



## DECISION

**Date of adoption: 17 February 2012**

**Cases No. 70/09 and 108/09**

**Zlatibor LJUŠIĆ and Zoran LJUŠIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 12 February 2012,  
with the following members present:

Mr Marek NOWICKI  
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 complaint of Mr. Zlatibor Ljušić (no. 70/09) was introduced on 17 April 2009 and registered on 30 April 2009.
2. The complaint of Mr. Zoran Ljušić (no. 108/09) was introduced on 23 April 2009 and registered on 30 April 2009.
3. On 24 July 2009, the complaint of Mr Zlatibor Ljušić (no. 70/09) was communicated to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on admissibility. On 5 August 2009 the Panel received the response from the SRSG.

4. On 21 April 2010, the Panel requested Mr Zlatibor Ljušić to submit additional information. The request was repeated on 7 December 2011. No response from this complainant was received by the Panel.
5. On 13 January 2010, the Panel requested Mr Zoran Ljušić to submit additional information. The request was repeated on 6 October 2010. No response from this complainant was received by the Panel.
6. On 9 September 2010, the Panel joined the complaint of Mr Zlatibor Ljušić (no. 70/09) with the complaint of Mr Zoran Ljušić (no. 108/09), pursuant to Rule 20 of the Panel's Rules of Procedures.
7. On 30 November 2011 the complaint of Mr Zlatibor Ljušić (no. 70/09) was re-communicated, and the complaint of Mr Zoran Ljušić (no. 108/09) was communicated, to the SRSG, for UNMIK's comments on admissibility. On 11 January 2012, the Panel received the response from the SRSG.

## **II. THE FACTS**

8. The complainants are the sons of Mr Stanoje Ljušić.
9. The complainants state that some time between 20 June 1999 and 1 July 1999, Mr Stanoje Ljušić, together with six other Kosovo Serbs, was abducted from his house in Istoq/Istok, by armed members of the Kosovo Liberation Army (KLA). Since that time his whereabouts have remained unknown.
10. The complainants indicate that the abduction of their father was reported to UNMIK, KFOR, the International Committee of the Red Cross (ICRC), the Yugoslav Red Cross, the Red Cross of Serbia, and other organisations. On 15 September 2000, the ICRC opened a tracing request for Mr Stanoje Ljušić, which remains open.
11. 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 COMPLAINT**

12. The complainants complain about UNMIK's alleged failure to properly investigate the disappearance and murder of their father and about the fear, pain and anguish suffered by themselves because of this situation.
13. The Panel considers that the complainants may be deemed to invoke, respectively, a violation of the right to life of Mr Stanoje Ljušić, guaranteed by Article 2 of the European Convention on Human Rights (hereinafter 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 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**

15. The complainants allege in substance the lack of an adequate criminal investigation into the disappearance and murder of Mr Stanoje Ljušić.
16. In his comments, the SRSG does not object to the admissibility of the complaints in relation to the procedural obligations under Article 2 of the ECHR.
17. 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.
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 pain and suffering allegedly caused to them by the situation surrounding the abduction and murder of their father.
20. In his comments, the SRSG argues that, while the complainants state that they have suffered mental pain and anguish as a result of the disappearance of their father, there is no express allegation that this fear and anguish were a result of UNMIK's response to the disappearance of Mr Stanoje Ljušić. For that reason, this part of the complaints is inadmissible as manifestly ill-founded.
21. 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 of Human Rights 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 (HRAP), *Zdravković*, no. 46/08, decision of 17 April 2009, § 41, and HRAP, *Petković*, no. 133/08, decision of 16 December 2011, § 35).

22. 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.
23. 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.
24. 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