



The Human Rights Advisory Panel

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DECISION

Date of adoption: 6 April 2012

Case No. 246/09

Stevan SIMOVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 6 April 2012,
with the following members taking part:

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, 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 13 April 2009 and registered on 30 April 2009.
2. On 23 December 2009, the Panel requested further information from the complainant. No response was received.
3. On 9 January 2012, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the case.
4. On 23 February 2012, UNMIK submitted its response.

II. THE FACTS

5. The complainant is the father of Mr Aleksandar Simović.
6. The complainant states that his son, employed as a journalist and interpreter at the radio station “Media Action International”, was abducted by members of the Kosovo Liberation Army (KLA) on 21 August 1999 in Prishtinë/Priština.
7. The complainant states that the abduction was immediately reported to the International Committee of the Red Cross (ICRC), KFOR, UNMIK and the International Prosecutor’s Office in Prishtinë/Priština. The complainant further states that, on an unspecified date, he requested the “international force and police” to escort him and approach a KLA commander allegedly involved in the abduction of his son. However, they refused.
8. The mortal remains of Mr Aleksandar Simović were discovered by UNMIK on 5 June 2001 in Glogoc/Glogovac. They were identified and handed over to the family on 1 November and 15 November 2002 respectively. According to the death certificate issued by the Missing Persons Unit of the UNMIK Police, the cause of death of Mr Aleksandar Simović was unascertained.
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. COMPLAINT

10. The complainant complains about UNMIK’s alleged failure to properly investigate the abduction and killing of his son.
11. The Panel considers that the complainant may be deemed to invoke a violation of the right to life of his son, guaranteed by Article 2 of the European Convention on Human Rights (ECHR).

IV. THE LAW

12. 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.
13. The complainant alleges in substance the lack of an adequate criminal investigation into the abduction and killing of his son.
14. In his comments, the SRSG argues that through an appropriate investigation UNMIK was able to locate and identify the mortal remains of Mr Aleksandar Simović, thus complying with one of the procedural requirements envisaged by Article 2 of the ECHR, namely the obligation to conduct an investigation capable of determining the fate and whereabouts of the missing person. Furthermore, as the procedure of identification and handing over of

the mortal remains was completed by November 2002, the SRSJ is of the view that the complaint concerning the above-mentioned aspect of Article 2 is out of the Panel's jurisdiction both *ratione materiae* and *ratione temporis*.

15. On the other hand, the SRSJ accepts that the complaint is *prima facie* admissible with respect to another procedural requirement of Article 2 of the ECHR, namely the obligation to conduct an investigation capable of determining "whether there was an unlawful disappearance and leading to the identification and punishment of those responsible for the disappearance and death" of Mr Aleksandar Simović.
16. The Panel notes that the SRSJ distinguishes between these two procedural requirements of Article 2 of the ECHR. He thus considers that the activities of location and identification of the mortal remains of a missing person can be considered as an independent component of the procedural obligation envisaged by Article 2 of the ECHR.
17. On this point, the Panel refers to the case law of the European Court of Human Rights setting the standards of an effective investigation into killings and disappearances in life-threatening circumstances. The European Court states that "the essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life ..." (see, e.g., European Court of Human Rights (ECtHR) (Grand Chamber), *Varnava and Others v. Turkey*, nos. 16064/09 and others, judgment of 18 September 2009, § 191). Specifically with regard to persons disappeared and later found dead, the Court has stated that the procedures of exhumating and identifying mortal remains do not exhaust the obligation under Article 2 of the ECHR. It is true that the Court holds that "the procedural obligation arising from a disappearance will generally remain as long as the whereabouts and fate of the person are unaccounted for, and it is thus of a continuing nature" (ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 46; in the same sense ECtHR (Grand Chamber), *Varnava and Others v. Turkey*, cited above, at § 148). However, the Court also stresses that this procedural obligation "does not come to an end even on discovery of the body This only casts light on one aspect of the fate of the missing person and the obligation to account for the disappearance and death, as well as to identify and prosecute any perpetrator of unlawful acts in that connection, will generally remain" (ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, at § 46; in the same sense ECtHR (Grand Chamber), *Varnava and Others v. Turkey*, cited above, at § 145). The procedural obligation under Article 2 of the ECHR should therefore be seen as a single obligation. While the location and the subsequent identification of the mortal remains of the victim may in themselves be significant achievements, the procedural obligation under Article 2 continues to exist (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, at § 64).
18. For these reasons, the Panel will not separate the obligation to conduct an investigation capable of determining the fate and whereabouts of the missing person from the obligation to conduct an investigation capable of determining whether there was an unlawful disappearance and leading to the identification and punishment of those responsible for the disappearance and death of the victim. The Panel will proceed on the basis of a single continuing obligation. Obviously, however, the fact that the mortal remains of Mr Aleksandar Simović have been located and subsequently identified is a significant element to be taken into account in the overall assessment of the fulfilment of the procedural obligation under Article 2 of the ECHR.
19. The complaint cannot therefore be declared partially inadmissible on the basis that it comes partially outside the jurisdiction *ratione temporis* and *ratione materiae* of the Panel. The objection raised by the SRSJ is accordingly dismissed.

20. The Panel furthermore 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.

21. No other ground for declaring the complaint inadmissible has been established.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT ADMISSIBLE

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member