



The Human Rights Advisory Panel

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DECISION

Date of adoption: 15 September 2011

Cases Nos. 139/09, 218/09 and 325/09

Tatjana VITOŠEVIĆ, Veska MAJMAREVIĆ and Nataša MAJMAREVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 15 September 2011,
with the following members present:

Mr Marek NOWICKI
Mr Paul LEMMENS
Ms Christine CHINKIN

Assisted by
Ms Anila PREMTI, acting as 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 (HRAP),

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint of Mrs Tatjana Vitošević (case no. 139/09) was introduced on 20 March 2009, and registered on 30 April 2009. The complaint of Mrs Veska Majmarević (case no. 218/09) was introduced on 6 April 2009, and registered on 30 April 2009. The complaint of Ms Nataša Majmarević (case no. 325/09) was introduced on 29 September 2009, and registered on 4 December 2009.
2. On 9 December 2009 the case of Mrs Vitošević was communicated to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on admissibility. On 30 April 2010 UNMIK provided its response.
3. On 23 December 2009 and 12 May 2010 the Panel requested additional information from Mrs Veska Majmarević, but received no reply.

4. On 9 September 2010 the Panel decided to join cases nos. 139/09, 218/09 and 325/09, pursuant to Rule 20 of the Panel's Rules of Procedure.
5. On 2 November 2010 the Panel decided to re-communicate case no. 139/09, and to communicate cases nos. 218/09 and 325/09 to the SRSG, for UNMIK's comments regarding admissibility. On 13 December 2010, the Panel received UNMIK's response.
6. On 4 March 2011, the Panel asked the Special Representative of the Secretary-General (SRSG) whether UNMIK could comment on information published in the media, which could have some bearing on the case. UNMIK provided its response on 23 March 2011.

II. THE FACTS

7. The first complainant, Mrs Tatjana Vitošević (case no. 139/09) is the wife of Mr Siniša Vitošević. The second complainant, Mrs Veska Majmarević (case no. 218/09) is the wife of Mr Gradimir Majmarević. The third complainant, Ms Nataša Majmarević (case no. 325/09), is the daughter of Mr Gradimir Majmarević. The complainants state that Messrs Vitošević and Majmarević were abducted together, on 22 June 1999, by armed members of the Kosovo Liberation Army (KLA). Mrs Vitošević states that this occurred somewhere on the road between Rahovec/Orahovac and Hoca i Madhe/Velika Hoča. Both Mrs Veska Majmarević and Ms Nataša Majmarević state that the abduction took place while Messrs Vitošević and Majmarević were visiting Mr Majmarević's weekend cottage located between Rahovec/Orahovac and Hoca i Madhe/Velika Hoča. Since that day their whereabouts are not known.
8. The complainants state that the abduction was reported to the Red Cross of Niš (Serbia), the Red Cross of Serbia, the Yugoslav Red Cross, the International Committee of the Red Cross, the Ministry of Internal Affairs of the Republic of Serbia, OSCE, and UNMIK.
9. Ms Nataša Majmarević added that the disappearance of her father was immediately reported to a KFOR unit stationed in Rahovec/Orahovac, but that KFOR took no action.
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. The first complainant complains about UNMIK's alleged failure to properly investigate the disappearance of her husband. The second complainant complains about UNMIK's alleged failure to properly investigate the disappearance of her husband. The third complainant complains about UNMIK's alleged failure to properly investigate the disappearance of her father. All three also complain about the mental pain and suffering allegedly caused to themselves by this situation.

12. 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, 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 case on its merits, the Panel must first decide whether to accept the case, considering 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

14. The complainants allege in substance the lack of an adequate criminal investigation into the disappearance of Messrs Vitošević and Majmarević.
15. In his comments, the SRSJ did not object to the admissibility of this part of the complaint.
16. The Panel considers that the complaints under Article 2 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 this part of the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
17. No other ground for declaring this part of the complaint inadmissible has been established.

Alleged violation of Article 3 of the ECHR

18. The complainants allege mental pain and suffering caused to them by the situation surrounding the disappearance of the victims.
19. In his comments, the SRSJ did not raise any objection to the admissibility of this part of the complaint.
20. The Panel considers that this part of the complaints 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 complaints is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
21. No other ground for declaring this part of the complaints inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINTS ADMISSIBLE.

Anila PREMTI
Acting Executive Officer

Marek NOWICKI
Presiding Member