



The Human Rights Advisory Panel

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DECISION ^[*]

Date of adoption: 13 April 2011

Case No. 49/09

Mileva STANIŠIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting 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 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 lodged with the Panel on 17 April 2009 and registered on the same date.
2. The Panel requested further information, clarification and documents regarding the complaint by a letter dated 2 December 2010.

^[*] Editorially revised pursuant to Rule 47.2 of the Rules of Procedure, on 15 June 2011.

3. The complainant sent a response on 28 December 2010.
4. On 25 January 2011, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the complaint.
5. The SRSG responded by a letter dated 15 March 2011.

II. THE FACTS

6. The complainant is a resident of Kosovo. She complains about the kidnapping of her son, Mr Zoran Stanišić, by unknown persons, on 22 June 1999. The family reported the case to the International Committee of the Red Cross, UNMIK and KFOR.
7. From UNMIK's comments, it appears that missing person files regarding Mr Stanišić were opened by UNMIK in 2000. As part of the investigation to locate Mr Stanišić in 2000, UNMIK Border Police were instructed to check exit and entry information on record for Mr Stanišić's name and to look for any person by that name in each unit's respective area of responsibility. Regional Investigations Units of UNMIK Police were also requested to cross-check and try to determine the whereabouts of Mr Stanišić. Despite these efforts he was not located. Ante mortem data were collected from Mr Stanišić's family. Checks were also made, with negative results, in follow-up to rumours that Mr Stanišić was being detained in a prison in Lipjan/Lipljan.
8. In furtherance of the investigation UNMIK Police conducted additional interviews with the complainant on 22 August 2001. In 2004, UNMIK Police interviewed Mr Stanišić's father, Mr Novica Stanišić, who provided the name of a man who might have information on the whereabouts of Mr Stanišić. UNMIK Police tried to locate the named man in order to question him but were unsuccessful. The file notes that UNMIK Police were informed by local residents that they did not know the whereabouts of the potential witness and that he no longer lived in that location.
9. Investigative action from UNMIK appears to have remained pending at this point due to a lack of information or leads that would enable further meaningful investigation and prioritisation against other cases.
10. 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.
11. According to UNMIK's comments, the missing persons file of the complainant's son was later transferred to EULEX where it remains open.

III. THE COMPLAINT

12. The complainant complains about UNMIK's alleged failure to properly investigate the kidnapping of her son. She also complains about the mental pain and suffering allegedly caused to herself and her family by this situation.
13. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of her son, guaranteed by Article 2 of the European Convention on Human Rights (ECHR), and a violation of the right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the ECHR.

IV. THE LAW

14. Before considering the case on its merits the Panel must first decide whether to accept the case, taking into consideration 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

15. The complainant alleges in substance the lack of an adequate criminal investigation into the kidnapping of her son.
16. In his comments, the SRSG does not raise any objection to the admissibility of this part of the complaint.
17. The Panel considers that the complaint under Article 2 of the ECHR raises serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that this part of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
18. No other ground for declaring this part of the complaint inadmissible has been established.

Alleged violation of Article 3 of the ECHR

19. The complainant alleges mental pain and suffering allegedly caused to herself and her family by the situation surrounding the kidnapping and disappearance of her son.
20. In his comments, the SRSG argues that regarding issues under Article 3 of the ECHR the complaint is overly vague, and for this reason should be declared inadmissible.
21. The Panel considers that, based on the information available, the complainant sets forth relevant facts upon which the alleged violation of Article 3 of the ECHR is based. It therefore dismisses the objection based on the vagueness of this part of the complaint.
22. The Panel considers, moreover, that the complaint under Article 3 of the ECHR raises serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that this part of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
23. No other ground for declaring this part of the complaint inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Anila PREMTI
Acting Executive Officer

Marek NOWICKI
Presiding Member