



The Human Rights Advisory Panel

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DECISION

Date of adoption: 21 October 2010

Cases Nos. 125/09 & 126/09

Nebojša PETKOVIĆ

against

UNMIK

The Human Rights Advisory Panel on 21 October 2010,
with the following members taking part:

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

Assisted by
Mr Rajesh TALWAR, Executive Officer

Having considered the aforementioned complaints, 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 complaints were introduced on 7 April 2009 and registered on 30 April 2009.
2. On 18 November 2009, the Panel requested further information in relation to Cases nos. 125/09 and 126/09 from the complainant. On 19 November 2009, the Panel joined the two cases pursuant to Rule 20 of the Panel's Rules of Procedure.

3. On 30 November 2009, the complainant provided further information.
4. On 3 March 2010, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the case.
5. On 16 July 2010, UNMIK provided its response.
6. On 24 August 2010, the Panel sent UNMIK's response to the complainant for comments. The complainant provided his response on 22 September 2010.

II. THE FACTS

7. The complainant states that he and his brother left Gjakovë/Đakovica on 12 June 1999, leaving their parents, Mr Živko Petković and Mrs Desanka Petković in their family house in Gjakovë/Đakovica town. The complainant states that the family maintained good relations with all their neighbours and received guarantees from them that their parents would be safe if they remained in Gjakovë/Đakovica. To that end, one neighbour, a Mr B.D., agreed to move in to the house in order to ensure the safety of Mr Živko Petković and Mrs Desanka Petković.
8. After his departure, the complainant did not hear from his parents. After several unsuccessful attempts, he was able to contact Mr B.D. and obtain some information about his parents in September 1999. Mr B.D. informed the complainant that he could no longer take care of the complainant's parents and that they had left for Pejë/Peć in their own vehicle about ten days after the departure of the complainant, on 22 June 1999. When the complainant asked Mr B.D. why he did not take his parents to UNMIK or to KFOR so that they could seek their assistance, Mr B.D. stated that he dared not do it, as he would be held responsible for protecting Serbs. Mr Živko Petković and Mrs Desanka Petković remain missing to date. Mr B.D. lived in the complainant's family home until 2008, when it was placed under the administration of the Kosovo Property Agency.
9. The complainant states that the disappearance was reported to the International Committee of the Red Cross (ICRC), the Red Cross of Montenegro, the Red Cross of Serbia, the Ministry of Internal Affairs (former Yugoslavia) and the Association of Missing and Kidnapped Persons.
10. The complainant states that he reported the disappearance to UNMIK immediately upon learning of his parents' disappearance. The SRSG states in his comments that the complainant reported the disappearance to UNMIK Police in October 2000. In February 2003, the complainant visited an UNMIK Police station to inform them that he had heard from a former neighbour that his parents had been seen alive in the Gjakovë/Đakovica region. UNMIK Police then visited the Petković home in Gjakovë/Đakovica and obtained statements from the family of Mr B.D. which confirmed the information in paragraph 8, above. In addition, they spoke to another neighbour who claimed to have had lunch with the complainant's parents before they set off for Pejë/Peć on 22 June 1999.
11. The fate of Mr Živko Petković and Mrs Desanka Petković remains unknown to date.
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.

III. COMPLAINT

13. The complainant complains about UNMIK's alleged failure to properly investigate the disappearance of his mother and father. He also complains about the mental pain and suffering allegedly caused by this situation.
14. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of his mother and father, guaranteed by Article 2 of the European Convention on Human Rights (ECHR) and a violation of his own right to be free from inhuman or degrading treatment, guaranteed by Article 3 of the ECHR.

IV. THE LAW

15. 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.
16. In his comments, the SRSG does not raise any objection to the admissibility of the complaint.
17. 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 this complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
18. The Panel does not see any other ground for declaring it inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member