



The Human Rights Advisory Panel

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DECISION

Date of adoption: 11 August 2011

Cases Nos. 13/09, 93/09 & 302/09

S.C., V.F., and O.L.

against

UNMIK

The Human Rights Advisory Panel, sitting on 11 August 2011, with the following members taking part:

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

Assisted by
Mr Andrey ANTONOV, 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, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint of Ms S.C. (case no. 13/09) was introduced on 21 January 2009 and registered on the same date. The complaint of Ms V.F. (case no. 93/09) was introduced on 30 April 2009 and registered on the same date. The complaint of Ms O.L. (case no. 302/09) was introduced on 5 May 2009 and registered on 10 July 2009.
2. On 3 April 2009 the Panel requested additional information from the complainant in case no. 13/09. On 9 December 2009, the Panel requested additional information from the complainant in case no. 93/09.
3. The complainant in case no. 13/09 responded on 3 June 2009. The complainant in case no. 93/09 responded on 5 January 2010.

4. On 24 July 2009, the Panel communicated case no. 13/09 to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on admissibility. On 10 May 2010, UNMIK provided its response.
5. On 9 September 2010, the Panel decided to join cases nos. 13/09, 93/09 and 302/09 pursuant to Rule 20 of the Panel's Rules of Procedure.
6. On 27 January 2011, the Panel decided to re-communicate case no. 13/09 and to communicate cases nos. 93/09 and 302/09 to the SRSG for UNMIK's comments on admissibility of the joined cases. On 9 March 2010 and 8 April 2011, UNMIK provided its responses.

II. THE FACTS

7. The first complainant, Ms S.C. (case no. 13/09), is the mother of Mr B.C. The second complainant, Ms V.F. (case no. 93/09), is the wife of Mr Ž.F. The third complainant, Ms O.L. (case no. 302/09), is the wife of Mr D.V.
8. According to the statements made by the complainants, Mr B.C., Mr Ž.F. and Mr D.V., all soldiers of the former Yugoslav army, disappeared on 11 April 1999. They were travelling in a vehicle with two more individuals en route from Prizren to Prishtinë/Priština. The vehicle was allegedly stopped near Suharekë/Suva Reka and the passengers taken away. It appears that one of the victims, Mr D.V., was able to inform his Police/Military Unit in Prizren that he had been kidnapped.
9. The complainants in all three cases indicate that they immediately reported the abduction of their relatives to the International Committee of the Red Cross, Red Cross of the Republic of Serbia and UNMIK Police. In addition, in case no. 93/09 the abduction was reported to the Ministry of Internal Affairs of the Republic of Serbia, and in case no. 302/09 to the International Prosecutor of the District Prosecutor's Office in Prizren.
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. In September 2009, human remains were discovered in a grave site called "Klečkë/Klečka" in Lipjan/Lipljan Municipality. Through DNA testing the mortal remains of Mr Ž.F. and Mr D.V. were identified. On 12 December 2009, the mortal remains of Mr D.V. were returned to his wife, Ms O.L. On 5 February 2010, the mortal remains of Mr Ž.F. were returned to a family member (Mr M.F.). As regards Mr B.C., it appears that the complainant in that case, Ms S.C., was interviewed by the police and requested to identify her son based on some photo evidence in their possession. However it is unclear whether such identification was made or whether the mortal remains of Mr B.C. were ever returned to his family.

III. THE COMPLAINTS

12. The first complainant complains about UNMIK's alleged failure to properly investigate the disappearance and murder of her son B.C. The second complainant complains about UNMIK's alleged failure to properly investigate the disappearance and murder of her husband Ž.F. The third complainant complains about UNMIK's alleged failure to properly investigate the disappearance and murder of her husband D.V. All complainants also complain about the mental pain and suffering allegedly caused to themselves by this situation.
13. The Panel considers that the complainants may be deemed to invoke, respectively, a violation of the right to life of their relatives, 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

14. 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.
15. In his comments, the SRSG does not raise any objection to the admissibility of the complaints under either Article 2 or 3 of the ECHR.
16. 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.
17. The Panel does not see any other ground for declaring the complaints inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINTS ADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member