



The Human Rights Advisory Panel

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DECISION

Date of adoption: 10 May 2012

Cases Nos 63/09, 64/09, 65/09, 66/09, 109/09, 113/09, 162/09, 300/09 and 301/09

Srboljub MITIĆ, Slavi MITIĆ, Smiljana ĐEKIĆ, Spasena MARKOVIĆ, Todor MARKOVIĆ, Stanomir JOVANOVIĆ, Marija JOVANOVIĆ

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 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 complaints of Mr Srboljub Mitić (cases nos 63/09 and 64/09) and the complaints of Mr Slavi Mitić (cases nos 65/09 and 66/09) were introduced on 15 April 2009 and registered on 30 April 2009. The complaint of Mrs Smiljana Đekić (case no. 109/09) was introduced on 3 March 2009 and registered on 30 April 2009. The complaint of Mrs Spasena Marković (case no. 113/09) was introduced on 4 April 2009 and registered on 30 April 2009. The complaint of Mr Todor Marković (case no. 162/09) was introduced on 7 April 2009 and registered on 30 April 2009. The complaint of Mr Stanomir Jovanović (case no. 300/09) was introduced and registered on 22 June 2009. The complaint of Mrs Marija Jovanović (case no. 301/09) was introduced and registered on 18 June 2009.

2. On 24 July 2009, the Panel communicated cases nos 63/09, 64/09, 65/09 and 66/09, as individual cases, to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the complaints. The SRSG's submitted his response on 5 August 2009.
3. On 24 October 2009, the Panel decided to join cases nos 63/09 and 64/09 with cases nos 64/09 and 65/09 pursuant to Rule 20 of the Panel's Rules of Procedure.
4. On 9 December 2009 and on 23 December 2009, the Panel requested further information from the complainants in cases nos 109/09 and 162/09 respectively.
5. On 13 January 2010, the Panel requested additional information from the complainant in case no. 113/09.
6. On 21 April 2010, the Panel requested additional information in relation to cases nos 63/09, 64/09 and 65/09 and 66/09.
7. On 12 May 2010, the Panel reiterated its request for additional information from the complainant in case no. 162/09. The complainant's response was received on 20 May 2010.
8. On 9 September 2010, the Panel decided to join the already joined cases nos 63/09, 64/09, 65/09 and 66/09 with case no. 109/09. On the same date, the Panel decided to join cases nos 113/09 and 162/09.
9. On 6 October 2010, the Panel reiterated its request for additional information to the complainants in relation to cases nos 63/09, 64/09, 65/09, 66/09, 109/09 and 113/09.
10. On 28 October 2010, the Panel received the complainant's response in relation to case no. 109/09.
11. On 11 November 2010, the Panel received additional information from the complainant in cases nos 63/09 and 64/09.
12. On 8 December 2010, the Panel requested further information from the complainants in relation to case no. 300/09 and case no. 301/09. The Panel received the complainant's response in relation to case no. 301/09 on 20 January 2011.
13. On 4 March 2011, the Panel communicated case no. 109/09 to the SRSG, and re-communicated cases nos 63/09, 64/09, 65/09 and 66/09 to him, following its decision to join the cases as well as the receipt of additional information from the complainant in cases nos 63/09 and 64/09. The SRSG submitted his response on 31 May 2011.
14. On 19 April 2011, the Panel forwarded additional information received in relation to case no. 109/09 to the SRSG.
15. On 25 July 2011, the Panel communicated case no. 301/09 to the SRSG for his comments on the admissibility of the complaint. On 30 September 2011, the SRSG submitted his response.
16. On 22 October 2011, the Panel decided to join the already joined cases nos 63/09, 64/09-65/09, 66/09, 109/09 with the joined cases nos 113/09, 162/09 as well as with cases nos 300/09 and 301/09.

17. On 31 October 2011, the Panel re-communicated cases nos 63/09, 64/09, 65/09, 66/09, 109/09 and 301/09 and communicated cases nos 113/09, 162/09 and 300/09 to the SRSG for comments on admissibility.
18. The SRSG provided his response on 15 December 2011.

II. THE FACTS

19. The first complainant is the son of Mrs Jovanka Mitić (case no. 63/09) and Mr. Stanislav Mitić (case no. 64/09). The second complainant is also a son of Mrs and Mr Mitić (cases no. 65/09 and 66/09). The third complainant is the daughter of Mrs and Mr Mitić (case no. 109/09). The fourth complainant is the wife of Mr Stanislav Marković (case no. 113/09). The fifth complainant is the son of Mr Stanislav Marković (case no. 162/09). The sixth complainant is the son of Mr Radislav Jovanović (300/09). The seventh complainant is the wife of Mr Božidar Jovanović (case no. 301/09).
20. The complainants state that their family members, Mrs Jovanka Mitić, Mr Stanislav Mitić, Mr Stanislav Marković, Mr Radislav Jovanović and Mr Božidar Jovanović, disappeared from the village of Mushtisht/Mušutište, Suharekë/Suva Reka Municipality, between 11 and 13 June 1999 during an attack by the Kosovo Liberation Army on the village. Their whereabouts are still unknown.
21. The complainants relate that they heard about their family members' disappearance from eye-witnesses, in particular from Mrs T.J., who survived the attack. The complainants state that they reported their relatives' disappearance to several authorities, including KFOR, UNMIK, the International Committee of the Red Cross (ICRC), the Yugoslav Red Cross and the International Prosecutor's Office in Prishtinë/Priština. However, they did not receive any feedback from the respective institutions.
22. ICRC tracing requests for Mrs Jovanka Mitić, Mr Stanislav Mitić, Mr Stanislav Marković, Mr Radislav Jovanović and Mr Božidar Jovanović remain open. Likewise, their names appear in the database compiled by the UNMIK Office on Missing Persons and Forensics. The names of Mrs Jovanka Mitić, Mr Stanislav Mitić and Mr Stanislav Marković also appeared in a list of missing persons communicated by the ICRC to UNMIK Police on 11 February 2002.
23. 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

24. The complainants complain about UNMIK's alleged failure to properly investigate the disappearance of their family members. They also complain about the mental pain and suffering allegedly caused to them by this situation.

25. The Panel considers that the complainants may be deemed to invoke, respectively, a violation of the right to life of their relatives, 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

26. 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

27. The complainants allege in substance the lack of an adequate criminal investigation into the disappearance and probable killing of Mrs Jovanka Mitić, Mr Stanislav Mitić, Mr Stanislav Marković, Mr Radislav Jovanović and Mr Božidar Jovanović.
28. In his comments, the SRSG raises no objection to the admissibility of this part of the complaints.
29. 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.
30. No other ground for declaring this part of the complaints inadmissible has been established.

Alleged violation of Article 3 of the ECHR

31. The complainants allege mental pain and suffering caused to themselves and their families by the situation surrounding the disappearance of their family members.
32. In his comments, the SRSG submits that, while the complainants state that they have suffered mental pain and anguish as a result of the disappearances, there is no express allegation that this fear and anguish were a result of UNMIK's response to the disappearances of Mrs Jovanka Mitić, Mr Stanislav Mitić, Mr Stanislav Marković, Mr Radislav Jovanović and Mr Božidar Jovanović. For that reason, this part of the complaints is inadmissible as manifestly ill-founded.
33. 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).

34. 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).
35. 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.
36. 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