



The Human Rights Advisory Panel

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DECISION

Date of adoption: 10 May 2012

Cases Nos 58/09, 59/09, 60/09, 61/09, 62/09, 215/09 and 217/09

Žaklina MIŠLJEN, Plana FOLIĆ, Slađana FOLIĆ, Savo FOLIĆ, Ms Slobodanka FOLIĆ, Vidna JEVRIĆ and Žarko FOLIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 10 May 2012,
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 Ms Žaklina Mišljen (case no. 58/09), Mrs Plana Folić (case no. 59/09), Mrs Slađana Folić (case no. 60/09), Mr Savo Folić (case no. 61/09), Ms Slobodanka Folić (case no. 62/09) and Mr Žarko Folić (case no. 217/09) were introduced on 15 April 2009 and registered on 30 April 2009. The complaint of Mrs Vidna Jevrić (case no. 215/09) was introduced on 1 April 2009 and registered on 30 April 2009.
2. On 12 September 2009, the Panel decided to join cases nos 59/09, 60/09, 61/09 and 62/09 pursuant to Rule 20 of the Panel's Rules of Procedure.

3. On 24 October 2009, the Panel decided to join case no. 58/09 to the already joined cases nos 59/09, 60/09, 61/09 and 62/09 pursuant to Rule 20 of the Panel's Rules of Procedure.
4. On 23 December 2009, the Panel requested additional information from the complainants in cases nos 215/09 and 217/09. No response was received.
5. On 10 March 2010, the Panel requested additional information from the complainants in cases nos 58/09, 59/09, 60/09, 61/09 and 62/09. However, no response was received.
6. On 9 August 2010, the Panel decided to join cases nos 215/09 and 217/09 with the already joined cases nos 59/09, 60/09, 61/09 and 62/09 pursuant to Rule 20 of the Panel's Rules of Procedure.
7. On 6 October 2010, the Panel reiterated its request for additional information to the complainants in cases nos 59/09, 60/09, 61/09 62/09, 215/09 and 217/09. No response was received.
8. On 2 December 2011, the Panel communicated the cases to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the complaints. UNMIK submitted its response on 17 February 2012.
9. On 7 December 2011, the Panel reiterated its request for further information to all complainants.
10. On 1 March 2012, the complainant in case no. 59/09, also on behalf of the other complainants, provided the Panel with additional information.

II. THE FACTS

11. The first complainant is the daughter of Mr Veljko Folić. The second complainant is the wife of Mr Veljko Folić. The third complainant is the daughter-in-law of Mr Veljko Folić. The fourth complainant is a son of Mr Veljko Folić. The fifth complainant is the sister of Mr Veljko Folić. The sixth complainant is the wife of Mr Miloš Jevrić. The seventh complainant is also a son of Mr Veljko Folić.
12. Mr Veljko Folić's relatives state that in June 1999 he travelled from Belgrade to Pejë/Peć with the intention of finding a way of taking his wife and his sister out of Gjakovë/Đakovica. According to the complainants, in the morning of 19 June 1999, Mr Veljko Folić, along with Mr Miloš Jevrić, left the Monastery of the Patriarchate of Pejë/Peć in Mr Jevrić's vehicle and headed towards Mr Jevrić's house in Pejë/Peć. The complainant states that in front of the hotel "Metohija" in the centre of Pejë/Peć, the two men were stopped by members of the Kosovo Liberation Army, forced out of their vehicle and taken in a lorry towards an unknown direction. Since then, their whereabouts have remained unknown.
13. The first, second, third, fourth, fifth and seventh complainants state that they promptly reported Mr Veljko Folić's abduction to KFOR, UNMIK, the International Committee of the Red Cross (ICRC), the Yugoslav Red Cross and the Serbian Ministry of Internal Affairs. They also state that on an unspecified date they filed a criminal complaint with the International Prosecutor of the District Public Prosecutor's Office of Pejë/Peć. However, they have not received any feed-back on the status of the investigation.

14. The sixth complainant states that she immediately reported Mr Jevrić's abduction to the KFOR command in Pejë/Peć, the ICRC, the "Commission on Missing Persons" and the "Police". On an unspecified date, she also submitted a criminal complaint to the International Prosecutor of the District Public Prosecutor's Office of Pejë/Peć. However, she is not aware as to whether any action was taken by relevant authorities.
15. An ICRC tracing request for Mr Veljko Folić and Mr Miloš Jevrić remains open. Likewise, their names appear in the database compiled by the UNMIK Office on Missing Persons and Forensics. Mr Veljko Folić's name also appears in a list of missing persons, communicated by the ICRC to UNMIK Police on 12 October 2001.
16. 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

17. The complainants complain about UNMIK's alleged failure to properly investigate the abduction of their relatives. They also complain about the mental pain and suffering allegedly caused to them by this situation.
18. The Panel considers that the complainants may be deemed to invoke, respectively, a violation of the right to life of Mr Veljko Folić and Mr Miloš Jevrić, 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

19. Before considering the cases on their 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

20. The complainants allege in substance the lack of an adequate criminal investigation into the abduction of Mr Veljko Folić and Mr Miloš Jevrić.
21. In his comments, the SRSG raises no objection to the admissibility of this part of the complaints.
22. 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.

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

Alleged violation of Article 3 of the ECHR

24. The complainants allege mental pain and suffering caused to themselves and their families by the situation surrounding the disappearance of their family members.
25. In his comments, the SRSG submits that, while the complainants state that they have 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 Veljko Folić and Mr Miloš Jevrić. For that reason, this part of the complaints is inadmissible as manifestly ill-founded.
26. 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, and HRAP, *Radisavljević*, no. 156/08, decision of 17 February 2012, § 18).
27. 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 (see HRAP, *Mladenović*, no. 99/09, decision of 11 August 2011, § 22; HRAP, *Petković*, no. 133/09, decision of 16 December 2011, § 20).
28. 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.
29. 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