



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: 18 March 2011

Cases Nos. 67/09 & 140/09

Rada ĐUKANOVIĆ and Radmila ĐUKANOVIĆ

against

UNMIK

The Human Rights Advisory Panel on 18 March 2011
with the following members present:

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

Assisted by
Ms Anila PREMTI, Acting 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 of Ms Rada Đukanović (case no. 67/09) was introduced on 9 April 2009 and registered on 30 April 2009 and the complaint of Ms Radmila Đukanović (case no. 140/09) was introduced on 2 February 2009 and registered on 30 April 2009.
2. On 24 July 2009, the Human Rights Advisory Panel communicated case no. 67/09 to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility and the merits of the case. On 30 November 2009, UNMIK provided its response which indicated that it was in the process of obtaining more information from KFOR in relation to the matter.

3. On 9 December 2009, the Panel requested further information from the complainant in case no. 140/09.
4. On 21 December 2009, the Panel requested that UNMIK notify it when UNMIK sent a request for information to KFOR and to be kept abreast of developments related to that request. On 12 January 2010, UNMIK provided its response, indicating that a letter had been sent to KFOR on 17 December 2009.
5. On 19 April 2010, the Panel decided to join cases nos. 67/09 and 140/09 pursuant to Rule 20 of the Panel's Rules of Procedure.
6. On 2 November 2010, the Panel re-communicated case no. 67/09 and communicated case no. 140/09 to the SRSG for UNMIK's comments on the admissibility of the cases in light of the decision to join the cases. On 13 December 2010, UNMIK provided its response.

II. THE FACTS

7. The first complainant (case no. 67/09) is the wife of Mr Dragomir Đukanović and the mother of Mr Jovica Đukanović. The second complainant (case no. 140/09) is the wife of Mr Jovica Đukanović.
8. According to the complainants, the first complainant and Mr Dragomir Đukanović remained in Prizren following the entry of KFOR and UNMIK into Kosovo in June 1999. However, the first complainant's son, Mr Jovica Đukanović, and the second complainant left for Shtërpçë/Štrpce on 14 June 1999 along with their family.
9. Believing that the situation was calm, Mr Jovica Đukanović and the second complainant returned to Prizren on 10 July 1999 to visit the first complainant and Mr Dragomir Đukanović at their home and to stay the night. Early the following morning, 11 July 1999, the second complainant went to her former place of employment to obtain her work records. Then at approximately 09:15 hours, three young men appeared at the door. One of the men was armed. They entered the apartment and conducted a search for weapons, but apparently did not find any. Having finished the search, they requested that Mr Jovica Đukanović accompany them for an informative talk.
10. The first complainant pleaded with them not to take her son, as did Mr Dragomir Đukanović. They offered to take Mr Dragomir Đukanović with them as well, promising that they would not harm him and that they would bring him back in 30 minutes.
11. Immediately after they left, the first complainant went to the German KFOR unit stationed approximately 70 meters from her apartment to report what happened. They replied that she should return to her home as her husband and son would return later in the day.
12. When they had not returned the following day, the first complainant returned to the KFOR unit and gave them the registration number of the car the three men were driving, a description of the clothes her husband and son were wearing when they were taken, and a description of the three men who took them.
13. The first complainant also approached the International Committee of the Red Cross and a number of humanitarian organisations with offices in Prizren seeking help. She also went to the local headquarters of the Kosovo Liberation Army to request help to locate her husband and son. She was allegedly threatened and insulted there and informed that she

would meet the same fate if she did not return home. The first complainant also reported the disappearances to UNMIK prior to her departure from Prizren on 27 December 1999.

14. From the death certificates issued by the UNMIK Office on Missing Persons and Forensics (OMPF), it appears that the mortal remains of Messrs Dragomir and Jovica Đukanović were discovered in October 1999, although the exact location is in dispute. The first complainant states that the remains were discovered by “British officers of UNMIK” at the entrance of Novak/Novake village following a tip-off from someone who had recognised Mr Dragomir Đukanović. UNMIK indicates that the bodies were assumed to be those that KFOR had removed from the Prizren mortuary and re-buried at the Prizren cemetery between October 1999 and October 2002. UNMIK further states that the first complainant must be mistaken, and that either the “British officer from UNMIK” who discovered the mortal remains in 1999 must have actually been a KFOR officer, or that the first complainant confused the dates 1999 and 2002 since UNMIK Police/OMPF did in fact re-exhume the bodies in October 2002.
15. On 11 December 2002, UNMIK Police/OMPF conducted autopsies on the human remains and successfully identified the remains of Mr Dragomir Đukanović. On 12 December 2003 an autopsy was performed on the second body, but it could not definitively ascertain that the mortal remains of the other person were in fact those of Mr Jovica Đukanović.
16. In May 2004, UNMIK Police/OMPF interviewed a family member of the deceased in Belgrade who confirmed the circumstances of the abduction and provided the names of three suspects.
17. In August 2004, UNMIK Police/OMPF referred the matter to the Central Criminal Investigation Unit of UNMIK Police.
18. On 27 July 2005, UNMIK OMPF issued a death certificate for Mr Jovica Đukanović. The cause of death was indicated as unknown.
19. The mortal remains of Messrs Dragomir and Jovica Đukanović were handed over to the family at Merdare on 2 August 2005. A report of Serbian pathologists indicates that the mortal remains of Mr Jovica Đukanović were mostly skeletonised, missing the skull, some vertebrae, and part of one forearm and that the remains included a 3.65 mm calibre shell, which was found in the mortal remains during the first autopsy.
20. 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

21. The first complainant complains about UNMIK’s alleged failure to properly investigate the abduction and murders of her husband and son. The second complainant complains about UNMIK’s alleged failure to properly investigate the abduction and murder of her husband. They both complain about the mental pain and suffering allegedly caused by this situation.

22. The Panel considers that the complainants may be deemed to invoke, respectively, a violation of the right to life of the first complainant's husband and son, who was also the second complainant's husband, guaranteed by Article 2 of the European Convention on Human Rights (ECHR), and a violation of their own right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the ECHR.

IV. THE LAW

23. Before considering the cases on their 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.
24. In his comments, the SRSG does not raise any objection to the admissibility of the complaints.
25. 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 these complaints are not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
26. The Panel does not see any other ground for declaring them inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINTS ADMISSIBLE.

Anila PREMTI
Acting Executive Officer

Marek NOWICKI
Presiding Member