



The Human Rights Advisory Panel

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DECISION

Date of adoption: 13 April 2011

Case No. 46/09

Nadica NEDELJKOVIĆ

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 31 March 2009 and registered on 14 April 2009.
2. On 16 June 2009, the Human Rights Advisory 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 29 June 2009, UNMIK provided its response.
3. On 3 November 2009, the Panel requested further information from the complainant.

4. On 18 December 2009, the Panel requested information from the European Union Rule of Law Mission in Kosovo (EULEX). EULEX provided a response on 23 March 2010.
5. On 10 August 2010 and 7 September 2010, the complainant provided a response to the Panel's letter of 3 November 2009.
6. On 2 November 2010, the Panel re-communicated the case to the SRSG for UNMIK's comments on the admissibility of the case in light of the additional comments from the complainant. On 20 December 2010, UNMIK provided its response.

II. THE FACTS

7. The complainant states that on 3 July 1999 she and her husband, Mr Svetislav Nedeljković, went to Lipjan/Lipljan to gather possessions they had kept at a friend's apartment. While the complainant waited in their car near the post office, Mr Nedeljković continued on via the horse-drawn carriage of a friend, Mr B.R., to collect the items from the apartment.
8. When Mr B.R. returned to the complainant, Mr Nedeljković was not with him. According to the complainant, Mr B.R. related the following information: that Mr Nedeljković had been seated in the back of the horse-drawn carriage; that a motor vehicle pulled alongside them and the occupants called Mr Nedeljković by name; and that when he approached the vehicle, he was forced into it and taken away. Also according to the complainant, both Mr B.R. and another witness, Mr Č.M., witnessed the kidnapping and informed her that the kidnappers were persons from Kraishtë/Krajište village. However, the complainant indicated that neither witness was willing to provide this information to the police, since they feared repercussions for themselves and their families. Both Mr B.R. and Mr Č.M. have since died.
9. The complainant states that the disappearance of Mr Nedeljković was immediately reported to the police (in UNMIK's comments it appears that it was a KFOR military police unit stationed in Lipjan/Lipljan) and that she provided all the information and documentation in her possession at that time. A few days later she reported the disappearance to police in Gushtericë/Gušterica and Gračanicë/Gračanica. The complainant also indicates that she reported the disappearance to the International Committee of the Red Cross.
10. According to the complainant, in October 1999, she was informed by an unknown person that Mr Nedeljković was buried between Kraishtë/Krajište and Ribar/Ribare villages. She reported this to the police, who took the complainant to the indicated spot. They found a burial mound at that time, but there was no body. It is unclear whether this took place in 1999 as stated by the complainant in her original complaint, or whether this statement refers to another event, described below in § 12.
11. According to information provided by UNMIK, the complainant provided ante mortem information to the UNMIK Office on Missing Persons and Forensics (OMPF) on 7 July 2000. During that interview, the complainant stated that another person had informed her that Mr Nedeljković had died and was buried. That person allegedly saw Mr Nedeljković's corpse on either 13 July 1999 or 18 July 1999.
12. Also according to UNMIK, on 15 September 2000, the complainant made a statement at the Lipjan/Lipljan police station, naming two suspects. On the same day, one of the witnesses (although UNMIK does not indicate which witness) was interviewed at the

Lipjan/Lipljan police station. At that time the witness indicated that he did not see what had happened and that he could not describe the persons who kidnapped Mr Nedeljković. Also while at the police station, the complainant told the police that on 14 September 2000, she received a phone call from a lady who informed her that Mr Nedeljković was buried between two villages in Lipjan/Lipljan municipality.

13. From UNMIK's submission, it appears that on 23 September 2000, UNMIK Police prepared an "initial incident report", and indicated that the case remained open.
14. UNMIK goes on to state that the Missing Persons Unit (MPU) of UNMIK Police produced a "case continuation report" which stated that the MPU visited the complainant to collect further information regarding her husband's disappearance on 2 April 2001. At that time, the complainant indicated that they had set out to Lipjan/Lipljan for Mr Nedeljković to have a medical check-up, since he suffered from kidney disease and needed regular dialysis. This is somewhat different than the statement given by the complainant in her complaint to the Panel. The "case continuation report" goes on to state that a meeting was arranged between the complainant and one of the eyewitnesses on 11 April 2001. UNMIK does not indicate which eyewitness it was, therefore it is unclear whether it was the same eyewitness referred to above in § 12, or a different person. During that meeting the eyewitness indicated that he did not see the abduction and therefore could not provide any names with regard to any possible perpetrators.
15. According to the UNMIK submission, the UNMIK Police MPU file indicates that on 31 August 2001, UNMIK Police visited the site described in § 12 above. They found three holes in the ground in that area, as well as some pieces of clothing, which they collected. They visited the site again on 3 September 2001, this time with the assistance of a search dog; however they did not locate any human remains. The report states that the complainant should be informed about the search. From the complainant's submission, it appears that she was probably informed of the outcome of the search, and that the October 1999 search most likely refers to these events.
16. UNMIK goes on to state that a different UNMIK Police MPU team visited the complainant on 20 November 2001 to show her clothing recovered from a body discovered on 11 October 2001. The complainant did not recognise the clothing as belonging to Mr Nedeljković. The team also contacted the person who had allegedly seen the missing person's body on 18 July 1999, but he denied the earlier statements. The team also visited the same person on 27 December 2001, but he stated that he did not know about the location of any burial site and that the last time he saw Mr Nedeljković was sometime between April and May 1999.
17. The complainant states that approximately eight years after the disappearance, someone from the UNMIK OMPF contacted her, but that she has not heard anything since.
18. The whereabouts of Mr Nedeljković remain unknown to date.
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 case files held by the UNMIK Department of Justice and UNMIK Police were handed over to their EULEX counterparts.

20. Information obtained by UNMIK from EULEX indicates that the case is not currently listed as under investigation, but that the case remains open with the EULEX OMPF.

III. THE COMPLAINT

21. The complainant complains about UNMIK's alleged failure to properly investigate the abduction of her husband and about the mental pain and suffering allegedly caused by this situation.

22. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of her husband, 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

23. 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.

24. In his comments, the SRSG does not raise any objection to the admissibility of the complaint.

25. 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.

26. 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