



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: 17 February 2012

Cases Nos. 42/09 and 128/09

Dragica MAJSTOROVIĆ and Slavica STEVANOVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 17 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 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 Mrs Dragica Majstorović (no. 42/09) was introduced on 3 April 2009 and registered on 10 April 2009.
2. The complaint of Mrs Slavica Stevanović (no. 128/09) was introduced on 10 February 2009 and registered on 30 April 2009.
3. On 2 March 2010, the complaint of Mrs Majstorović (no. 42/09) was communicated to the Special Representative of the Secretary-General (SRSG), for comments on admissibility. On 12 April 2010, the Panel received a response from the SRSG.

4. On 3 March 2010, the Panel requested Mrs Stevanović to submit additional information. The request was repeated on 23 February 2011. No response from this complainant has been received by the Panel.
5. On 9 September 2010, the Panel joined the complaint of Mrs Majstorović (no. 42/09) with the complaint of Mrs Stevanović (no. 128/09), pursuant to Rule 20 of the Panel's Rules of Procedure.
6. On 8 July 2011, the complaint of Mrs Majstorović (no. 42/09) was re-communicated, and the complaint of Mrs Stevanović (no. 128/09) was communicated to the SRSG, for UNMIK's comments on admissibility. On 11 January 2012, the Panel received a response from the SRSG.

II. THE FACTS

7. Mrs Dragica Majstorović is the mother of Mr Ivan Majstorović. Mrs Slavica Stevanović is the wife of Mr Dragan Stevanović.
8. The complainants state that Messrs Majstorović and Stevanović were abducted on 18 August 1999, in the vicinity of Prishtinë/Priština, by armed members of the Kosovo Liberation Army (KLA), while travelling together in Mr Stevanović's vehicle. Since that time their whereabouts have remained unknown.
9. Mrs Dragica Majstorović indicates that she reported the abduction to KFOR, UNMIK Police, which opened an investigation, the Serbian Ministry of Internal Affairs, the International Committee of the Red Cross (ICRC), and to the Yugoslav Red Cross. On 24 August 1999, the ICRC opened a tracing request for Mr Majstorović, which remains open until now.
10. Mrs Slavica Stevanović indicates that the abduction of her husband was reported to the ICRC, the Red Cross in Niš (Serbia), and to an International Public Prosecutor in Prishtinë/Priština. On 15 September 1999, the ICRC opened a tracing request for Mr Stevanović, which remains open until now.
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 COMPLAINTS

12. The complainants complain about UNMIK's alleged failure to properly investigate the disappearance and murder of their close relatives 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 Messrs Majstorović and Stevanović, 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 a 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 abduction of Messrs Majstorović and Stevanović.
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 close relatives.
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 relative, there is no express allegation that this fear and anguish were a result of UNMIK's response to the disappearance of Messrs Majstorović and Stevanović. 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