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STANDARDS OF INVESTIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND INVESTIGATIONS OF INCIDENTS OF HISTORIC SIGNIFICANCE

Key words: air crash investigation, effective investigation, collusion, assassination, independence of judges, exhumations, autopsy, rule of law

Abstract

In search of international remedies for the investigation of the Tu-154M airplane crash of April 10, 2010, in Smolensk, Russia, standards of effective investigation under Article 2 of the European Convention on Human Rights are examined. Cases of airplane crashes and terrorist attacks are analyzed. Next, investigations of major international incidents of historic significance are examined. The case of UN Secretary General D. Hammarskjöld killed in 1961 airplane crash is analyzed. Also, the investigation conducted by the International Commission of Inquiry for Lebanon on the assassination of Prime Minister Hariri is examined. Based on the above, recommendations are made for the most effective international investigation of the Smolensk crash.

Standards of Investigation under Article 2 of the European Convention on Human Rights

The standards of the investigation under Article 2 of the European Convention on Human Rights (“the Convention”) on matters relating to the right to life impose on the state a positive procedural duty to conduct an effective investigation. Explaining all relevant facts and circumstances of the case, identifying and punishing the guilty ones constitute the basic requirements of an effective investigation. According to the jurisprudence of

the European Court of Human Rights (“the Tribunal”), in order to ensure an effective investigation certain conditions must be met¹. The Tribunal distinguishes four elements which shall be cumulatively implemented in

¹ Juliet Chevalier-Watts, *Effective Investigations under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on a State?* *European Journal of International Law*, Volume 21, Issue 3, August 1, 2010, pages 701–721, <https://doi.org/10.1093/ejil/chq045>. The investigation should be conducted promptly and transparently by independent organs.

order to assure the effectiveness of the investigative process. They are: official sanction, independence, openness and expediency². These requirements for an effective investigation were further developed and explained by the Committee of Ministers of the Council of Europe in the 2011 guidelines that list the following criteria for an effective investigation:

- Adequacy
The state authorities should take all necessary measures leading to the identification and punishment of the perpetrators. This requirement does not create an obligation on the state to ensure that the investigation leads to a particular result, but the authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident.
- Thoroughness (accuracy)
The investigation should be comprehensive in scope. All relevant facts and circumstances of the case and systemic failures that led to the violation should be clarified. It is also necessary to secure relevant evidence such as identifying and interviewing the alleged victims, suspects and eyewitnesses; examination of the scene of the alleged violation for material evidence; and the gathering of forensic and medical evidence by competent specialists. The evidence should be assessed in a thorough, consistent and objective manner³.

² Katarzyna Holy, *Zwalczanie bezkarności sprawców poważnych naruszeń praw człowieka – rozważania na tle Europejskiej Konwencji Praw Człowieka*, Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego, vol. X, A.D. MMXII; *McKerr vs. United Kingdom*, application no. 28883/95, judgement May 4, 2001 r., par. 157; *Shanaghan vs. United Kingdom*, application no. 37715/97, judgement May 2001 r., par. 89–92; *Isayeva, Yusupova i Bazayeva vs. Russia*, application no. 57947/00, 57948/00 and 57949/00, judgment February 24, 2005, par. 208. See also: J. Chevalier-Watts, *Effective Investigations under Article 2 of the European Convention on Human Rights: The European Journal of International Law infra*.

³ In order to assure thoroughness, the investigators should have unrestricted ability to interrogate witnesses. Families of the victims should have legal assistance assured and unrestricted access to the investigation. The public should be adequately informed about the progress of the investigation. Adam Straw, *Doughty Street Chambers, The legal basis of the duty to investigate (2): The duties to investigate within the European Convention on Human Rights*. http://www.publiclawproject.org.uk/data/resources/227/The-legal-basis-for-the-duty-to-investigate-2_AS.pdf.

- Impartiality and independence of the authorities leading the investigation. The authorities implicated in the events can neither lead the collection of evidence nor the preliminary investigation; in particular, the investigators cannot be part of the same unit as the officials who are the subject of the investigation.
- Promptness
The investigation must be commenced with sufficient promptness in order to obtain the best possible amount and quality of evidence available. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities may generally be regarded as essential in maintaining public confidence in the maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. The investigation must be completed within a reasonable time and, in all cases, be conducted with all necessary diligence.
- Public scrutiny
There should be a sufficient element of public scrutiny of the investigation or its results to secure accountability, to maintain public confidence in the authorities' adherence to the rule of law, and to prevent any appearance of collusion in or tolerance of unlawful acts. Public scrutiny should not endanger the aims of the investigation and the fundamental rights of the parties⁴.

Tagayeva and Others vs. Russia

The Tribunal's case-law develops in greater detail the individual requirements of an effective investigation under Article 2 of the Convention. For example, in the case of *Tagayeva v. Russia*, which concerned a terrorist attack at the school in Beslan in September 2004⁵, the Tribunal found that Russia did not carry out an effective investigation, pointing to many instances of negligence

⁴ Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations adopted by the Committee of Ministers dated March 30, 2011 r., CM/Del/Dec (2011) 1110. In Polish language: <http://bip.ms.gov.pl/pl/prawa-czlowieka/europejski-trybunal-praw-czlowieka/opracowania-i-analizy-standardy-w-zakresie-ochrony-prawczlowieka>.

⁵ *Tagayeva and Others vs. Russia*, applications nos 26562/07, 14755/08, 49339/08, judgment April 13 2017.

in collecting the evidence. The Tribunal pointed out, *inter alia*, that the direct causes of death of 334 civilian victims of this attack have not been duly determined. Investigations were limited only to superficial body inspections. Families demanded exhumations to determine the direct cause of deaths of their relatives, but they were denied exhumation. The bodies of one-third of the victims were so burnt that it was impossible to determine the cause of death only on the basis of visual inspection. Also, the place where bodies were found at the scene of the incident was not precisely identified. The lack of information about the places where the bodies were found led to doubts as to the circumstances in which they were killed. A detailed description of the place where the victims' bodies were found as well as an accurate autopsy aimed at determining the immediate cause of death should be the starting point for further conclusions in every investigation. The failure to secure such basic evidence in the initial phase of the investigation is a gross violation of the requirements of an effective investigation. In view of the above, the Tribunal held that Russia violated the procedural duty of effective investigation under Article 2 of the Convention.

The Tribunal also indicated that as part of the investigation carried out in this case, important evidence from the site of the incident was not properly secured, was not properly collected and recorded. The Tribunal pointed out that there was compelling evidence of the use of firearms by the state securities forces during the terrorist attack that was not taken into account in the investigation. The lack of reliable and adequate information on the use of firearms makes it impossible to clarify the key aspect of the events, thus makes it impossible to draw correct conclusions as to the responsibility of the state and individual persons. The position of Russia that no victim was shot by state officials has not been duly proven. If we take into account that the immediate cause of death of the victims has not been determined due to the lack of accurate autopsy and the location of victims on the scene has not been duly documented, then Russia's conclusions that no one was shot are unfounded and have not been properly proven.

The Tribunal also found that Russia violated the obligation to prevent a threat to life because there was specific information warning against a terrorist attack directed at a school in the area of Beslan and planned for September 1. That warning was ignored and not acted upon.

Jaloud vs. the Netherlands

The requirement for an effective investigation under Article 2 of the Convention was also thoroughly examined in the case of *Jaloud vs. the Netherlands*⁶ regarding the murder of an Iraqi citizen in April 2004 by a Dutch soldier who served as a member of the stabilization force. In its ruling the Tribunal pointed to many facts proving that the investigation carried out by the Dutch was ineffective. The Tribunal drew attention to the fact that the autopsy was carried out without the participation of a qualified specialist from the Netherlands, and the pathologist's report was brief, did not contain any details or photographs. In addition, fragments of metal found in the body of the victim and identified as fragments of the ball were lost in unexplained circumstances. In addition, the documents relevant to the case were not made available to either the court or the victim's relatives. Furthermore, a soldier who fired a deadly shot had the opportunity to act in collusion with other witnesses because the interrogation of witnesses was significantly delayed and the testimonies of some witnesses were not included in the case file at all. As a result of the above deficiencies, an incomplete report was made. Therefore, the investigation was considered ineffective.

It is worth adding that the Tribunal in this case applied a very low standard of independence of the investigating authorities. It stated that the Dutch military investigative organs, although they were located in the same barracks as the army unit of a soldier responsible for the death of an Iraqi citizen, they nevertheless acted independently and impartially. The Tribunal also ruled that the Dutch military judge acted independently because he was neither subject to military authorities nor military discipline, i.e. he had guaranteed functional independence and therefore met the condition of independence and impartiality.

Investigations of Airplane Crashes under European Convention on Human Rights

The requirement of an effective investigation arising from the procedural obligation of Article 2 of the Convention was also analyzed by the Tribunal in matters relating to aviation incidents. Particularly noteworthy are

⁶ *Jaloud vs. Netherlands*, application no. 47708/09, judgment November 20, 2014.

two cases concerning air crashes, which were resolved in 2016 and 2018. They are presented in greater detail below.

Mikhno vs. Ukraine, 2016⁷

This case concerns an airplane accident that took place at the aerobatics show of Ukrainian Air Force in Lviv in 2002. In this case, the pilot who catapulted survived, while 77 people died on the ground. As a result of the investigation, the cause of the accident was determined as a pilot error aggravated by procedural deficiencies in ensuring safety of the public. Five people were sentenced to imprisonment and disciplinary proceedings were instituted against several other persons.

In its analysis, the Tribunal focused on assessing whether the investigation carried out in this case was effective. It pointed out that the prosecutors, investigators, experts and judges were all military. However, the Tribunal stressed that there was no formal relationship of dependence between them and the persons accused in this case. There were no cases of attempts to conceal or hide facts or other important circumstances relevant to the pursuit of the truth. Consequently, the Tribunal held that the investigation met the requirement of independence under Article 2 of the Convention.

The Tribunal also found that the investigation was adequate because the guilty were identified, imprisoned and punished, and the punishment imposed was within the scope of penalties appropriate for this type of crime. The decisions issued in this case were not arbitrary. As part of the investigation, the facts were duly documented, the cause of the accident was determined, and the criminal and disciplinary liability duly attributed to individual persons. The Tribunal also found that the investigation was carried out promptly taking into account complex facts and the large number of victims. In view of the above, the Tribunal found that the investigation was carried out effectively. The Tribunal also found that military judges in this case had organizational and structural independence and acted independently of the interest of the Armed Forces or the Ministry of Defense.

The case of R.Š. vs. Latvia, 2018⁸

A small company called KD.C. offered private flights and training for pilots of small aircrafts. In August 2008, KD.C. organized a flight from Riga to Tukums for six people. During the flight, the pilot lost control of the plane and died in the crash. However, all passengers survived but suffered severe injuries. One of the passengers unsuccessfully applied for compensation in the legal system of Latvia and then filed a complaint to the Tribunal under Articles 2 and 8 of the Convention.

The Tribunal considered that at the time of the accident, the Chicago Convention did not provide for the liability of the aircraft owner for an accident in the air. Only the pilot who died in the crash could be held liable for this accident. Likewise, European regulations did not provide for liability of the aircraft owner for an accident caused by a pilot error. The owner of the aircraft was responsible only for the technical condition of the aircraft and not for the pilot's error. Therefore, the Tribunal found that the law in Latvia, which did not provide for liability of the aircraft owner for an accident caused by the pilot's error, was in accordance with international standards in force at the time of the accident.

The Tribunal also analyzed Latvian law on the safety of private flights and stated that the obligation to ensure that an airplane is being operated by a sufficiently qualified pilot falls on the pilot himself. In addition, there was a significant difference in the legal regulatory framework for private flights and commercial flights. However, this difference in the safety requirements for commercial and non-commercial flights fell within the permissible range of existing international standards. In connection with the above and taking into account the complexity of the legal regulation of flight safety, the Tribunal stated that in the substantive aspect of the duty to protect life, there was no violation of Article 2 of the Convention. A dissenting opinion on this matter was reported by one of the judges who stated that in order to rent a car, a valid driving license must be presented, while there is no such requirement for renting an airplane. In his opinion such approach does not meet the substantive obligations to protect life under Article 2 of the Convention.

Next the Tribunal analyzed the procedural obligations of the State under Article 2 of the Convention.

⁷ Mikhno vs. Ukraine, application no. 32514/12, judgment September 1, 2016.

⁸ R.Š. vs. Latvia, application no. 44154/14, judgment March 8, 2018.

Persons who have been wronged have three paths to determine the circumstances of the incident, find the guilty ones, and obtain compensation for the harm done: a) an investigation conducted by a state body entitled to investigate airplane incidents, b) criminal proceedings, and c) civil proceedings.

The Tribunal stated that the relevant state bodies immediately went to the scene of the accident, identified the cause of the accident as a pilot error, pointed out that bad weather contributed to the pilot's error, and issued appropriate recommendations to prevent similar accidents in the future. Criminal proceedings were also promptly initiated and evidence in the case was appropriately secured. Unfortunately, the main accused, i.e. the pilot, died in the crash. Hence, criminal proceedings were discontinued. The Tribunal therefore concluded that the criminal proceedings were conducted efficiently taking into account the complexity of the case.

The victims also brought civil proceedings for compensation against three entities: the company that owned the aircraft, the individual who was the sole owner of the company, and the insurance company. Unfortunately, the company that was the owner of the plane immediately went bankrupt, its owner by law was not responsible for the company's activity, while the insurance company refused to pay compensation claiming that the insurance did not cover the accident due to pilot error.

As a result, despite the fact that the causes of the accident were duly established and criminal and civil proceedings immediately initiated, injured persons were unable to obtain any compensation. Taking all these factors into account, the Tribunal found that the state authorities had fulfilled their positive procedural obligation under Article 2 of the Convention in this case, since they reacted correctly and promptly to an aviation accident by ensuring an effective investigation into the matter.

Investigations of incidents of historic significance

The above recent judgment of the Tribunal regarding the aviation disaster in Latvia as well as the Mikhno versus Ukraine ruling demonstrate that the Tribunal is not guided by the motive of serving justice in a particular cases but rather on developing and forcing implementa-

tion of the systemic solutions. Thus, the Tribunal approaches the cases under consideration primarily from the systemic point of view without much concern for actually serving justice in a particular case. Hence, cases of historic significance and international magnitude may not get adequate individual attention they deserve. In my opinion the Tribunal is not an appropriate body to address the politically sensitive problem of grossly ineffective investigation of the Smolensk crash with which Poland has been struggling for so long.

Tragic events of historic proportions such as the Smolensk catastrophe result from serious tensions in international relations generated by powerful forces in the struggle for world domination and control. Shocking events such as the Smolensk tragedy that claimed the life of the top leadership of Poland, including President Lech Kaczynski, are potentially the source of inflaming international relations in order to preserve or change the balance of power. In the past, events of this magnitude led to armed conflicts on a global scale.

When analyzing the Smolensk catastrophe from the point of view of available legal mechanisms and their effectiveness, events of similar rank, political significance, and impact on the course of history, should be taken into account. In particular, instances of political assassination should be reviewed where attacks were aimed at political leaders who were at the center of increasing political tensions on a regional or global scale.

Death of UN Secretary-General Daga Hammarskjöld

The tragic death of UN Secretary General Daga Hammarskjöld, who lost his life in an airplane crash during a 1961 peace mission in Rhodesia is very relevant to the Smolensk case. The report of the authorities of Rhodesia in 1962 identified the pilot's error as the cause of this catastrophe. However, the UN report from 1962 stated that the reasons for this catastrophe cannot be determined on the basis of limited evidence. As a result, the UN General Assembly adopted a resolution stating that in the event a new evidence appears, the investigation should be resumed.

In 2011, Susan Williams published a book entitled "Who killed Hammarskjöld?" In the book she revealed new evidence in this matter, indicating that the colonial authorities of Rhodesia were behind the assassination. Williams also admitted that she was a representative of

the generation that had great hopes to overcome colonialism. For her generation, the tragic death of Secretary Hammarskjöld was a blow to hope for a better world. Considering the political context in which this tragedy took place, it appears that the tragic death of Secretary Hammarskjöld was related to great political tensions of global significance at the time.

As a result of Williams's determination, a special committee of legal experts was set up to evaluate the new evidence presented in her book. The committee concluded that new important facts and circumstances were discovered and recommended that the UN Secretary General resume investigation into the tragic death of Secretary General Hammarskjöld⁹.

On the basis of this report, in December 2014, the UN General Assembly adopted Resolution Number 69/246 authorizing the UN Secretary-General to set up a panel of experts to clarify the tragic death of the UN Secretary General. A panel of independent experts was appointed under the leadership of Mohamed Othman. The panel also included an aviation expert Keryn Macaulay from Australia and ballistics expert Henric Larsen from Denmark. The UN Secretary General presented the preliminary report of the panel of independent experts to the General Assembly. As a result of this report, in December 2016 the General Assembly adopted Resolution Number 71/260 authorizing Secretary General to designate a "Eminent Person" in order to draw conclusions from the investigations so far carried out, assess the evidential value of new materials and information, and to determine the scope of the investigation that still needs to be carried out.

In September 2017, Secretary General sent a report prepared by the Eminent Person Mohamed Othman to the UN General Assembly. In the report he stated that it was likely that the attack or threat from outside led to the airplane crash. He also recommended continuing the investigation and stressed that important evidence in this case is still in the possession of third countries that are reluctant to provide full information on the case for the investigation. To solve this problem, he recommended that individual countries that may have material information relevant to this matter appoint independent, high-ranking individuals in their countries to conduct thorough internal archival searches to find material related to the

tragic death of Secretary Hammarskjöld, including materials that remain classified¹⁰. According to press reports, countries such as Belgium, Canada, France, Germany, Russia, South Africa, the United Kingdom, and the United States are in possession of additional materials and information on this matter¹¹.

The issue of obtaining materials from the resources of the secret services of these countries for the investigation is crucial to explaining the reasons for the death of Secretary Hammarskjöld. It was only at the stage of the "Eminent Person" report that the United States and the United Kingdom admitted that they had recorded pilots' conversations with the tower from the night of the disaster. However, these records have not been made available to the investigation or released to the public¹².

In December 2017, the General Assembly decided to support the continuation of the investigation conducted by the Eminent Person regarding the death of Secretary Hammarskjöld¹³. One year later the Eminent Person issued an interim report stating that UK and South Africa chose to hinder the Hammarskjöld inquiry¹⁴. On April 25, 2019, a meeting organized by the Westminster United Nations Association to review progress of the UN inquiry into the plane crash took place. Participants expressed their support to continue UN Inquiry into Hammarskjöld plane crash until the truth is revealed despite obstruction from the UK and South Africa governments¹⁵.

¹⁰ Letter dated September 5, 2017, from the Secretary-General addressed to the President of the General Assembly, http://www.hammarkjoldinquiry.info/pdf/ham_150_Othman_report_251017.pdf; "Expert concludes review of new information on death of former UN chief Dag Hammarskjöld", UN News, August 9, 2017.

¹¹ 25 October 2017 – "Eminent Person's report recommends continuity, more transparency from Member States and declassification of relevant UN records"; <http://www.hammarkjoldinquiry.info/index.html>; "Information Still Insufficient to Determine Cause of Dag Hammarskjöld's Death, SecretaryGeneral Says, Based on Findings in Eminent Person's Report", 25 October 2017; <https://www.un.org/press/en/2017/sgsm18764.doc.htm>.

¹² 21 December 2017 – "Le Monde reviews inquiry progress, noting lapses in French support"; <http://www.hammarkjoldinquiry.info/index.html>.

¹³ 24 December 2017 – "UN General Assembly agrees to extend investigation into plane crash, with later budgetary restraints"; <http://www.hammarkjoldinquiry.info/index.html>

¹⁴ "UK and South Africa choose to hinder Hammarskjöld inquiry", December 3, 2018; <http://www.hammarkjoldinquiry.info/index.html>.

¹⁵ "London meeting supports continuation of UN Inquiry into Hammarskjöld plane crash until the truth is revealed",

⁹ M. Szonert Binienda, *Badania istotnych katastrof lotniczych; Polityczno-prawne studium porównawcze*, Materiały z II Konferencji Smoleńskiej, 2013 r., s. 375–377.

Murder of Prime Minister of Lebanon Rafik Hariri on February 17, 2005

In response to the brutal assassination of former Lebanese Prime Minister Rafik Hariri and 21 people accompanying him by means of a bomb attack, the United Nations Security Council appointed an Independent International Commission of Inquiry ("Commission") to investigate the causes and circumstances of the assassination of Prime Minister Hariri, and to collect and secure evidence in this matter¹⁶. The German Judge Detlev Mehlis headed the Commission. On October 20, 2005, the Commission presented its first report to the Security Council, in which the responsibility for the terrorist attack on the life of Prime Minister Hariri was placed with officials of Syria and Lebanon. At the same time, the Commission recommended that the investigation in this matter be continued¹⁷. In the next stage of the investigation, the German Judge Mehlis was replaced by Belgian Judge Serge Brammertz, who was more skeptical about the conclusions of the Mehlis Commission.

Under the Brammertz chairmanship the Commission operated until February 2009. During this period, the Commission presented a total of ten reports. In the last report the Commission stated that a group of individuals conspired in order to murder Prime Minister Hariri. This network committed many other assassinations and murders that were linked with the death of Prime Minister Hariri. The report concludes that this criminal network continues to operate with impunity in Lebanon¹⁸.

In March 2009, the UN Special Tribunal for Lebanon ("Lebanese Court") was established and began its operations in the Netherlands. Its goal was to bring to justice and punish those guilty of assassinating Prime Minister Hariri. In this way, the first international tribunal to investigate a terrorist attack was born¹⁹.

In 2011, the Higher Chamber of the Lebanese Court issued an important decision regarding the sub-

stantive law. In this decision, the Lebanese Court for the first time defined the crime of terrorism on the basis of customary international law. The definition of terrorism adopted by the Lebanese Court consists of three elements: a) committing an act, b) using means that pose a public threat, c) with the intention to bring about a state of terror. These elements of the crime of terrorism do not require committing the crime itself. If murder occurs as a result of these actions, it amounts to aggravating circumstances²⁰.

In January 2014, the Lebanese Court began a trial against four people affiliated with the Hezbollah organization, who were accused of acting in collusion in order to conduct a terrorist attack on Prime Minister Hariri²¹. In addition, perpetrators of other terrorist attacks related to the attack on Prime Minister Hariri were also indicted.

In connection with the proceedings pending before the Lebanese Court, the political situation in Lebanon became very tense. The Hezbollah organization accused Israel of assassinating Prime Minister Hariri to eliminate Syrian influence in Lebanon. In addition, a large-scale operation was undertaken to discredit the Lebanese Court as a tool of Western countries to limit Lebanon's sovereignty.

There have also been threats that if Hezbollah activists are found guilty of assassinating Prime Minister Hariri by the Lebanese Court, Hezbollah would lead a coup d'état and take over the power in Lebanon²². Hence, the ongoing political conflict in the Middle East directly influences administration of justice for the murder of Prime Minister Hariri by the Lebanese Court. On March 11, 2019, the Lebanese Court submitted its tenth annual report to the United Nations Secretary-General and to the Government of Lebanon. Final trial briefs have been filed and final arguments were presented in the cases before the court but the judgments have not been issued²³.

April 25, 2019; <http://www.hammarkjoldinquiry.info/index.html>.

¹⁶ UNIIIC Timeline, <https://www.stl-tsl.org/en/about-the-stl/636-creation-of-the-stl>.

¹⁷ "UN Hariri probe implicates Syria", BBC News, 21 October 2005; http://news.bbc.co.uk/1/hi/world/middle_east/4362698.stm.

¹⁸ *Ibid.*

¹⁹ The Lebanese Court was formed pursuant to the Security Council Resolution Number 1775 (2007).

²⁰ Interlocutory decision on the applicable law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, <https://www.stl-tsl.org/en/the-cases/stl-11-01/main/filings/orders-and-decisions/appeals-chamber/534-f0936>.

²¹ They are: Salim Jamil Ayyash, Hassan Habib Merhi, Hussein Hassan Oneissi & Assad Hassan Sabra.

²² "Hezbollah Threatens an 'Explosion' in Beirut Over Tribunal", Archived November 6, 2010 at the Wayback Machine, Stratfor Global Intelligence; Lebanese Daily: 'Hezbollah Drills Takeover of Lebanon.' <https://www.memri.org/reports/lebanese-daily-hizbullah-drills-takeover-lebanon>.

²³ Special Tribunal for Lebanon Publishes Tenth Annual

The fear of riots associated with the conviction of the perpetrators of Prime Minister Hariri murder that may further destabilize the region makes the Lebanese Court clearly reluctant to pursue justice.

Conclusions

The jurisprudence of the Tribunal in matters related to airplane crashes demonstrates that filing of an application under Article 2 of the Convention is unlikely to bring about satisfactory results in the case of the Smolensk tragedy because the purpose of the Tribunal's deliberations is not to serve justice in a particular case, but rather to improve the legal framework of the Member State and assure effective implementation of the law. Even those judgments of the Tribunal that find violation of effective investigation under Article 2 of the Convention do not lead directly to the administration of justice in a particular case.

On the other hand, investigations conducted under the auspices of the United Nations concern the most serious, very complex, and politically sensitive cases of historic significance that take place in a tense and complicated international context. These are long-term, accurate, targeted investigations aimed at collecting and preserving the evidence in a particular case in order to find the truth and punish the guilty ones. Unfortunately, they are frequently impeded by serious political obstacles.

Nevertheless, investigations conducted directly under the auspices of the United Nations are always of outmost international significance, hence are subject to exceptional scrutiny and transparency, and permanently inscribe a given case onto the annals of the international justice system and world history.

Considering all the above, in order to serve justice in the Smolensk case, in particular to properly collect, secure and preserve the evidence and withstand enormous political pressure for cover-up and manipulations in this investigation, it is imperative to establish a special international tribunal to properly investigate the tragic death of the Polish elite in Smolensk, Russia, on April 10, 2010. It would be advisable that such tribunal be established and operated on the basis of the mandate of the General Assembly of the United Nations.

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