



# *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: 21 August 2012**

**Case Nos. 143/09 and 247/09**

**Živanka PATRNOGIĆ and Vesna VOJINOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 21 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 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, decides as follows:

### **I. PROCEEDINGS BEFORE THE PANEL**

1. The complaint of Ms Patrnogić (case no 143/09) was introduced on 7 April 2009 and registered on 30 April 2009. The complaint of Ms Vojinović (case no 247/09) was introduced and registered on 30 April 2009.
2. On 23 December 2009 and 6 October 2010, the Panel requested further information from the complainant in case no. 247/09. No response was received.
3. On 13 January 2010, the Panel requested further information from the complainant in case no. 143/09. On 23 February 2010, the Panel received additional information from the complainant.
4. On 9 September 2010, the Panel decided to join the cases, pursuant to Rule 20 of the Panel's Rules of Procedure.

5. On 13 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.
6. On 14 May 2012, the SRSG provided UNMIK's response.

## **II. THE FACTS**

7. Mrs Živanka Patrnogić (in case no. 143/09) is the widow of Mr Duško Patrnogić. Ms Vesna Vojinović (in case no. 247/09) is the sister of Mr Aleksandar Stanojević.
8. The complainants state that on 17 July 1998, Mr Duško Patrnogić and Mr Aleksandar Stanojević were forced to leave their workplace, the Health Centre in Rahovec/Orahovac by armed members of the Kosovo Liberation Army, and were taken away in an unknown direction.
9. The complainants state that the abductions were reported to the International Committee of the Red Cross (ICRC), UNMIK, the OSCE, KFOR, the Serbian Ministry of Internal Affairs, and the Yugoslav Red Cross. They also filed a criminal complaint with the International Prosecutor of the District Public Prosecutor's Office of Prizren. The names of both Mr Patrnogić and Mr Stanojević appear in the database compiled by the UNMIK Office on Missing Persons and Forensics (OMPF); Mr Patrnogić's name also appears in a list of missing persons communicated by the ICRC to UNMIK Police on 12 October 2001.
10. The mortal remains of Mr Patrnogić were discovered on 18 May 2005 in Malishevë/Mališevo municipality. They were identified by the OMPF on 7 February 2006. According to the death certificate issued by the OMPF, the cause of death of Mr Patrnogić was "two gunshots to the head and a gunshot to the trunk". The mortal remains were handed over to the family on 13 October 2006.
11. The mortal remains of Mr Stanojević were discovered on 18 May 2005 also in Malishevë/Mališevo municipality. According to the SRSG's response, an autopsy performed by the OMPF listed his cause of death as "a gunshot to the head". Additionally, the SRSG's response states that Mr Stanojević's remains were handed over to the family on 8 December 2005. However, the complainant states that the mortal remains of Mr Stanojević were handed over to his family on 3 November 2007.
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. THE COMPLAINTS**

13. The complainants complain about UNMIK's alleged failure to properly investigate the abduction and killing of Mr Patrnogić and Mr Stanojević.

14. The Panel considers that the complainants may be deemed to invoke a violation of the right to life of Mr Patrnogić and Mr Stanojević, guaranteed by Article 2 of the European Convention on Human Rights (ECHR).

#### IV. THE LAW

15. 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.
16. The complainants allege in substance the lack of an adequate criminal investigation into the abduction and killing of Mr Patrnogić and Mr Stanojević.
17. In his comments, the SRSG argues that through an appropriate investigation UNMIK was able to locate and identify the mortal remains of Mr Patrnogić and Mr Stanojević, 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 persons. Furthermore, as the process of identification and handing over of the mortal remains was completed by November 2007, at the latest, the SRSG is of the view that the obligation concerning the above-mentioned aspect of Article 2 has been met and that the complaints are therefore inadmissible.
18. On the other hand, the SRSG accepts that the complaints are *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 Patrnogić and Mr Stanojević.
19. 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.
20. 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).

21. 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 Patrnogić and Mr Stanojević 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.
22. The complaints cannot therefore be declared partially inadmissible on the basis that 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 the missing persons. The objection raised by the SRSG is accordingly dismissed.
23. 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.
24. 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