



The Human Rights Advisory Panel

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DECISION

Date of adoption: 21 June 2012

Cases Nos 72/09, 73/09, 74/09, 75/09 and 76/09

Lela NIKOLIĆ

against

UNMIK

The Human Rights Advisory Panel, on 21 June 2012,
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 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, including through electronic means, in accordance with Rule 13 § 2 of its Rules of Procedure, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaints were introduced on 15 April 2009 and registered on 30 April 2009.
2. On 24 July 2009, the complaints were communicated to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on admissibility and merits. In response, by letter dated 5 August 2009, the SRSG advised the Panel that UNMIK could not provide comments because of lack of facts presented by the complainant.
3. On 24 October 2009, the Panel decided to join all mentioned cases, pursuant to Rule 20 of the Panel's Rules of Procedure.

4. On 21 April 2010, the Panel requested the complainant to provide additional information. The complainant has not responded to these requests.
5. On 4 May 2012, the complaints were re-communicated to the SRSG, for UNMIK's comments on admissibility. The SRSG provided UNMIK's response on 13 June 2012.

II. THE FACTS

6. The complainant is a former resident of Kosovo, currently living in Serbia proper.
7. The complainant informs the Panel that on 12 June 1999 five close members of her family, Mr Nedeljko Šutaković (her father, case no. 75/09), Mrs Darinka Šutaković (her stepmother, case no. 72/09), and their three sons: Aleksandar Šutaković (case no. 76/09), Đorđe Šutaković (case no. 74/09) and Radovan Šutaković (case no. 73/09), were abducted from their home in Gjakovë/Đakovica by members of the Kosovo Liberation Army. Since that time their whereabouts have remained unknown.
8. The complainant states that the disappearance was reported to KFOR, UNMIK, the Yugoslav Red Cross, the Serbian Ministry of Internal Affairs, and other organisations.
9. The ICRC tracing requests for all above-mentioned persons remain open. Likewise, their names appear in the database compiled by the UNMIK Office on Missing Persons and Forensics. The complainant also states that the matter was reported to the International Public Prosecutor in Prishtinë/Priština, but presents no specific details.
10. 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

11. The complainant complains about UNMIK's alleged failure to properly investigate the abduction and probable killing of her family members. The complainant in essence also complains about the fear, pain and anguish suffered by her because of this situation.
12. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of her relatives, guaranteed by Article 2 of the European Convention on Human Rights (ECHR), and a violation of her own right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the ECHR.

IV. THE LAW

13. Before considering the cases on their merits, the Panel must first decide whether to accept the complaints, considering the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.

14. The complainant alleges the lack of an adequate criminal investigation into the abduction of her relatives and mental pain and suffering caused to her by the situation surrounding the abductions.
15. In his comments, the SRSG raises no objection to the admissibility of the complaints.
16. The Panel considers that the complaints raise serious issues of fact and law, the determination of which should depend on examination of their merits. The Panel concludes therefore that the complaints are not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
17. No other ground for declaring the complaints inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINTS ADMISSIBLE.

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member