the complaint.
14. The Panel considers that the complaints under Articles 2 and 3 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 complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
15. The Panel does not see any other ground for declaring it inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member