



The Human Rights Advisory Panel

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DECISION

Date of adoption: 26 September 2012

Cases Nos 291/09 and 292/09

Ljubinko VASIĆ and Malina ĐUKIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 26 September 2012,
with the following members present:

Mr Marek NOWICKI, Presiding Member
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 Mr Ljubinko Vasić (case no. 291/09) and Mrs Malina Đukić (case no. 292/09) were introduced on 24 April 2009 and registered on 15 May 2009.
2. On 23 December 2009, the Panel requested Mrs Malina Đukić to provide additional information. No response was received.
3. On 9 September 2010, the Panel decided to join the two cases pursuant to Rule 20 of the Panel's Rules of Procedure.
4. On 6 October 2010, the Panel submitted a request for further information to both complainants. No response was received.

5. On 24 November 2010, the Panel reiterated its request for additional information to Mrs Malina Đukić. However, no response was received.
6. On 4 March 2011, the Panel asked the Special Representative of the Secretary-General (SRSG) whether UNMIK could comment on information published in the media, which could have some bearing on the case. The SRSG responded on 24 March 2011.
7. On 19 April 2011, the Panel communicated the complaints to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on their admissibility.
8. On 31 May 2011, the SRSG submitted UNMIK's response.

II. THE FACTS

9. The first complainant is the father of Mr Mladen Vasić. The second complainant is the wife of Mr Miodrag Đukić.
10. The complainants state that on 22 June 1999 Mr Mladen Vasić and Mr Miodrag Đukić were abducted by unknown perpetrators while driving to work on the road from Rubofc/Rabovce to Lipjan/Lipljan. They were never seen alive again.
11. The complainants state that, on an unspecified date, they reported the abduction to UNMIK and KFOR. Indeed, the names of Mr Mladen Vasić and Mr Miodrag Đukić appear in the database compiled by the UNMIK Office on Missing Persons and Forensics.
12. 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.
13. In his comments, the SRSG states that, according to information provided by EULEX, the mortal remains of Mr Miodrag Đukić were located in 2003, identified through DNA analysis in 2010 and handed over to the family on 17 December 2010.
14. According to the database of the International Commission on Missing Persons, information concerning Mr Mladen Vasić was provided to an authorised institution on 26 October 2010. It therefore appears to the Panel that also the mortal remains of Mr Mladen Vasić were identified through DNA analysis in 2010.

III. THE COMPLAINTS

15. The complainants complain about UNMIK's alleged failure to properly investigate the abduction and killing of their family members. The complainants in essence also complain about the fear, pain and anguish suffered by them because of this situation.
16. The Panel considers that the complainants may be deemed to invoke, respectively, a violation of the right to life of Mr Mladen Vasić and Mr Miodrag Đukić, 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

17. 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

18. The complainants allege in substance the lack of an adequate criminal investigation into the abduction and killing of Mr Mladen Vasić and Mr Miodrag Đukić.
19. In his comments, the SRSG raises no objection to the admissibility of this part of the complaints.
20. 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.
21. No other ground for declaring this part of the complaints inadmissible has been established.

Alleged violation of Article 3 of the ECHR

22. The complainants allege mental pain and suffering caused to them by the situation surrounding the abduction of their family members.
23. In his comments, the SRSG argues that, while the complainants state that they have suffered mental pain and anguish as a result of the disappearance of their relatives, there is no assertion that this suffering was a result of any acts or omissions attributable to UNMIK. According to the SRSG, this part of the complaints is therefore inadmissible as manifestly ill-founded.
24. The Panel considers that, despite the lack of express allegations put forward by the complainants in this respect, the complaints set forth relevant facts relating to the abduction of the complainants' relatives upon which the alleged violation of the complainants' rights under Article 3 of the ECHR may be based.
25. 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).

26. 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).
27. 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.
28. 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