



The Human Rights Advisory Panel

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DECISION

Date of adoption: 13 April 2011

Cases Nos. 06/09 & 55/09

S.P. and Vidosava ĐORĐEVIĆ

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 S.P. (case no. 06/09) was introduced on 20 January 2009 and registered on 23 January 2009. The complaint of Ms Vidosava Đorđević (case no. 55/09) was introduced on 31 March 2009 and registered on 17 April 2009.
2. On 4 May 2009, the Human Rights Advisory Panel communicated case no. 06/09 to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility and the merits of the case.

3. On 24 July 2009, the Panel communicated case no. 55/09 to the SRSG for UNMIK's comments on the admissibility and the merits of the case.
4. On 5 August 2009, UNMIK provided its response for case no. 55/09. On 17 August 2009, UNMIK provided its response for case no. 06/09.
5. On 26 August 2009, the Panel requested further information from the complainant in case no. 06/09. The complainant responded on 25 September 2009.
6. On 10 March 2010, the Panel requested further information from the complainant in case no. 55/09. The complainant responded on 10 August 2010.
7. On 9 September 2010, the Panel decided to join cases nos. 06/09 and 55/09 pursuant to Rule 20 of the Panel's Rules of Procedure.
8. On 2 November 2010, the Panel re-communicated cases nos. 06/09 and 55/09 to the SRSG for UNMIK's comments on the admissibility of the cases in light of the decision to join the cases. On 28 February 2011, UNMIK provided its response.

II. THE FACTS

9. The first complainant (case no. 06/09) is the wife of Mr D.P. The second complainant (case no. 55/09) is the wife of Mr Miloš Đorđević. Messrs D.P. and Đorđević went missing in the village of Nerodime e Poshtme/Donje Nerodimlje village in the Municipality of Ferizaj/Uroševac during events between 17 June and 20 June 1999. The whereabouts of both men remain unknown to date.
10. According to the first complainant, on 17 June 1999 approximately 100 Kosovo Liberation Army (KLA) soldiers entered Nerodime e Poshtme/Donje Nerodimlje village. At about 1400 hours, five armed KLA soldiers entered the complainant's home and took Mr D.P. to the village of Balice/Balaj where they questioned him in a private home. After questioning Mr D.P., this group told him that he was free to leave. However, when he went out into the hall, another group of KLA soldiers was waiting for him and forced Mr D.P. into another room, where they began to beat him. According to the complainant, after a particularly heavy blow, Mr D.P.'s nose began to bleed, and the KLA soldiers allegedly forced him to lick his own blood off the floor while cursing his family.
11. The first complainant states that she was in her yard when Mr D.P. returned home, covered in blood and bruises. She was unable to take Mr D.P. to any doctor, since there was none in the village. Furthermore, she could not report the case to any authorities, since neither UNMIK nor KFOR was yet present in the village and the telephone lines were not functioning. However, Mr D.P. related the information concerning his treatment to the first complainant at this time.
12. The first complainant goes on to state that at approximately 1600 hours, a different group of KLA soldiers came to the complainant's home, and told Mr D.P. to come with them to give a statement to their commander. Mr D.P. went with them to another house in Nerodime e Poshtme/Donje Nerodimlje village where the KLA soldiers apparently swore at him, shot bullets in the air and threatened him. After approximately 20 minutes, they released Mr D.P. and he returned home.
13. According to the first complainant another hour passed and at approximately 1700 hours on 17 June 1999, the same group of KLA soldiers that took Mr D.P. to Balice/Balaj

village for questioning the first time returned and took Mr D.P. with them. The whereabouts of Mr D.P. remain unknown since that time.

14. Approximately 2-3 days later, on 19 June or 20 June 1999, a KFOR patrol entered the village of Nerodime e Poshtme/Donje Nerodimlje at around 2300 hours. At that time, a number of private homes were allegedly on fire. The first complainant attempted to report the disappearance to them when the patrol stopped approximately 50 meters from her home. However, she claims that she was not able to do so because armed KLA soldiers were present in front of her house and threatened that they were going to kill her. After approximately ten minutes, the KFOR patrol left the village.
15. According to the second complainant, on 20 June 1999 her husband Mr Miloš Đorđević was also in the village of Nerodime e Poshtme/Donje Nerodimlje. The second complainant herself had already fled the village. According to information provided by her brother-in-law who remained in the village, during the evening of 20 June 1999 Mr Miloš Đorđević was approached by unknown persons and asked to join them for an informational interview. They indicated to others present that he would be allowed to return home after the interview was finished. Just after afterwards, Mr Milorad Đorđević, another brother of Mr Miloš Đorđević was allegedly asked to accompany unknown individuals for an informational interview. Although the complainant limits her complainant to the disappearance of her husband, Mr Miloš Đorđević, it appears that the whereabouts of both Messrs Miloš and Milorad Đorđević remain unknown since that time.
16. According to the second complainant, on 21 June 1999 a group of persons came to her brother-in-law's home and told him to leave within a limited period of time or he would be killed. When the brother-in-law asked about the fate of his brothers, Messrs Miloš and Milorad Đorđević, those persons told him that they had left his brothers somewhere. The complainant further relates that the brother-in-law allegedly recognised two persons from a neighbouring village amongst this group.
17. According to the first complainant, on 24 or 25 June 1999, groups of 15 KLA soldiers went to each of the remaining Serb homes in the village and informed the occupants that they had two hours to leave or they would be killed. As a result, the first complainant left the village along with other villagers and went to Ferizaj/Uroševac. They allegedly approached a group of UNMIK Police officers standing in front of the municipal building and informed them of the abduction of three men from the village, including the first complainant's husband, Mr D.P., and the husband and brother-in-law of the second complainant, Messrs Miloš and Milorad Đorđević, respectively. The officers replied that they were not in charge of their village and directed the first complainant to UNMIK Police stationed on the outskirts of town, where she reported the disappearances and requested an escort to Çagllavicë/Čaglavica village, outside of Prishtinë/Priština. Once in Çagllavicë/Čaglavica, the first complainant reported the abductions to a KFOR contingent there. Both complainants also reported the disappearances to the International Committee of the Red Cross. The second complainant indicates that she also reported the disappearance of her husband to diplomatic offices in Prishtinë/Priština.
18. UNMIK states that police from the UNMIK Police Missing Persons Unit attempted to contact the first complainant to investigate the abduction of Mr D.P., but that they were unable to do so because the first complainant did not provide any contact numbers or details when she left Kosovo. UNMIK did not provide any statement as to the investigation into the disappearances of Messrs Miloš and Milorad Đorđević. There is no indication of any further investigation into any of the disappearances.

19. 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

20. The first complainant complains about UNMIK's alleged failure to properly investigate the abduction of her husband, Mr D.P. The second complainant complains about UNMIK's alleged failure to properly investigate the abduction of her husband, Mr Miloš Đorđević. They both complain about the mental pain and suffering allegedly caused by this situation.
21. 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, Mr D.P., and a violation of the right to life of the second complainant's husband, Mr Miloš Đorđević, 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

22. 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.
23. In his comments, the SRSG does not raise any objection to the admissibility of the complaints.
24. 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.
25. 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