



The Human Rights Advisory Panel

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DECISION

Date of adoption: 13 April 2011

Cases Nos. 97/09, 332/09, 335/09 & 345/09

Ljiljana MILENKOVIĆ, Marica STOJANOVIĆ, Dalibor MILENKOVIĆ and Ljubiša MILENKOVIĆ

against

UNMIK

The Human Rights Advisory Panel on 13 April 2011
with the following members taking part:

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

Assisted by
Ms Anila PREMTI, Acting Executive Officer

Having considered the aforementioned complaints, 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 of Ms Ljiljana Milenković (case no. 97/09) was introduced on 8 April 2009 and registered on 30 April 2009. The complaint of Ms Marica Stojanović (case no. 332/09) was introduced on 13 April 2009 and registered on 4 December 2009. The complaint of Mr Dalibor Milenković (case no. 335/09) was introduced on 13 April 2009 and registered on 4 December 2009. The complaint of Mr Ljubiša Milenković (case no. 345/09) was introduced on 13 April 2009 and registered on 4 December 2009.

2. On 9 December 2009, the Human Rights Advisory Panel requested further information from the complainant in case no. 97/09. The complainant responded on 5 January 2010.
3. On 29 April 2010, the Panel communicated case no. 97/09 to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility and the merits of the case. On 3 June 2010, UNMIK provided its response.
4. On 9 September 2010, the Panel decided to join cases nos. 97/09, 332/09, 335/09 and 345/09 pursuant to Rule 20 of the Panel's Rules of Procedure.
5. On 2 November 2010, the Panel re-communicated case no. 97/09 and communicated cases nos. 332/09, 335/09 and 345/09 to the SRSG for UNMIK's comments on the admissibility of the cases in light of the decision to join the cases. On 25 February 2011, UNMIK provided its response.

II. THE FACTS

6. The first complainant (case no. 97/09) is the wife of Mr Momir Milenković. The second complainant (case no. 332/09) is the daughter of Mr Momir Milenković. The third complainant (case no. 335/09) and the fourth complainant (case no. 345/09) are the sons of Mr Momir Milenković.
7. According to the first complainant, on 28 June 1999 Mr Milenković went to the village of Pllanjan/Planjane in Prizren Municipality to see a friend named Mr F. After staying overnight at the home of Mr F., the two travelled together to Mr Milenković's family home in Prizren town on 29 June 1999. All of the complainants state that neighbours reported witnessing some unknown persons with Kosovo Liberation Army insignias on their headbands who removed Messrs Milenković and F. from the house, put them into a car and drove away with them. The whereabouts of Mr Milenković remain unknown to date.
8. The first complainant recalls that she reported the disappearance to UNMIK Police in Shtërpçë/Štrpce around 3 July 1999 and provided photographs of Mr Milenković at that time. She also states that every time there was a change of personnel at UNMIK Police, she would report the disappearance to the new officers. She also indicates that she reported the disappearance to the International Committee of the Red Cross.
9. In December 2004, the UNMIK Office on Missing Persons and Forensics produced an Ante Mortem Investigation Report concerning Mr Milenković. UNMIK argues that information contained in the report shows that UNMIK Police conducted an investigation aimed at clarifying the circumstances under which Mr Milenković disappeared, the possible causes that led to his disappearance, as well as the identity of anyone who could have been involved in the incident. However, according to UNMIK's submission, UNMIK Police were unable to identify any potential witnesses or any other leads that could shed light on the disappearance.
10. In 2006 or 2007, the first complainant was informed by Mr F.'s wife that Mr F. had been found dead and that he was buried in the village of Pllanjan/Planjane.
11. It appears that the UNMIK Police War Crimes Unit produced a Case Analysis Review Report dated 5 September 2008, which indicated that UNMIK Police had insufficient information regarding the case and that it was unable to proceed.

12. 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 COMPLAINTS

13. Each complainant complains about UNMIK's alleged failure to properly investigate the abduction of Mr Milenković and about the mental pain and suffering allegedly caused by this situation.

14. The Panel considers that the complainants may be deemed to invoke, respectively, a violation of the right to life of Mr Milenković, 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

15. Before considering the cases on the 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.

16. In his comments, the SRSG does not raise any objection to the admissibility of the complaints.

17. 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.

18. The Panel does not see any other ground for declaring the complaints inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINTS ADMISSIBLE.

Anila PREMTI
Acting Executive Officer

Marek NOWICKI
Presiding Member