



The Human Rights Advisory Panel

Building D, UNMIK HQ Prishtinë/Priština, Kosovo | E-mail: hrap-unmik@un.org | Tel: +381 (0)38 504-604, ext. 5182

DECISION

Date of adoption: 27 October 2011

Cases Nos. 95/09 & 96/09

Milan PETROVIĆ

against

UNMIK

The Human Rights Advisory Panel, on 27 October 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 cases, 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. Both complaints were introduced on 08 April 2009 and registered on 30 April 2009.
2. On 24 October 2009, the Panel decided to join the two cases pursuant to Rule 20 of the Panel's Rules of Procedure.
3. On 10 March 2010, the Panel requested additional information from the complainant.
4. On 22 March 2010, the complainant provided his response.

5. On 16 June 2011, the Panel communicated the joined cases to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the cases.
6. On 2 September 2011, UNMIK submitted its response.

II. THE FACTS

7. The complainant is the son of Mr Mića Petrović and Mrs Radmila Petrović.
8. The complainant states that his parents were kidnapped from their flat in Gjakovë/Đakovica by members of the Kosovo Liberation Army (KLA) on some date between 14 June 1999 and 13 July 1999, most likely on 7 or 8 July 1999.
9. The complainant reports the statement of a witness according to whom on 14 June 1999, identified KLA members broke into Mr and Mrs Petrović's apartment, interrogated the complainant's parents, conducted a house search and seized valuable items from them, including money, jewellery and weapons. The complainant states that as of then, the KLA took control of the apartment building where his parents were living and restricted their movements. According to the statement of the same witness, who was reportedly living in the same apartment building, Mr and Mrs Petrović were taken away in a truck to an unknown location on the night of 7 or 8 July 1999. The complainant states that since his parents' disappearance, an Albanian family related to the KLA members has been living in his parents' apartment.
10. The complainant states that he learnt about his parents' disappearance on 13 July 1999, when his brother, Mr Zoran Petrović, went with a British KFOR captain to Gjakovë/Đakovica in order to take his parents away to a safe location. Mr Zoran Petrović found the door to his parents' apartment broken and the property empty, with a red tape across the entrance saying that the apartment was under KLA control. Thereafter, the complainant's brother went with the KFOR captain to the KLA Headquarters in Gjakovë/Đakovica to make enquiries concerning his parents' whereabouts, to no avail.
11. The complainant states that the disappearance of his parents was reported to UNMIK and the Yugoslav Red Cross, and that criminal complaints against named individuals were filed with the Serbian Ministry of Internal Affairs.
12. Mr and Mrs Petrović's whereabouts remain unknown to date.
13. 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

14. The complainant complains about UNMIK's alleged failure to properly investigate the disappearance of his parents. He also complains about the mental pain and suffering allegedly caused to him by this situation.
15. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of his parents, guaranteed by Article 2 of the European Convention on Human Rights (ECHR), and a violation of his own right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the ECHR.

IV. THE LAW

16. 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.

Alleged violation of Article 2 of the ECHR

17. The complainant alleges in substance the lack of an adequate criminal investigation into the kidnapping of his parents.
18. In his comments, the SRSG does not raise any objection to the admissibility of this part of the complaints.
19. 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 complaints is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
20. No other ground for declaring this part of the complaints inadmissible has been established.

Alleged violation of Article 3 of the ECHR

21. The complainant alleges mental pain and suffering caused to himself by the situation surrounding the disappearance of his parents.
22. In his comments, the SRSG argues that, while the complainant states that he has suffered mental pain and anguish as a result of the disappearance, there is no express allegation that this fear and anguish were a result of UNMIK's response to the disappearance of Mr and Mr Petrović. For that reason, this part of the complaints is inadmissible as manifestly ill-founded.
23. 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).

24. 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.
25. 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, and rejects the objection raised by the SRSG.
26. 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