



The Human Rights Advisory Panel

Building D, UNMIK HQ Prishtinë/Priština, Kosovo | E-mail: hrap-unmik@un.org | Tel: +381 (0)38 504-604, ext. 5182

DECISION

Date of adoption: 17 August 2012

Cases Nos. 168/09, 169/09 and 312/09

Snežana MILENKOVIĆ and Momčilo MILENKOVIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 17 August 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 complaints of Mrs Milenković were introduced on 9 April 2009 and 30 April 2009, respectively, and registered on 30 April 2009. The complaint of Mr Milenković was introduced on 21 September 2009 and registered on 23 September 2009.
2. On 10 December 2009 and 6 July 2011, the Panel requested further information from Mr Milenković. On 23 December 2009 and 6 June 2011 the Panel requested further information from the complainants. No responses were received.
3. On 20 December 2009 the Panel decided to join the cases, pursuant to Rule 20 of the Panel's Rules of Procedure.

4. On 18 April 2012, the Panel communicated the cases to the Special Representative of the Secretary-General (SRSG) for UNMIK's comments on the admissibility of the cases.
5. On 28 May 2012, UNMIK submitted its response.

II. THE FACTS

6. The complainants Mr Momčilo Milenković and Mrs Snežana Milenković, are the brother and widow, respectively of Mr Dimitrije Milenković. Mrs Snežana Milenković is the mother of Mr Aleksandar Milenković.
7. The complainants state that on 16 June 1999, Mr Dimitrije Milenković and Mr Aleksandar Milenković were abducted, along with four other men, on the road between Obiliq/Obilić town and Mazgit/Mazgit village in Obiliq/Obilić municipality. A few days later, the bodies were found in Mazgit/Mazgit village. KFOR transported the mortal remains of the six bodies to the Pristinë/Priština hospital morgue and the mortal remains were later buried in Dragodan cemetery in Pristinë/Priština.
8. The complainants state that the abductions were reported to UNMIK, KFOR, and the International Committee of the Red Cross (ICRC). The ICRC opened a tracing request for Mr Dimitrije Milenković on 5 June 2001. The ICRC published the name of Mr Aleksandar Milenković in its publication "Persons missing in relation to the events in Kosovo", (3rd edition, February 2004). According to information provided by the SRSG, investigations concerning the victims were opened by the Missing Persons Unit of UNMIK Police in 2000. Additionally, the names of both victims appear in the database compiled by the UNMIK Office on Missing Persons and Forensics (OMPF).
9. The mortal remains of Mr Dimitrije Milenković and Mr Aleksandar Milenković were identified by DNA samples collected by OMPF on 19 April 2004 and handed over to the family on 25 June 2004. A copy of the death certificate prepared by the Office of the Medical Examiner of the Department of Justice states that the cause of death of Mr Dimitrije Milenković was two gunshot wounds to the head and chest. A copy of the death certificate prepared by the same office states that the cause of death of Mr Aleksandar Milenković was two gunshot wounds to the head.
10. 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 COMPLAINTS

11. The complainants complain about UNMIK's alleged failure to properly investigate the abduction and killing of Mr Dimitrije Milenković and Mr Aleksandar Milenković.

12. The Panel considers that the complainants may be deemed to invoke a violation of the right to life of their husband/brother and son, guaranteed by Article 2 of the European Convention on Human Rights (ECHR).

IV. THE LAW

13. Before considering the cases on their merits, the Panel must first decide whether to accept the cases, considering the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.
14. The complainant alleges in substance the lack of an adequate criminal investigation into the abduction and killing of their husband/brother and son.
15. In his comments, the SRSG argues that through an appropriate investigation UNMIK was able to locate and identify the mortal remains of Mr Dimitrije Milenković and Mr Aleksandar Milenković, thus complying with one of the procedural requirements required 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 process of identification and handing over of the mortal remains was completed on June 2004, the SRSG is of the view that the complaint concerning the above-mentioned aspect of Article 2 has been met and is therefore inadmissible.
16. 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 investigating 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 Dimitrije Milenković and Mr Aleksandar Milenković.
17. 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 identification of the mortal remains of a missing person can be seen as an independent component of the procedural obligation envisaged by Article 2 of the ECHR.
18. 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).

19. 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 Dimitrije Milenković and Mr Aleksandar Milenković 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.
20. The complaints cannot therefore be declared partially inadmissible on the basis the SRSG completed his obligations concerning part of the procedural aspects of Article 2, specifically, the activity of locating and identifying the mortal remains of missing persons. This objection raised by the SRSG is accordingly dismissed.
21. The Panel furthermore considers that the complaints raise serious issues of fact and law, the determination of which should depend on an examination of the merits. The Panel concludes therefore that the complaints are not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
22. No other ground for declaring the complaints inadmissible have been established.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINTS ADMISSIBLE

Andrey ANTONOV
Executive Officer

Marek NOWICKI
Presiding Member