



The Human Rights Advisory Panel

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DECISION

Date of adoption: 15 September 2011

Case Nos. 105/09 & 106/09

Danica STANOJKOVIĆ and Milosav STOJKOVIĆ

against

UNMIK

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

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

Assisted by
Mr Andrey ANTONOV, 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, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaints of Mrs Danica Stanojković (case no. 105/09) and of Mr Milosav Stojković (case no. 106/09) were introduced on 22 April 2009 and registered on 30 April 2009.
2. On 30 September 2009, the Panel communicated the cases to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the complaints insofar as they relate to an alleged violation of the right to life.
3. On 24 October 2009, the Panel decided to join case no. 105/09 with case no. 106/09 pursuant to Rule 20 of the Panel's Rules of Procedure.

4. On 2 February 2010, UNMIK provided its comments on the admissibility of the complaints.
5. On 28 July 2010, the Panel forwarded UNMIK's comments to the complainants and invited them to submit observations if they wished so. The complainant did not avail themselves of that possibility.

II. THE FACTS

6. The first complainant is the daughter of Mrs Darinka Stojković and Mr Milan Stojković. The second complainant is the son of Mrs and Mr Stojković.
7. Mr and Mrs Stojković were allegedly abducted from their house in Ferizaj/Uroševac by a group of Kosovo Liberation Army members on a date between June and October 1999. Their whereabouts remain unknown to date.
8. 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.
9. According to the SRSG, in July 2009 the case of Mr and Mrs Stojković was reviewed by a Prosecutor of the EULEX War Crimes Investigations Unit (WCIU), who requested further investigation on the case to be conducted. The investigation remains ongoing to date.

III. COMPLAINTS

10. The complainants complain about UNMIK's alleged failure to properly investigate the disappearance of their parents. They also complain about the mental pain and suffering allegedly caused to them by this situation.
11. The Panel considers that the complainants may be deemed to invoke, respectively, a violation of the right to life of their parents, 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

12. 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

13. The complainants allege in substance the lack of an adequate criminal investigation into the disappearance of their mother and father. The Panel notes that Mr and Mrs Stojković went missing on a date between June and October 1999.

14. The SRSG argues that the complaints are *prima facie* inadmissible. He is of the view that all other avenues for review have not been exhausted because the complainants' case is pending with a EULEX WCIU Prosecutor.
15. The Panel notes that the SRSG has not indicated any specific legal remedy available to the complainants with regard to the effectiveness of the investigation itself. For its part, the Panel does not see any such remedy. The fact that the matter is currently under investigation has no bearing on the object of the complaints: the effectiveness of the investigation thus far (see Human Rights Advisory Panel, *D.P.*, case no. 04/09, decision of 6 August 2010).
16. The Panel therefore concludes that this part of the complaints cannot be rejected for non-exhaustion of remedies within the meaning of Section 3.1 of UNMIK Regulation No. 2006/12.
17. The Panel furthermore 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 complaints 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 complaints inadmissible has been established.

Alleged violation of Article 3 of the ECHR

19. The complainants allege mental anguish and pain caused to them by the situation surrounding the disappearance of their parents.
20. The Panel refers to the case law of the European Court of Human Rights with respect to the question whether a member of the family of a disappeared person can be considered the victim of a treatment contrary to Article 3 of the ECHR, which prohibits inhuman treatment. The European Court accepts that this may be the case, depending on the existence of "special factors which give the suffering of the [family member] a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation". The Court further holds that "relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries". It also emphasises "that the essence of such a violation does not so much lie in the fact of the disappearance of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention" (see, e.g., European Court of Human Rights (ECtHR) (Grand Chamber), *Çakici v. Turkey*, no. 23657/94, judgment of 8 July 1999, § 98, *ECHR*, 1999-IV; ECtHR (Grand Chamber), *Cyprus v. Turkey*, no. 25781/94, judgment of 10 May 2001, § 156, *ECHR*, 2001-IV; ECtHR, *Orhan v. Turkey*, no. 25656/94, judgment of 18 June 2002, § 358; ECtHR, *Bazorkina v. Russia*, no. 69481/01, judgment of 27 July 2006, § 139; see also Human Rights Advisory Panel, *Zdravković*, no. 46/08, decision of 17 April 2009, § 41).
21. The Panel considers that a complainant may invoke a violation of Article 3 of the ECHR even if there is no explicit reference to specific acts of the authorities involved in the

investigation, since also the passivity of the authorities and the absence of information given to the complainant may be indicative of inhuman treatment of the complainant by the authorities.

22. 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.

23. No other ground for declaring this part of the complaints inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINTS ADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member