



The Human Rights Advisory Panel

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DECISION

Date of adoption: 17 August 2012

Cases Nos 68/09, 83/09, 235/09, 236/09 and 256/09

Budimirka MIRIĆ, Ljiljana STOJKOVIĆ and Dimitrije SPASIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 17 August 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 Budimirka Mirić were introduced on 3 April 2009 (case no. 68/09) and on a later date in April 2009 (case no. 256/09). The complaint of Ms Ljiljana Stojković (case no. 83/09) was introduced on 15 April 2009. The complaints of Mr Dimitrije Spasić (cases nos 235/09 and 236/09) were introduced on 14 April 2009. All complaints were registered on 30 April 2009.
2. On 24 July 2009, the cases nos 68/09 and 83/09 were communicated to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on admissibility and merits. In response, by letter dated 3 August 2009, the SRSG advised

the Panel that UNMIK could not provide comments because of the lack of facts presented by the complainant.

3. On 18 December 2009, the Panel addressed the European Union Rule of Law Mission in Kosovo (EULEX) with a request for information in relation to the availability of any investigation files with regard to 43 complaints, including those of Ms Budimirka Mirić (case no. 68/09) and Ms Ljiljana Stojković (case no. 83/09). The Head of the EULEX Human Rights and Gender Office provided a response on 23 March 2010.
4. On 23 December 2009, the Panel requested all complainants to provide additional information. No response to this request was received.
5. On 21 April 2010, the Panel reiterated its request for information to Ms Ljiljana Stojković. She responded by a submission of additional documents, which were received by the Panel on 29 April 2010. During a telephone conversation with the Panel's Secretariat on 15 December 2012, Ms Stojković confirmed that she possessed no further information in relation to the complaint.
6. On 12 May 2010, the Panel repeated its request for information to Mr Dimitrije Spasić. He responded by a letter dated 14 May 2010.
7. On 9 September 2010, the Panel decided to join all the above mentioned cases, pursuant to Rule 20 of its Rules of Procedure.
8. On 29 September 2010, the Panel reiterated its request for additional information to Ms Budimirka Mirić. On 20 January 2011 the Panel's Secretariat contacted her by telephone. On 23 February 2011, the Panel received Ms Mirić's response.
9. On 23 April 2012, all complaints were communicated to the SRSG, for UNMIK's comments on admissibility. The SRSG provided UNMIK's response on 4 June 2012.

II. THE FACTS

10. All complainants are former residents of Kosovo, currently living in Serbia proper.
11. Ms Budimirka Mirić is the daughter of Mrs Draga Đukić (case no. 68/09) and sister of Mr Srećko Đekić (case no. 256/09). Ms Ljiljana Stojković is the daughter of Mrs Vasiljka Nikolić (case no. 83/09). Mr Dimitrije Spasić is the son of Mr Jevta Spasić (case no. 235/09) and Mrs Bosiljka Spasić (case no. 236/09).
12. The complainants inform the Panel that their relatives were abducted in June 1999 by members of the Kosovo Liberation Army (KLA), from Dojnicë/Dojnica village, Prizren municipality. Specifically, Mrs Draga Đukić was reportedly abducted on 12 June 1999, Mr and Mrs Spasić on 26 June 1999, and Mrs Vasiljka Nikolić and Mr Srećko Đekić on 27 June 1999.
13. All the complainants state that their relatives were abducted during an orchestrated attack by the KLA on that village, which is established to have taken place on 27 June 1999. Therefore, the Panel assumes that all victims were abducted on that date. The information available on the websites of the International Committee of the Red Cross (ICRC) and the International Commission on Missing Persons supports this conclusion.

14. Since that time, the whereabouts of Mrs Draga Đukić, Mrs Vasiljka Nikolić, Mr Jevta Spasić and Mrs Bosiljka Spasić have remained unknown. The ICRC tracing requests for them remain open.
15. The mortal remains of Mr Srećko Đekić were located and identified by the UNMIK Office on Missing Persons and Forensics (OMPF), which is confirmed by a copy of a Confirmation of Identity issued by the OMPF on 19 October 2006. As the complainant states, Mr Đekić's mortal remains were returned to the family on 3 December 2007.
16. The complainants state that all disappearances were reported to KFOR, UNMIK, the Yugoslav Red Cross, and the Serbian Ministry of Internal Affairs.
17. Ms Budimirka Mirić and Ms Ljiljana Stojković also inform the Panel that on unspecified dates they submitted criminal reports against unknown KLA members responsible for the abduction of around 20 victims, including all the above-listed persons, to UNMIK International Prosecutors in the Prizren District Public Prosecutor's Office. They state that they have never received any reply in that regard.
18. The names of the five abducted persons appear in a list of missing persons, communicated by the ICRC to UNMIK Police on 12 October 2001, and in the database compiled by the OMPF.
19. On 9 December 2008, UNMIK's responsibility with regard to police and justice in Kosovo ended with 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 investigation case files held by the UNMIK Department of Justice and UNMIK Police were handed over to their EULEX counterparts.

III. THE COMPLAINTS

20. The complainants complain about UNMIK's alleged failure to properly investigate the abduction and killing or probable killing of their family members. The complainants in essence also complain about the fear, pain and anguish suffered by themselves because of this situation.
21. 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

22. 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.

A. Alleged violation of Article 2 of the ECHR

23. The complainants allege in substance the lack of an adequate criminal investigation into the abduction and killing or probable killing of their relatives.
24. 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.
25. 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.
26. No other ground for declaring this part of the complaints inadmissible has been established.

B. Alleged violation of Article 3 of the ECHR

27. The complainants allege mental pain and suffering caused to them by the situation surrounding the abduction and killing or possible killing of their relatives.
28. 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, *Radisavljević*, no. 156/09, decision of 17 February 2012, § 18).

29. In this respect, a distinction should be made between the situation of Mr Srećko Đekić (case no. 256/09), on the one hand, and the situation of the other victims, on the other hand.

1. With regard to the abduction and killing of Mr Srećko Đekić (case no. 256/09)

30. Where the disappeared person is later found dead, as in the case of Mr Srećko Đekić, the applicability of Article 3 of the ECHR is in general limited to the distinct period during which the member of the family sustained uncertainty, anguish and distress appertaining to the specific phenomenon of disappearances (see, e.g., ECtHR, *Luluyev and Others v.*

Russia, no. 69480/01, judgment of 9 November 2006, §§ 114-115, *ECHR*, 2006-XIII; see also ECtHR, *Gongadze v. Ukraine*, no. 34056/02, judgment of 8 November 2005, § 185, *ECHR*, 2005-XI).

31. In this respect, the question arises whether the complaint has been filed in time. Section 3.1 of UNMIK Regulation No. 2006/12 states that the Panel “may only deal with a matter ... within a period of six months from the date on which the final decision was taken”. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the complainant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the complainant (ECtHR (Grand Chamber), *Varnava and Others v. Turkey*, nos. 16064/90 and others, judgment of 18 September 2009, § 157). Where the complaint relates to a continuing situation, which has come to an end, the six-month time limit starts to run from the date on which the situation has come to an end.
32. The Panel notes that the mortal remains of Mr Srećko Đekić were handed over to his family on 3 December 2007. It is at that moment that the period during which an issue could arise under Article 3 of the ECHR, came to an end. For the purpose of Section 3.1 of UNMIK Regulation No. 2006/12, the six-month time limit therefore started to run from that date (see HRAP, *Petković*, no. 133/09, decision of 16 December 2011, § 23; HRAP, *Marković*, no. 06/10, decision of 19 February 2012, § 27).
33. The complaint in case no. 256/09 was filed with the Panel in April 2009, that is after the expiration of the above-referred six-month period.
34. The Panel therefore must conclude that this part of the complaint falls outside the time-limit set by Section 3.1 of UNMIK Regulation No. 2006/12.
2. *With respect to the abduction and probable killing of Mrs Draga Đukić (case no. 68/09), Mrs Vasiljka Nikolić (case no. 83/09), Mr Jevta Spasić (case no. 235/09) and Mrs Bosiljka Spasić (case no. 236/09)*
35. In his comments, the SRSG does not object to the admissibility of this part of the complaints.
36. The Panel considers that the analysis presented in § 28 applies to the situation surrounding the abduction and probable killing of Mrs Draga Đukić, Mrs Vasiljka Nikolić, Mr Jevta Spasić and Mrs Bosiljka Spasić, as their whereabouts remain unknown.
37. The Panel also 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.
38. No other ground for declaring this part of the complaint inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

- DECLARES ADMISSIBLE THE COMPLAINTS RELATING TO THE RIGHT TO LIFE;**
- DECLARES INADMISSIBLE THE COMPLAINT RELATING TO THE RIGHT TO BE FREE FROM INHUMAN AND DEGRADING TREATMENT WITH RESPECT TO MR SREĆKO ĐEKIĆ (CASE NO. 256/09);**
- DECLARES ADMISSIBLE THE COMPLAINTS RELATING TO THE RIGHT TO BE FREE FROM INHUMAN AND DEGRADING TREATMENT WITH RESPECT TO MRS DRAGA ĐUKIĆ (CASE NO. 68/09), MRS VASILJKA NIKOLIĆ (CASE NO. 83/09), MR JEVTA SPASIĆ (CASE NO. 235/09) AND MRS BOSILJKA SPASIĆ (CASE NO. 236/09).**

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member