



The Human Rights Advisory Panel

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DECISION

Date of adoption: 13 April 2011

Cases Nos. 248/09, 250/09 & 251/09

Dušan TOMANOVIĆ, Jelena TOMANOVIĆ-KOKOVIĆ and Verica TOMANOVIĆ

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 Mr Dušan Tomanović (case no. 248/09) was introduced on 17 April 2009 and registered on 30 April 2009. The complaint of Ms Jelena Tomanović-Koković (case no. 250/09) was introduced on 17 April 2009 and registered on 30 April 2009. The complaint of Ms Verica Tomanović (case no. 251/09) was introduced on 15 April 2009 and registered on 30 April 2009.
2. On 23 December 2009, the Panel invited each of the complainants to submit additional information. The complainants did not avail themselves of that opportunity.

3. On 9 September 2010, the Panel decided to join cases nos. 248/09, 250/09 and 251/09 pursuant to Rule 20 of the Panel's Rules of Procedure.
4. On 2 November 2010, the Panel communicated cases nos. 248/09, 250/09 and 251/09 to the SRSG for UNMIK's comments on the admissibility of the cases. On 28 February 2011, UNMIK provided its response.

II. THE FACTS

5. The first complainant (case no. 248/09) is the son of Dr Andrija Tomanović. The second complainant (case no. 250/09) is the daughter of Dr Andrija Tomanović. The third complainant (case no. 251/09) is the wife of Dr Andrija Tomanović.
6. According to the complainants, Dr Tomanović worked at the Clinical Hospital Centre in Prishtinë/Priština from 1963 until his disappearance. At about 1300 hours on 24 June 1999, Dr Tomanović called the second complainant to inform her that he was on his way home from the clinic. The complainants have not seen or heard from Dr Tomanović since that time. According to the complainants, there was a KFOR checkpoint in front of the clinic at the time of his disappearance.
7. The complainants indicate that they immediately reported the disappearance to the SRSG at the time, UNMIK Police, British KFOR, the International Committee of the Red Cross, the Red Cross of Serbia, the United Nations Office in Belgrade and the governmental authorities of Yugoslavia.
8. The third complainant attaches a number of letters to her complaint. The first letter, dated 19 July 1999, was sent to the United Nations Office in Belgrade requesting an appointment to discuss the abduction of Dr Tomanović and noting that his pre-existing medical conditions required specialised medicines that he was unlikely to receive if he were in detention. The second letter, dated 2 September 1999, was sent to the SRSG, noting that Dr Tomanović's life would be in danger if he were prevented from receiving the required medications in detention, and beseeching the SRSG to take all measures to shed light on the disappearance of her husband and to locate him without delay. The third letter, dated 27 September 1999, was sent to the commander of KFOR, noting that the complainant had been informed of KFOR's efforts to locate Dr Tomanović, and requesting further efforts from KFOR to locate and return him.
9. However, the whereabouts of Dr Tomanović remain unknown to date.
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.

III. THE COMPLAINTS

11. Each complainant complains about UNMIK's alleged failure to properly investigate the disappearance of Dr Tomanović and about the mental pain and suffering allegedly caused by this situation.
12. The Panel considers that the complainants may be deemed to invoke, respectively, a violation of the right to life of Dr Tomanović, 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

13. 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.
14. In his comments, the SRSG does not raise any objection to the admissibility of the complaints.
15. 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.
16. 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