



DECISION

Date of adoption: 13 April 2011

Case No. 34/09

Svetlana JOČIĆ

against

UNMIK

The Human Rights Advisory Panel on 13 April 2011
with the following members taking part:

Mr Marek NOWICKI, Presiding Member
Mr Paul LEMMENS
Ms Christine CHINKIN

Assisted by
Ms Anila PREMTI, Acting 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 complaint was introduced on 6 March 2009 and registered on the same date.
2. On 4 May 2009, the Human Rights Advisory Panel requested further information from the complainant. On 31 August 2009 the complainant provided her response.
3. On 30 November 2009, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility and the merits of the case. On 1 June 2010, UNMIK provided its response.

4. On 14 July 2010, the Panel sent UNMIK's comments to the complainant to obtain her comments in reply. The complainant did not avail herself of that opportunity.

II. THE FACTS

5. The complainant states that on 18 June 1999 her son, Mr Dušan Jočić was with friends in the centre of Pejë/Peć, when the group was approached by persons wearing Italian Army uniforms. Those persons reportedly invited Mr Jočić and his friends to go to the Dujagjini/Dukađini printing facility if they were interested in work as interpreters with the Italian KFOR contingent. A group of four friends, including Mr Jočić, responded to this invitation and went to the printing facility. Apparently one of the four was very young and was sent home. Allegedly, there were also Kosovo Liberation Army personnel at the same printing facility. The complainant has not heard from or seen Mr Jočić since.
6. After hearing that Mr Jočić had gone to the printing facility, the complainant reported what had happened to the Italian KFOR commanders in the area. The complainant alleges that some of the Italian KFOR personnel refused to meet them, and others merely noted the name of the missing person without doing more. The complainant's husband also sought assistance from the clergymen at the Patriarchate of Pejë/Peć approximately one year later, however they were not able to obtain any further information or assistance regarding the disappearance.
7. The complainant also submitted an undated criminal complaint to the international public prosecutor of Pejë/Peć with their complaint, raising charges against unknown persons and providing the names of two witnesses to the events.
8. From UNMIK's submission, it appears that as of 16 August 2005, the UNMIK Police War Crimes Unit had opened an investigation and that it remained open as of 3 October 2007.
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 complainant complains about UNMIK's alleged failure to properly investigate the disappearance of her son and about the mental pain and suffering allegedly caused by this situation.
11. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of her son, 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

12. Before considering the case on the 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.
13. In his comments, the SRSG does not raise any objection to the admissibility of the complaint.
14. The Panel considers that the complaints under Articles 2 and 3 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 these complaints are not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
15. The Panel does not see any other ground for declaring the complaint inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Anila PREMTI
Acting Executive Officer

Marek NOWICKI
Presiding Member