The Human Rights Advisory Panel
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DECISION

Date of adoption: 11 May 2012

Case No. 84/09

Kata JOVANOVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 11 May 2012,
with the following members present:

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, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 8 April 2009 and registered on 30 April 2009.

2. On 9 December 2009, 21 April 2010 and 24 June 2011 the Panel requested further information from the complainant. No response was received.

3. On 2 February 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 2 March 2012, UNMIK submitted its response.

II. THE FACTS

5. The complainant is the widow of Mr Milorad Jovanović.

6. The complainant states that on 24 June 1999 her husband was abducted by a member of the Kosovo Liberation Army (KLA) and taken to a building in Gjakovë/Đakovica where other Serbs were being held.

7. The complainant states that the abduction was reported to KFOR, to a KLA commander, and to other relevant institutions. The International Committee of the Red Cross (ICRC) opened a tracing request for Mr. Jovanović on 2 December 1999. Likewise, his name appears in the database compiled by the UNMIK Office on Missing Persons and Forensics (OMPF).

8. The mortal remains of Mr Milorad Jovanović were discovered by UNMIK on 30 September 2002 in Gjakovë/Đakovica. They were identified on 16 June 2003 and apparently handed over to the family sometime later. According to the death certificate issued by the OMPF, the cause of death of Mr Jovanović was "multiple gunshot injuries to trunk and right arm".

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 abduction and killing of her husband.

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

14. In his comments, the SRSG argues that through an appropriate investigation UNMIK was able to locate and identify the mortal remains of Mr Milorad Jovanović, 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 June 2003, the SRSG 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 SRSG 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 Milorad Jovanović.

16. The Panel notes that the SRSG distinguishes between two procedural requirements of Article 2 of the ECHR. He thus considers that the activities of locating and identifying 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 (see Human Rights Advisory Panel (HRAP), *Simović*, no. 246/09, decision of 6 April 2012, § 18). Obviously, however, the fact that the mortal remains of Mr Milorad Jovanović 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 SRSG 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	Marek NOWICKI
Executive Officer	Presiding Member