



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 November 2012

Cases Nos 264/09 and 265/09

Bogoljub ŠMIGIĆ

against

UNMIK

The Human Rights Advisory Panel, sitting on 21 November 2012,
with the following members present:

Mr Marek NOWICKI, Presiding Member
Ms Christine CHINKIN
Ms Françoise TULKENS

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 two complaints were introduced on 9 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 September 2010, the Panel decided to join the cases pursuant to Rule 20 of the Panel's Rules of Procedure.
4. On 28 March 2012, the Panel communicated the cases to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on the admissibility of the complaints. On 4 May 2012, the SRSG provided UNMIK's response.

II. THE FACTS

5. The complainant is the son of Mr Milosav Šmigić (case no 264/09) and Mrs Sultana Šmigić (case no. 265/09).
6. The complainant states that his parents were abducted from the village of Leoqin/Leoćina in the municipality of Skenderaj/Srbica by members of the Kosovo Liberation Army on 9 June 1998. Since that time their whereabouts have remained unknown.
7. The complainant states that the disappearances were reported to the International Committee of the Red Cross (ICRC), the Yugoslav Red Cross and the Serbian Ministry of Internal Affairs. ICRC tracing requests for Mr Milosav Šmigić and Mrs Sultana Šmigić remain open. Likewise, their name appears in a list of missing persons, communicated by the ICRC to UNMIK Police on 12 October 2001, as well as in the database compiled by the UNMIK Office on Missing Persons and Forensics.
8. 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

9. The complainant complains about UNMIK's alleged failure to properly investigate the abduction and probable killing of his parents. The complainant in essence also complains about the fear, pain and anguish suffered by him because of this situation.
10. The Panel considers that the complainant may be deemed to invoke, respectively, a violation of the right to life of Mr Milosav Šmigić and Mrs Sultana Šmigić, 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

11. 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.
12. The complainant alleges the lack of an adequate criminal investigation into the abduction of his parents and mental pain and suffering caused to him by the situation surrounding their abduction.
13. In his comments, the SRSG raises no objection to the admissibility of the complaint.
14. The Panel 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 that the complaint is not manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.

15. 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