



The Human Rights Advisory Panel

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DECISION

Date of adoption: 21 August 2012

Case No. 293/09

Božidar JOVANOVIĆ, Olga PATRNOGIĆ, Bogoljub PATRNOGIĆ, Jelica JOVANOVIĆ and Radmila LUČIN

against

UNMIK

The Human Rights Advisory Panel, sitting on 21 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 complaint was introduced on 13 May 2009 and registered on 19 May 2009.
2. On 23 December 2009, the Panel requested the complainants to provide additional information. The complainants' response was received on 17 June 2010.
3. On 29 December 2010, the Panel requested further information from the complainants. The complainants' response was received on 20 January 2011.
4. On 6 July 2011, the Panel requested further documentation from the complainants. The complainants' response was received on 6 June 2012 and 4 July 2012.

5. On 28 June 2012, the complaint was communicated to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on admissibility. The SRSG provided UNMIK's response on 13 August 2012.

II. THE FACTS

6. The complainants are relatives of Mr Tihomir Patrnogić. Mr Božidar Jovanović is the brother-in-law and the guardian of Mr Tihomir Patrnogić. Ms Olga Patrnogić is a sister of Mr Tihomir Patrnogić; she passed away on 6 April 2010. Mr Bogoljub Patrnogić is the brother of Mr Tihomir Patrnogić. Mrs Jelica Jovanović and Mrs Radmila Lučin are also sisters of Mr Patrnogić. In the proceedings before the Panel, all complainants are represented by Mr Dragoljub Vasiljević, a retired attorney from Belgrade.
7. The complainants state that Mr Tihomir Patrnogić was abducted by members of the Kosovo Liberation Army on 1 September 1999 while heading towards the centre of Prizren. Since that time his whereabouts have remained unknown.
8. The complainants state that the abduction was reported immediately to UNMIK and subsequently to the International Committee of the Red Cross (ICRC), the Yugoslav Red Cross and the Serbian Ministry of Internal Affairs. On 8 November 1999, the ICRC opened a tracing request for Mr Tihomir Patrnogić which remains open. Likewise, his name appears in two lists of missing persons, communicated by the ICRC to UNMIK Police on 12 October 2001 and 11 February 2002 respectively, and in the database compiled by the UNMIK Office on Missing Persons and Forensics.
9. 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 COMPLAINT

10. The complainants complain about UNMIK's alleged failure to properly investigate the abduction of their family member. The complainants in essence also complain about the fear, pain and anguish suffered by themselves because of this situation.
11. The Panel considers that the complainants may be deemed to invoke, respectively, a violation of the right to life of Mr Tihomir Patrnogić, 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 COMPLAINT OF MRS OLGA PATRNOGIĆ

12. The Panel notes that the complainant Mrs Olga Patrnogić passed away during the proceedings before the Panel.

13. In these circumstances, the Panel decides, in accordance with Rule 29 of its Rules of Procedure, to strike out of its list of cases the complaint insofar as it has been filed by Mrs Patrnogić.

V. THE LAW

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

FOR THESE REASONS,

The Panel, unanimously,

- **DECIDES TO STRIKE OUT OF ITS LIST OF CASES THE COMPLAINT INSO FAR AS IT HAS BEEN FILED BY MRS OLGA PATRNOGIĆ;**
- **DECLARES THE REMAINDER OF THE COMPLAINT ADMISSIBLE.**

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member