

**OPINION**

**Date of adoption: 29 May 2014**

**Case Nos. 154/09 & 155/09**

**Biljana RADOVANOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 29 May 2014,

with the following members present:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

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, makes the following findings and recommendations:

1. **PROCEEDINGS BEFORE THE PANEL**
2. The complaints were introduced on 13 April 2009 and registered on 30 April 2009.
3. On 23 December 2009, the Panel requested additional information from the complainant in relation to both complaints. However, no response was received.
4. On 19 April 2010, the Panel decided to join the two cases pursuant to Rule 20 of the Panel’s Rules of Procedure.
5. On 12 May 2010, the Panel reiterated its request for further information to the complainant. On 17 June 2010, the Panel received a response from the complainant’s uncle submitted on behalf of the complainant.
6. On 19 April 2011, the Panel communicated the two complaints to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1) for UNMIK’s comments on the admissibility of the cases. On 31 May 2011, the SRSG submitted UNMIK’s response.
7. On 26 November 2011, the Panel declared the complaints admissible. On 29 November 2011, the Panel communicated the decision on admissibility to the SRSG, inviting UNMIK’s observations on the merits of the cases, together with the investigative files.
8. On 28 February 2013, the SRSG provided UNMIK’s response.
9. On 22 April 2014, the Panel requested UNMIK to confirm whether the disclosure of the investigative files concerning the cases could be considered final. On the same day, the SRSG submitted UNMIK’s response.
10. **THE FACTS**
11. **General background[[2]](#footnote-2)**
12. The events at issue took place in the territory of Kosovo shortly after the establishment in June 1999 of the United Nations Interim Administration Mission in Kosovo (UNMIK).
13. The armed conflict during 1998 and 1999 between the Serbian forces on one side and the Kosovo Liberation Army (KLA) and other Kosovo Albanian armed groups on the other is well documented. Following the failure of international efforts to resolve the conflict, on 23 March 1999, the Secretary General of the North Atlantic Treaty Organisation (NATO) announced the commencement of air strikes against the Federal Republic of Yugoslavia (FRY). The air strikes began on 24 March 1999 and ended on 8 June 1999 when the FRY agreed to withdraw its forces from Kosovo. On 9 June 1999, the International Security Force (KFOR), the FRY and the Republic of Serbia signed a “Military Technical Agreement” by which they agreed on FRY withdrawal from Kosovo and the presence of an international security force following an appropriate UN Security Council Resolution.
14. On 10 June 1999, the UN Security Council adopted Resolution 1244 (1999). Acting under Chapter VII of the UN Charter, the UN Security Council decided upon the deployment of international security and civil presences - KFOR and UNMIK respectively - in the territory of Kosovo. Pursuant to Security Council Resolution No. 1244 (1999), the UN was vested with full legislative and executive powers for the interim administration of Kosovo, including the administration of justice. KFOR was tasked with establishing “a secure environment in which refugees and displaced persons can return home in safety” and temporarily ensuring “public safety and order” until the international civil presence could take over responsibility for this task. UNMIK comprised four main components or pillars led by the United Nations (civil administration), United Nations High Commissioner for Refugees (humanitarian assistance, which was phased out in June 2000), the OSCE (institution building) and the EU (reconstruction and economic development). Each pillar was placed under the authority of the SRSG. UN Security Council Resolution 1244 (1999) mandated UNMIK to “promote and protect human rights” in Kosovo in accordance with internationally recognised human rights standards.
15. Estimates regarding the effect of the conflict on the displacement of the Kosovo Albanian population range from approximately 800,000 to 1.45 million. Following the adoption of Resolution 1244 (1999), the majority of Kosovo Albanians who had fled, or had been forcibly expelled from their houses by the Serbian forces during the conflict, returned to Kosovo.
16. Meanwhile, members of the non-Albanian community – mainly but not exclusively Serbs, Roma and Slavic Muslims – as well as Kosovo Albanians suspected of collaboration with the Serbian authorities, became the target of widespread attacks by Kosovo Albanian armed groups. Current estimates relating to the number of Kosovo Serbs displaced fall within the region of 200,000 to 210,000. Whereas most Kosovo Serbs and other non-Albanians fled to Serbia proper and the neighbouring countries, those remaining behind became victims of systematic killings, abductions, arbitrary detentions, sexual and gender based violence, beatings and harassment.
17. Although figures remain disputed, it is estimated that more than 15,000 deaths or disappearances occurred during and in the immediate aftermath of the Kosovo conflict (1998-2000). More than 3,000 ethnic Albanians, and about 800 Serbs, Roma and members of other minority communities went missing during this period. More than half of the missing persons had been located and their mortal remains identified by the end of 2010, while 1,766 are listed as still missing by the International Committee of the Red Cross (ICRC) as of October 2012.
18. As of July 1999, as part of the efforts to restore law enforcement in Kosovo within the framework of the rule of law, the SRSG urged UN member States to support the deployment within the civilian component of UNMIK of 4,718 international police personnel. UNMIK Police were tasked with advising KFOR on policing matters until they themselves had sufficient numbers to take full responsibility for law enforcement and to work towards the development of a Kosovo police service. By September 1999, approximately 1,100 international police officers had been deployed to UNMIK.
19. By December 2000, the deployment of UNMIK Police was almost complete with 4,400 personnel from 53 different countries, and UNMIK had assumed primacy in law enforcement responsibility in all regions of Kosovo except for Mitrovicë/Mitrovica. According to the 2000 Annual Report of UNMIK Police, 351 kidnappings, 675 murders and 115 rapes had been reported to them in the period between June 1999 and December 2000.
20. Due to the collapse of the administration of justice in Kosovo, UNMIK established in June 1999 an Emergency Justice System. This was composed of a limited number of local judges and prosecutors and was operational until a regular justice system became operative in January 2000. In February 2000, UNMIK authorised the appointment of international judges and prosecutors, initially in the Mitrovicë/Mitrovica region and later across Kosovo, to strengthen the local justice system and to guarantee its impartiality. As of October 2002, the local justice system comprised 341 local and 24 international judges and prosecutors. In January 2003, the UN Secretary-General reporting to the Security Council on the implementation of Resolution 1244 (1999) defined the police and justice system in Kosovo at that moment as being “well-functioning” and “sustainable”.
21. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a Memorandum of Understanding (MoU) between UNMIK and the Sarajevo-based International Commission of Missing Persons (ICMP), supplemented by a further agreement in 2003, the identification of mortal remains was carried out by the ICMP through DNA testing.
22. 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.
23. On the same date, UNMIK and EULEX signed a MoU on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK International Prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were supposed to be handed over to EULEX.
24. **Circumstances surrounding the disappearance and probable killing of Mrs Zorka Radovanović and Mr Milorad Radovanović**
25. The complainant is the daughter of Mrs Zorka Radovanović (case no. 154/09) and Mr Milorad Radovanović (case no. 155/09).
26. The complainant states that her parents disappeared at some time in June 1999 from their house in Osek Hilë/Osek Hilja, Gjakovë/Ðakovica Municipality.
27. The complainant states that the disappearance of her parents was reported to the KFOR, the ICRC, the Yugoslav Red Cross, UNMIK and that a criminal complaint was submitted, on an unspecified date, to the District Public Prosecutor’s Office (DPPO) in Pejë/Peć.
28. The complainant submitted to the Panel the copy of a letter, with delivery slip dated 5 March 2003, addressed to the SRSG, in which the complainant’s uncle, Mr Milorad Radovanović’s brother, informed the SRSG that Mrs Zorka Radovanović and Mr Milorad Radovanović were presumably killed on 26 July 1999 on their property in Osek Hilë/Osek Hilja. They had lived in Osek Hilë/Osek Hilja for 70 years without having any problem with any of their neighbours; their house was the only Serbian house left in the village at the time of the events. Villagers told the family that Mrs Zorka Radovanović and Mr Milorad Radovanović were first murdered and buried in the backyard of their house. In the following days, unknown persons collected the remains of their bodies and buried them in the proximity of the burnt house. Everything that had remained on their property was looted.
29. Among the complainant’s submission is the copy of a criminal complaint, dated 12 September 2007 and addressed by the complainant’s brother to the DPPO in Pejë/Peć, against five named individuals, one from Skivjan/Skivjane village, and four from Osek Hilë/Osek Hilja, who were allegedly responsible for the killing of the complainant’s parents. The criminal complaint states that information about the crime had been given by two named inhabitants of Osek Hilë/Osek Hilja.
30. The complainant submitted the copy of a criminal complaint to the ICTY Office in Belgrade, bearing no date, concerning the alleged murder of Mrs Zorka and Mr Milorad Radovanović. The complaint contains a list of eight KLA members, the five individuals named in the criminal complaint to the DPPO in Pejë/Peć (see § 25 above) and three additional named individuals from Osek Hilë/Osek Hilja, allegedly responsible for the killing. This complaint also lists two individuals, U.S. and A.S., the latter a KLA commander from Bec village, who were allegedly responsible for ordering the killing. Also the name of I.L., the KLA commander for the villages of Osek Hilë/Osek Hilja and “Piskote” is provided in the complaint. It is further stated that a complaint concerning the event had been previously addressed to other authorities, including a criminal complaint filed through a lawyer with the “competent institutions in Priština”.
31. The names of Mrs Zorka Radovanović and Mr Milorad Radovanović appear in the list of missing persons communicated by the ICRC to UNMIK Police on 11 February 2002, for which ante-mortem data had been collected. Their names are also included in the databases compiled by the UNMIK OMPF and by the ICMP; the entries concerning Mrs Zorka Radovanović and Mr Milorad Radovanović in the ICMP online database read in relevant fields “Sufficient Reference Samples Collected” and “DNA match not found”[[3]](#footnote-3).

**C. The investigation**

1. In the present case, the Panel received from UNMIK investigative documents previously held by the UNMIK OMPF and the UNMIK Police (WCIU, MPU and CCIU). The Panel notes that UNMIK has confirmed that all available documents have been provided.
2. It appears from the investigative file that missing person files on Mrs Zorka Radovanović and Mr Milorad Radovanović were opened in 2000 and 2003 respectively.
3. The investigative file contains undated Victim Identification Forms for Mr Milorad Radovanović (MPU case file no. 2000-000585) and Mrs Zorka Radovanović (MPU case file no. 2003-000058) which indicate 27 June 1999 as the date of their disappearance. The forms also provide the full contact address, including his telephone number and home address in Serbia proper, of the missing persons’ son (the complainant’s brother).
4. The investigative file shows that a criminal investigation into the case of Mrs Zorka Radovanović and Mr Milorad Radovanović was opened by the UNMIK Police CCIU in 2002, under case file no. 2002-00079.
5. The file contains the translation of an undated criminal complaint filed by one Mr R.S. (relationship with the victims or complainant unknown) with the International Prosecutor at the DPPO in Pejë/Peć concerning the alleged killing of Mrs Zorka Radovanović and Mr Milorad Radovanović, marked as case file no. 2002/00079. This criminal report states that on 19 June 1999 a group of unnamed armed KLA members “arrived from the village of Skivjan/Skivjane, broke into Mrs Zorka Radovanović and Mr Milorad Radovanović’s house and took them away in an unknown direction”. Their house was looted and burnt down. The family had contacted all relevant institutions and authorities in Kosovo in order to obtain information about Mrs Zorka Radovanović and Mr Milorad Radovanović’s fate; however “no feedback was ever received”.
6. Included in the investigative file is also an undated Case Report of the CCIU concerning case file no. 2002-00079. The reports states that the case had been forwarded by the International Prosecutor in Pejë/Peć, and that, on 6 January 2003, had been “reassigned” to a different CCIU investigator. On the circumstances of the case, the report states that Mrs Zorka Radovanović and Mr Milorad Radovanović were murdered “between the 25th and 26th of June 1999”, “because they were from Serb origin”. The report further lists the names and surnames of four individuals, two from Gjakovë/Đakovica (one being the same individual named in § 25 above), and two from Niš (Serbia proper), identified as witnesses.
7. According to an Ante Mortem Investigation Report of the UNMIK Police WCIU dated 13 December 2004 and concerning the MPU case no. 2000-00585, Mr Milorad Radovanović disappeared, along with his wife, in the night of 15 July 1999. In the field “Statement of witness” the same report states, however, a different date for Mrs Zorka Radovanović and Mr Milorad Radovanović’s killing. The report states that they were allegedly killed in their own house “on 27 June 1999” by “Albanians”. They were the only Serbs in the village of Osek Hilë/Osek Hilja at the time of the events. Their bodies had been burnt and “after that unknown persons buried them somewhere in the courtyard”. According to the report, on 13 December 2004, UNMIK Police investigators tried to contact the missing persons’ son, Mr Ž. R., at his telephone number in Serbia proper; however, according to the investigators, the phone number provided was “wrong” and it was therefore “impossible to contact them”. The conclusion of the report reads “after investigations, it is impossible at this time to find an impartial witness around the place event. No information leading to MP’s location. The case should remain open pending within the WCIU”. Included in the file is also a separate Ante Mortem Investigation Report for Mrs Zorka Radovanović, MPU case no. 2003-00058, also dated 13 December 2004, which states the same information as that in the Ante Mortem Investigation Report mentioned above. According to the report, the MPU file on Mrs Zorka Radovanović was opened on 2 April 2003.
8. The investigative file also contains the copy of a Weekly Report on the activities of the UNMIK MPU Office based in Belgrade, dated 18 September 2004, and addressed to the chief of the UNMIK OMPF in Prishtinë/Priština. Specifically on the case of Mr Milorad Radovanović, the report states “still in phase of checking”.
9. Included in the investigative file is the copy of a 2005 UNMIK Exhumation Plan and an ICRC Worksheet, dated 5 November 2011. Under no. 21 of the ICRC Worksheet, the field “Information” states “Bodies of the MP’s Mr. Milorad and Mrs. Zorka Radovanović went missing on 1.06.1999. The bodies were burned, one neighbour buried the remains. Family wants a nice burial in the Orthodox Cemetery”. Under “Action taken” it is stated “Case pending. We have the exact location on paper, with grid coordinates”. The field “Action needed” states “Need to locate and exhume the site”. A handwritten note in the same field states “He found the neighbour witness who showed the site but gave no info”.
10. The file includes a printout of an UNMIK MPU database generated on 17 May 2006, which in the field “Investigation Type” states “Post Mortem”. The report states that “according to the information received by the requesting agency from the MP’s children presently living in Serbia, the bodies of their parents were burned” in the village of Osek Hilë/Osek Hilja. The neighbours managed to collect some of their mortal remains and buried them on their land. The report further contains a description of the location of the land and a precise indication “20 metres away from the MP’s house, between two light poles”, of the alleged burial site, including its grid coordinates.
11. A Post Mortem Investigation Report of the UNMIK WCIU concerning the cases of Mrs Zorka Radovanović and Mr Milorad Radovanović, MPU case nos. 2000-000058 and 2003-000585 respectively, states that, between 24 October and 13 November 2005, UNMIK investigators contacted by telephone the missing persons’ son (at the same number indicated in the Victim Identification Form in § 30 above), who told them that he had received information from a named Albanian neighbour (the same individual as in § 25 and 33 above) in Osek Hilë/Osek Hilja, about the location of his parents’ burial. The abovementioned neighbour had described to him over the telephone the exact location where his parents had been buried (the same as in § 37 above). He had also sent the investigators a sketch of the location (included in the investigative file). The report further states that the investigators subsequently visited and interviewed the said neighbour in Osek Hilë/Osek Hilja who, however, denied knowing anything about Mrs Zorka Radovanović and Mr Milorad Radovanović’s disappearance or their gravesite. In the investigators’ view, “he looked like that he knows something but he was afraid to speak about gravesite”.
12. It transpires from the file that on 12 December 2005 an International Judge at the District Court in Pejë/Peć, based on the information conveyed by the UNMIK MPU, issued an order (also included in the file) for exhumation, autopsy and expert analysis on the place believed to be the gravesite of Mrs Zorka Radovanović and Mr Milorad Radovanović.
13. The investigative file further contains documents, including pictures, related to the exhumation, which took place on 11 May 2006. According to a Provisional Field Report, dated 11 May 2006, three different sites were excavated in the grid indicated and following the directions provided by the investigators; however nothing was found.
14. In the investigative file is also an undated Case Report of the CCIU concerning case no. 2002-00079 which states that, after Mrs Zorka Radovanović and Mr Milorad Radovanović were killed, their bodies were first buried in the yard by two named neighbours. A few days later, the perpetrators had returned to the house, exhumed the bodies and set them on fire in the house. Afterwards, the same neighbours mentioned above had reburied the mortal remains of the victims in the yard. One line in the report states “DOJ case No. CIR 2003/21/PEJ/RS”. The report further lists six identified suspects and four identified witnesses to the alleged crime. A printout of the WCIU database, generated on 13 September 2007, and providing the same information as the CCIU Case Report aforementioned, follows in the file.
15. The file further contains a Cases Analysis Report of the IPU WCIU, dated 13 September 2007, referring to case no. 2002-00079, which provides the name of six individuals suspected of the killing. The report also states “there is no documentation of a preliminary investigation being conducted in regards to these victims. No incident report included in the case file”. The report further states

“Investigator recommends reviewing DOJ Case no. CIR 2003/21/PEJ/RS to determine if this case file may contain additional documents which may be of significant value to the investigation. Some names listed in the War Crimes database were not included in the case file (possibly DOJ-Peja) ... If DOJ does not have those documents then the location is unknown to the investigator.

The information contained in the file is scant. It is recommended that the four witnesses be contacted and statements be obtained from the witnesses listed in the case file in an effort to obtain evidentiary information to further the investigation and potential prosecution”.

1. It appears that the case concerning the disappearance of Mrs Zorka Radovanović and Mr Radovanović Milorad was reviewed by the UNMIK Police WCIU in September 2008. A Case Analysis Review Report of the WCIU, dated 17 September 2008, lists the cases of Mr and Mrs Radovanović and a third case, of one Mr D.C. (the report does not indicate the connection between those cases). The report provides a summary of the information gathered thus far by the investigators and, with respect to the identified neighbour and witness mentioned above (see §§ 25, 33, 38) states “investigators think he knew something else but hesitated to speak. We may give full protection and guarantee his safety if he explains what he knows” and further “based on OMPF database MPs are dead according to ICRC but no info regarding hand over”. Therefore the reviewing officer recommended that the case shall be left “pending”, “waiting for further information”. In the field “Blood sample collection for DNA”, the report states “No information”.
2. **THE COMPLAINTS**
3. The complainant complains about UNMIK’s alleged failure to properly investigate the disappearance and probable killing of her parents. In this regard the Panel deems that the complainant invokes a violation of the procedural limb of Article 2 of the European Convention on Human Rights (ECHR).
4. The complainant also complains about the mental pain and suffering allegedly caused to her and her family by this situation. In this regard, she relies on Article 3 of the ECHR.
5. **THE LAW**
6. **Alleged violation of the procedural obligation under Article 2 of the ECHR**
	1. **The scope of the Panel’s review**
7. In determining whether it considers that there has been a violation of Article 2 (procedural limb) of the ECHR, the Panel is mindful of the existing case-law, notably that of the European Court of Human Rights. However, the Panel is also aware that the complaints before it differ in some significant ways from those brought before that Court. First, the respondent is not a State but an interim international territorial administration mandated to exercise temporary responsibilities in Kosovo. No suspicion attaches to UNMIK with respect to the substantive obligations under Article 2 of the ECHR. Second, as in a limited number of cases before the European Court, those suspected of being responsible for the alleged killings and/or abductions are in all cases before the Panel non-state actors, mostly but not exclusively connected to the conflict. These are factors for the Panel to take into consideration as it assesses for the first time the procedural positive obligations of an intergovernmental organisation with respect to acts committed by third parties in a territory over which it has temporary legislative, executive and judicial control.
8. Before turning to the examination of the merits of the complaints, the Panel needs to clarify the scope of its review.
9. The Panel notes that with the adoption of the UNMIK Regulation No. 1999/1 on 25 July 1999 UNMIK undertook an obligation to observe internationally recognised human rights standards in exercising its functions. This undertaking was detailed in UNMIK Regulation No. 1999/24 of 12 December 1999, by which UNMIK assumed obligations under the following human rights instruments: the Universal Declaration of Human Rights, the European Convention on Human Rights and Protocols thereto, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, [the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](http://untreaty.un.org/English/TreatyEvent2001/pdf/07e.pdf), the Convention on the Rights of the Child.
10. The Panel also notes that Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel provides that the Panel “shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of (their) human rights”. It follows that only acts or omissions attributable to UNMIK fall within the jurisdiction *ratione personae* of the Panel. In this respect, it should be noted, as stated above, that as of 9 December 2008, UNMIK no longer exercises executive authority over the Kosovo judiciary and law enforcement machinery. Therefore UNMIK bears no responsibility for any violation of human rights allegedly committed by those bodies. Insofar as the complainants complain about acts that occurred after that date, they fall outside the jurisdiction *ratione personae* of the Panel.
11. Likewise, the Panel emphasises that, as far as its jurisdiction *ratione materiae* is concerned, as follows from Section 1.2 of UNMIK Regulation No. 2006/12, it can only examine complaints relating to an alleged violation of human rights. This means that it can only review acts or omissions complained of for their compatibility with the international human rights instruments referred to above (see § 48). In the particular case of killings and disappearances in life-threatening circumstances, it is not the Panel’s role to replace the competent authorities in the investigation of the case. Its task is limited to examining the effectiveness of the criminal investigation into such killings and disappearances, in the light of the procedural obligations flowing from Article 2 of the ECHR.
12. The Panel further notes that Section 2 of UNMIK Regulation No. 2006/12 provides that the Panel shall have jurisdiction over complaints relating to alleged violations of human rights “that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights”. It follows that events that took place before 23 April 2005 generally fall outside the jurisdiction *ratione temporis* of the Panel. However, to the extent that such events gave rise to a continuing situation, the Panel has jurisdiction to examine complaints relating to that situation (see European Court of Human Rights (ECtHR), Grand Chamber [GC], *Varnava and Others v. Turkey*, nos. 16064/90 and others, judgment of 18 September 2009, §§ 147-149; ECtHR, *Cyprus v. Turkey* [GC] no. 25781/94, judgment of 10 May 2001, § 136, ECHR 2001-IV).
	1. **The parties’ submissions**
13. The complainant in substance alleges violations concerning the lack of an adequate criminal investigation into the disappearance and probable killing of her parents. The complainant also states that she not informed as to whether an investigation was conducted and what the outcome was.
14. In his comments on the merits of the complaint under Article 2, the SRSG acknowledges that the disappearance and probable killing of Mrs Zorka Radovanović and Mr Milorad Radovanović in June 1999 occurred in life threatening circumstances. He notes that at that time the security situation in Kosovo was tense: “KFOR was still in the process of reaching sufficient strength to maintain public safety and law and order and there were a number of serious criminal incidents targeting Kosovo-Serbs, including abductions and killings”.
15. The SRSG therefore accepts UNMIK’s responsibility to conduct an investigation in the case of Mrs Zorka Radovanović and Mr Milorad Radovanović under Article 2 of the ECHR, procedural part, stemming “from the procedural obligation to conduct an effective investigation where death occurs in suspicious circumstances not imputable to state agents”. In the words of the SRSG, “the essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life, as defined by UNMIK Regulation No. 1999/1 On the Authority of the Interim Administration in Kosovo of 25 July 1999 and subsequently, by UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo of 12 December 1999, as amended”.
16. Nonetheless, according to the SRSG, when examining the complaint under Article 2, due consideration shall be given to “the difficulties inherent in post-conflict situations, and the concomitant problems that limit the ability of investigating authorities when conducting investigations of such nature”. The SRSG further observes that obligations under Article 2, must be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court of Human Rights in the case *Palić v. Bosnia and Herzegovina*, stating at paragraph 70:

“The Court takes into account the complex situation in Bosnia and Herzegovina, notably in the first ten years following the war. In such a post-conflict situation, what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and context. In this connection, the Court notes that more than 100,000 people were killed, almost 30,000 people went missing and more than two million people were displaced during the war in Bosnia and Herzegovina. Inevitably choices had to be made in terms of post-war priorities and resources. Furthermore, after a long and brutal war, Bosnia and Herzegovina underwent fundamental overhaul of its internal structure and political system: Entities and Cantons were set up pursuant to the Dayton Peace Agreement, power-sharing arrangements were introduced in order to ensure effective equality between the “constituent peoples” in the post-conflict society (see *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, ECHR 2009‑...), new institutions had to be created and the existing ones had to be restructured. Some reluctance on the part of the former warring parties to work with those new institutions could be expected in the post-war period, as evidenced in the present case. While it is difficult to pinpoint when exactly this process ended, the Court considers that the domestic legal system should have become capable of dealing effectively with disappearances and other serious violations of international humanitarian law by 2005, following comprehensive vetting of the appointment of police and judiciary and the establishment of the War Crimes Sections within the Court of Bosnia and Herzegovina.

All this considered and since there has been no substantial period of inactivity post-2005 on the part of the domestic authorities in the present case, the Court concludes that, in the circumstances obtaining at the material time, the domestic criminal investigation can be considered to have been conducted with reasonable promptness and expedition”.

1. In the view of the SRSG, UNMIK was faced with a very similar situation in Kosovo “from 1999 to 2008” as the one in Bosnia from 1995. The SRSG states that thousands of people were displaced or went missing during the Kosovo conflict. Many of the persons who went missing were abducted, killed, and buried in unmarked graves inside or outside Kosovo, which made it very difficult locating and recovering their mortal remains.
2. The SRSG states that during the Kosovo conflict thousands of people went missing, at least 800,000 people were displaced and thousands were killed. Many of those that went missing were abducted and killed, buried in unmarked graves and “in certain instances were killed outside of Kosovo, or had their mortal remains moved and buried outside of Kosovo, further adding to the difficulty in locating and recovering the remains”.
3. In June 2002, UNMIK created the OMPF with the mandate to determine the fate of the missing; however its work was faced with many challenges at the beginning of the operations, due to the work previously done mostly by actors independent from UNMIK. In particular, the SRSG states that the collection of evidence of war crimes began with the arrival of NATO in 1999 with independent teams from several countries operating under the loose coordination of the ICTY. A lack of standard operating procedures or centralisation led to problems with the evidence gathered in this phase. In 2000, the ICTY launched a large, centralised forensic operation, based at the Rahovec/Orahovac mortuary, with standard operating procedures for all forensic teams except the British one, which operated independently out of Prishtinë/Priština. The SRSG states that, in the effort to demonstrate that crimes were systematic and widespread, the ICTY teams conducted autopsies on as many bodies as possible, carrying out little or no identification work; moreover, unidentified bodies exhumed in 1999 were reburied in locations still unknown to the OMPF. After the ICTY closed their operation in 2000, the UNMIK Police MPU continued small-scale investigations on missing persons “*ex-officio*, without any broader prosecutorial strategy”. As a consequence, a large amount of unstructured information was collected.
4. The SRSG states that locating and identifying the missing in the context described above is a very difficult and time-consuming task. He further states that the number of missing persons recovered and identified by OMPF is “testament to the vigour of its work between 2002-2008” and that “more bodies continued to be located in burial sites and more identifications and returns to family members are taking place, often based on information contained in UNMIK-OMPF files”. The SRSG continues that “therefore, it is apparent that the process for establishing a system capable of dealing effectively with disappearances and other serious violations of international humanitarian law has been an understandably incremental one” in Kosovo as reflected in the *Palić* case referred to above. The SRSG further notes that this process was “reliant on a number of actors rather than just UNMIK, for example the International Commission on Missing Persons, the International Committee of the Red Cross and local missing persons organisations.”
5. The SRSG further argues that fundamental to conducting effective investigations is a professional, well trained and well-resourced police force and that such a force did not exist in Kosovo in the aftermath of the conflict. In the policing vacuum following the end of the conflict, UNMIK had to build a new Kosovo Police Service from scratch, a long and challenging task, which, according to the SRSG, is still in progress. The SRSG also states that UNMIK Police faced numerous challenges in exercising law enforcement functions gradually transferred to it by KFOR in 1999-2000. In this regard, he refers to the UNMIK Police Annual Report of 2000 describing the situation as follows:

“UNMIK Police had to deal with in the aftermath of war, with dead bodies and the looted and burned houses. Ethnic violence flared through illegal evictions, forcible takeovers of properties, the burning of houses and physical violence against communities all over Kosovo. Tempers and tensions were running high amongst all ethnic groups, exacerbated by reports of missing and dead persons. It became imperative for UNMIK Police to establish order and to quickly construct a framework to register and investigate crimes.

All of this had to be done with limited physical and human resources. Being the first executive mission in the history of the UN, the concept, planning and implementation was being developed on the ground. With 20 different contributory nationalities at the beginning, it was a very challenging task for police managers to establish common practices for optimum results in a high-risk environment.”

1. The SRSG states that UNMIK Police WCIU included both international UNMIK Police and local Kosovo Police Service officers and focused on the criminal investigation of cases of missing persons. Their responsibility included locating illicit graves, identifying the perpetrators and collecting evidence relating to the crime. UNMIK international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and country, with limited support from the still developing Kosovo Police.
2. He further states that, after the conflict, all local institutions in Kosovo, including law-enforcement institutions and those responsible for locating the missing, were non-functional and had to be established from scratch. In addition, investigators were often faced with situations where individuals holding relevant knowledge on the whereabouts and fate of missing persons did not want to disclose this information. According to the SRSG, all these constraints inhibited the ability of the UNMIK Police to conduct investigations according to the standards that may be expected from States with more established institutions and which are not faced with the high number of cases of this nature associated with a post-conflict situation.
3. The SRSG therefore argues that the constraints describe above inhibited the ability of UNMIK to conduct all investigations in a manner that “may be demonstrated, or at least expected, on other States with more established institutions and without the surge in cases of this nature associated with a post-conflict situation”.
4. Concerning UNMIK’s investigation into the case of Mrs Zorka Radovanović and Mr Milorad Radovanović, the SRSG states at the outset that, according to “records” UNMIK Police were not aware of the complainant and her interest in the investigation until the complaints were registered with the Panel in April 2009. The SRSG states that the complainant did not appear as a family member in any of the documents in the possession of the UNMIK Police, namely: the criminal report no. 2002-00079 filed with the DPPO in Pejë/Peć; the letter written to the SRSG by the complainant’s uncle (Mr Milorad Radovanović’s brother) in 2003; the criminal complaint filed by Mrs Zorka Radovanović and Mr Milorad Radovanović’s son with the DPPO in Pejë/Peć in September 2007; the Victim Identification Form for Mrs Zorka Radovanović, which lists only her son as a next-of-kin. The SRSG states that, for this reason, “sadly, UNMIK Police were not in a position to contact the Complainant to seek further information concerning her parents disappearance and any possible indication that could lead to their whereabouts or to inform the Complainant of the status of the investigations at that time”.
5. On the steps taken by the investigators, the SRSG states that when ante-mortem data was collected for both Mrs Zorka Radovanović and Mr Milorad Radovanović in 2001, not much information on the circumstances surrounding their disappearance was given to the investigators, except for the contact address and telephone number of the victims’ son.
6. The SRSG states that in January 2003 the case was reassigned to a new UNMIK Police officer and reviewed: on this occasion a list of witnesses was recorded in the file “along with their possible locations”. The SRSG further notes that on or around March 2003, the SRSG received a letter from Mr Radovanović’s brother stating that Mrs Zorka Radovanović and Mr Milorad Radovanović had been killed in their house and buried in their backyard, where their mortal remains could still be located (see § 24 above) . According to the SRSG, as no copy of this correspondence has been found in the investigative file, “UNMIK is not able to confirm whether or not this correspondence was communicated” from the SRSG’s Office to the UNMIK Police. According to the SRSG, on 29 March and 2 April 2003 respectively, UNMIK Police inputted into the electronic database the ante-mortem information so that electronic missing persons reports were generated for Mrs Zorka Radovanović and Mr Milorad Radovanović.
7. The SRSG states that in September 2004, UNMIK Police attended a “regular Family Association” meeting where, as the case of Mrs Zorka Radovanović and Mr Milorad Radovanović was raised, the attending UNMIK Police officer stated that the case was “still in [the] phase of checking”. In December 2004, UNMIK Police tried to contact the victims’ son, who was the “only contact contained in the file”, but “his phone number was wrong” and it was “impossible to contact him”. As there was no information leading to the possible location of a gravesite, UNMIK Police recommended that the case should remain open and pending.
8. The SRSG further states that, between 28 October and 5 November 2005, UNMIK Police contacted Mrs Zorka Radovanović and Mr Milorad Radovanović’s son, visited the village of Osek Hilë/Osek Hilja and interviewed the Albanian neighbour who was alleged to have buried the mortal remains of Mrs Zorka Radovanović and Mr Milorad Radovanović in the backyard of their house. The neighbour denied knowing anything about where the victims were buried. In the view of the investigators, he appeared to have further information about the incident but was hesitant to provide that information to the UNMIK Police. In December 2005, a request for an Order for Exhumation, Autopsy and Expert Analysis was filed with the District Court in Pejë/Peć, which was granted on 12 December 2005.
9. In May 2006, a team of UNMIK Police, anthropologists and diggers excavated three different sites in Osek Hilë/Osek Hilja using the directions given in the file; however the result of the exhumation was negative. The SRSG states that “as the mortal remains of Mr and Mrs Radovanović could potentially be located the case was kept open and pending” and the Police continued to investigate their disappearance and probable killing.
10. With respect to the investigation aimed at identifying and bringing to justice the perpetrators of Mrs Zorka Radovanović and Mr Milorad Radovanović’s disappearance and probable killing, the SRSG states that on 12 September 2007, the victims’ son filed a criminal complaint with the DPPO in Pejë/Peć. According to the SRSG, the information contained in the criminal report “differs from that initially reported to UNMIK, providing much greater detail and providing a list of alleged suspects”. As the case was reviewed on 13 September 2007, it was recommended that DOJ Case No. CIR 2003/21/PEJ/RS should be reviewed to determine if the case file contains additional documents of value to the investigation. The reviewing investigator also recommended that four witnesses be contacted and statements be obtained to further the investigation and potential prosecution.
11. The SRSG states that the case was further reviewed in September 2008, when the case was listed as “pending waiting for further information”. However, according to the SRSG, “there were only limited avenues for UNMIK Police to further investigate” due to numerous factors such as: the lack of information on the circumstances surrounding the disappearance; the inconsistent information concerning the date of disappearance of Mrs Zorka Radovanović and Mr Milorad Radovanović and the circumstances of their disappearance; the inability to identify and locate further witnesses; the reluctance of witnesses to provide full statements concerning the disappearance; the complete absence of any forensic evidence; the destruction of evidence, in particular of Mrs Zorka Radovanović and Mr Milorad Radovanović’s house, which made it not possible for the investigators to “attend their last known location to collect and examine evidence of foul play”. The SRSG states that, accordingly, the investigation remained pending, until the moment it was transferred to EULEX, “due to the absence of further information and leads that would enable meaningful investigation and, as a result of the need to prioritise resources”.
12. The SRSG argues that, in light of the above, UNMIK Police did indeed make reasonable investigative efforts as required by Article 2 of the ECHR in order to determine the whereabouts of Mrs Zorka Radovanović and Mr Milorad Radovanović and to identify possible perpetrators and bring them to justice.
	1. **The Panel’s assessment**
13. *Submission of relevant files*
14. The SRSG observes that all available files regarding the investigation have been presented to the Panel.
15. The Panel notes that Section 15 of UNMIK Regulation No. 2006/12 states that the Panel may request the submission from UNMIK of any documents and that the SRSG shall cooperate with the Panel and provide the necessary assistance including, in particular, in the release of documents and information relevant to the complaints. The Panel in this regard refers to the case-law of the European Court of Human Rights that inferences shall be drawn from the conduct of the respondent party during the proceedings, including from its failure “to submit information in their hands without a satisfactory explanation” (see ECtHR, *Çelikbilekv. Turkey*, no. 27693/95, judgment of 31 May 2005*,* § 56).
16. The Panel also notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigation to their handing over, is crucial to the continuation of such investigations and could thus raise *per se* issues under Article 2.
17. The Panel itself is not in the position to verify the completeness of the investigative files received. The Panel will therefore assess the merits of the complaints on the basis of documents made available (in this sense, see ECtHR, *Tsechoyev v. Russia*, no. 39358/05, judgment of 15 March 2011, § 146).
18. *General principles concerning the obligation to conduct an effective investigation under Article 2*
19. The Panel notes that the positive obligation to investigate disappearances is widely accepted in international human rights law since at least the case of the Inter-American Court of Human Rights *Velásquez-Rodríguez* (see Inter-American Court of Human Rights (IACtHR), *Velásquez-Rodríguez v. Honduras*, judgment of 29 July 1988, Series C No. 4). The positive obligation has also been stated by the HRC as stemming from Article 6 (right to life), Article 7 (prohibition of cruel and inhuman treatment) and Article 9 (right to liberty and security of person), read in conjunction with Article 2(3) (right to an effective remedy) of the ICCPR (see HRC, General Comment No. 6, 30 April 1982, § 4; HRC, General Comment No. 31, 26 May 2004, §§ 8 and 18, CCPR/C/21/Rev.1/Add. 13; see also, among others, HRC, *Mohamed El Awani, v. Libyan Arab Jamahiriya*, communication no. 1295/2004, views of 11 July 2007, CCPR/C/90/D/1295/2004). The obligation to investigate disappearances and killings is also asserted in the UN Declaration on the Protection of all Persons from Enforced Disappearances (A/Res/47/133, 18 December 1992), and further detailed in UN guidelines such as the UN Manual on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions (1991) and the “Guidelines for the Conduct of United Nations Inquiries into Allegations of Massacres” (1995). The importance of the obligation is confirmed by the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in 2006, which entered into force on 23 December 2010.
20. In order to address the complainant’s allegations, the Panel refers, in particular, to the well-established case-law of the European Court on Human Rights on the procedural obligation under Article 2 of the ECHR. The Court has held that “[The] obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed (see, *mutatis mutandis*, ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, § 105, *Reports of Judgments and Decisions* 1998-I; see also ECtHR, *Jasinskis v. Latvia*, no. 45744/08, judgment of 21 December 2010, § 71). The duty to conduct such an investigation arises in all cases of killing and other suspicious death, whether the perpetrators were private persons or State agents or are unknown (see ECtHR, *Kolevi v. Bulgaria*, no. 1108/02, judgment of 5 November 2009, § 191).
21. The European Court has also stated that the procedural obligation to provide some form of effective official investigation exists also when an individual has gone missing in life-threatening circumstances and is not confined to cases where it is apparent that the disappearance was caused by an agent of the State (see ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 51 above, at § 136).
22. The authorities must act of their own motion once the matter has come to their attention, and they cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedure (see ECtHR, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, judgment of 6 April 2004, § 310; see also ECtHR, *Isayeva v. Russia*, no. 57950/00, judgment of 24 February 2005, § 210).
23. Setting out the standards of an effective investigation, the Court has stated that “beside being independent, accessible to the victim’s family, carried out with reasonable promptness and expedition, affording a sufficient element of public scrutiny of the investigation and its results, the investigation must also be effective in the sense that is capable of leading to a determination of whether the death was caused unlawfully and if so, to the identification and punishment of those responsible (see ECtHR [GC]*, Varnava and Others v. Turkey*, cited in § 51 above, at § 191; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited above, at § 312; and *Isayeva v. Russia*, cited above, at § 212).
24. In particular, the investigation’s conclusion must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of enquiry undermines to a decisive extent the investigation’s ability to establish the circumstances of the case and the identity of those responsible (see ECtHR, *Kolevi v. Bulgaria*, cited in § 78 above, at § 201). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation’s effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigation work (see ECtHR, *Velcea and Mazărev. Romania*, no. 64301/01, judgment of 1 December 2009, § 105).
25. A requirement of promptness and reasonable expedition is implicit in this context. Even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see ECtHR, *Paul and Audrey Edwards v. the* *United Kingdom*, no. 46477/99, judgment of 14 March 2002, § 72, ECHR 2002 II).
26. Specifically with regard to persons disappeared and later found dead, which is not the situation in this case, the Court has stated that the procedures of exhuming and identifying mortal remains do not exhaust the obligation under Article 2 of the ECHR. 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*, cited in § 81 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 51 above, at § 148, *Aslakhanova and Others v. Russia*, nos. 2944/06 and others, judgment of 18 December 2012, § 122). 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 [GC], *Varnava and Others v. Turkey*, cited in § 51 above, at § 145). 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).
27. On the requirement of public scrutiny, the Court has further stated that there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see ECtHR, *Ahmet Özkan and Others*, cited in § 80 above, at §§ 311‑314; ECtHR, *Isayeva v. Russia*, cited in § 80 above, at §§ 211-214 and the cases cited therein; ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, judgment of 7 July 2011, no. 55721/07, § 167, ECHR 2011).
28. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired, not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri v. The Former Yugoslav Republic of Macedonia*, no. 39630/09, judgment of 13 December 2012, § 191). The United Nations also recognises the importance of the right to truth. In the words of the United Nations Secretary-General, “the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons … it also implies the right to know the fate and whereabouts of the victim” (see Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5; see also UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; see also the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Framework Principles for securing the accountability of public officials for gross and systematic human rights violations committed in the context of State counter-terrorist initiatives; UN Document A/HRC/22/52, 1 March 2013).
29. *Applicability of Article 2 to the Kosovo context*
30. The Panel is conscious of the fact that the disappearance and probable killing of Mrs Zorka Radovanović and Mr Milorad Radovanović took place shortly after the deployment of UNMIK in Kosovo in the immediate aftermath of the armed conflict, when crime, violence and insecurity were rife.
31. On his part, the SRSG does not contest that UNMIK had a duty to investigate the present case under ECHR Article 2. However, according to the SRSG, the unique circumstances pertaining to the Kosovo context and to UNMIK’s deployment in the first phase of its mission shall be taken into account when assessing whether this investigation is in compliance with Article 2 of the ECHR. In substance, the SRSG argues that it is not possible to apply to UNMIK the same standards applicable to a State in a normal situation.
32. The Panel considers that the SRSG’s arguments raise two main questions: first, whether the standards of Article 2 continue to apply in situation of conflict or generalised violence and, secondly, whether such standards shall be considered fully applicable to UNMIK.
33. As regards the applicability of Article 2 to UNMIK, the Panel recalls that with the adoption of the UNMIK Regulation No. 1999/1 on 25 July 1999 UNMIK undertook an obligation to observe internationally recognised human rights standards in exercising its functions. This undertaking was detailed in UNMIK Regulation No. 1999/24 of 12 December 1999, by which UNMIK assumed obligations under certain international human rights instruments, including the ECHR. In this respect, the Panel has already found that it is true that UNMIK’s interim character and related difficulties must be duly taken into account with regard to a number of situations, but under no circumstances could these elements be taken as a justification for diminishing standards of respect for human rights, which were duly incorporated into UNMIK’s mandate (see HRAP, *Milogorić and Others,* nos. 38/08 and others, opinion of 24 March 2011, § 44; *Berisha and Others,* nos. 27/08 and others, opinion of 23 February 2011,§ 25; *Lalić and Others*, nos. 09/08 and others, opinion of 9 June 2012, § 22).
34. Concerning the applicability of Article 2 to situations of conflict or generalised violence, the Panel recalls that the European Court on Human Rights has established the applicability of Article 2 to post-conflict situations, including in countries of the former Yugoslavia (see, among other examples, ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 81 above, and ECtHR, *Jularić v. Croatia*, no. 20106/06, judgment of 20 January 2011). The Court has further held that that the procedural obligation under Article 2 continues to apply in “difficult security conditions, including in a context of armed conflict” (see ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, cited in § 85 above, at § 164; see also ECtHR, *Güleç v. Turkey*, judgment of 27 July 1998, § 81, Reports 1998-IV; ECtHR, *Ergi v. Turkey*, judgment of 28 July 1998 , §§ 79 and 82, Reports 1998-IV; ECtHR, *Ahmet Özkan and Others v. Turkey*, cited in § 80 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 80 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
35. The Court has acknowledged that “where the death [and disappearances] to be investigated under Article 2 occur in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed” (see, ECtHR [GC], *Al-Skeini and Others v. the United Kingdom,* cited above, at § 164; ECtHR, *Bazorkina v. Russia*, no. 69481/01, judgment of 27 July 2006, § 121). Nonetheless, the Court has held that “the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (see, amongst many other examples, ECtHR, *Kaya v. Turkey*, cited in § 78 above, at §§ 86‑92; ECtHR, *Ergi v Turkey,* cited above, at §§ 82-85; ECtHR [GC], *Tanrıkulu v. Turkey*, no. 23763/94, judgment of 8 July 1999, §§ 101-110, ECHR 1999-IV; ECtHR, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, judgment of 24 February 2005, §§ 156-166; ECtHR, *Isayeva v. Russia*, cited in § 80 above, at §§ 215‑224; ECtHR, *Musayev and Others v. Russia*, nos. 57941/00 and others, judgment of 26 July 2007, §§ 158-165).
36. Similarly, the HRC has held that the right to life, including its procedural guarantees, shall be considered as the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (see, HRC, General Comment No. 6, cited in § 77 above, at § 1; HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, communication no. 1447/2006, views of 22 April 2009, § 11.2, CCPR/C/95/D/1447/2006). Further, the HRC has stated the applicability of Article 2 (3), 6 and 7 of the ICCPR with specific reference to UNMIK’s obligation to conduct proper investigations on disappearances and abductions in Kosovo (see HRC, Concluding Observations of the Human Rights Committee: Kosovo (Serbia), 14 August 2006, §§ 12-13, CCPR/C/UNK/CO/1).
37. The Panel appreciates the difficulties encountered by UNMIK during the first phase of its deployment. The Panel notes that the appropriate importance attached to the issue of missing persons in Kosovo meant that UNMIK had to take into account both the humanitarian and criminal dimensions of the situation. In particular, the Panel considers that the importance attached to the criminal investigations and the difficulties in Kosovo that limited the abilities of investigating authorities to conduct such investigations, made it crucial that UNMIK establish from the outset an environment conducive to the performance of meaningful investigations. This would involve putting in place a system that would include such elements as the allocation of overall responsibility for the supervision and monitoring of progress in investigations, provision for the regular review of the status of investigations, and a process for the proper handover of cases between different officers or units of UNMIK Police. Such a system should also take account of the protection needs of victims and witnesses (see, *mutatis mutandis*, ECtHR, *R.R. and Others v. Hungary*, no. 19400/11, judgment of 4 December 2012, §§ 28-32), as well as to consider the special vulnerability of displaced persons in post-conflict situations (see ECtHR [GC], *Sargsyan v. Azerbaijan,* no. 40167/06, decision of 14 December 2011, § 145; and ECtHR [GC], *Chiragov and Others v. Armenia*, no. 13216/05, decision of 14 December 2011, § 146). While understanding that the deployment and the organisation of the police and justice apparatus occurred gradually, the Panel deems that this process was completed in 2003 when the police and justice system in Kosovo was described as being “well-functioning” and “sustainable” by the UN Secretary-General (see § 17 above).
38. The Panel further notes that its task is not to review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the particular circumstances of a situation subject of a complaint before it (see, ECtHR, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, § 53, Series A no. 145-B). The Panel therefore determines that the nature and degree of scrutiny to determine whether the effectiveness of the investigation satisfies the minimum threshold depends on the circumstances of the particular case. For these reasons, the Panel considers that it will establish with regard to each case if all reasonable steps were taken to conduct an effective investigation as prescribed by Article 2, having regard to the realities of the investigative work in Kosovo.
39. *Compliance with Article 2 in the present case*
40. Turning to the particulars of the present case, the Panel notes that there were delays and shortcomings in the conduct of the investigation since its inception, having in mind that the initial stage of the investigation is of the utmost importance. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 51), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the case at that date (ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 81 above, at § 70). The period under review ends on 9 December 2008, with EULEX taking over responsibility in the area of administration of justice (see §§ 19-20 above).
41. The Panel notes that, while it is not possible to determine from the documentation in the investigative file the exact date on which the disappearance of Mrs Zorka Radovanović and Mr Milorad Radovanović was reported to UNMIK, a missing person file on Mr Milorad Radovanović was opened by the UNMIK MPU at some time in 2000 and recorded under case file no. 2000-000585. At the latest by February 2002 (see § 27 above) UNMIK had received from the ICRC ante-mortem data concerning both Mrs Zorka Radovanović and Mr Milorad Radovanović, which also included the contact address and the telephone number of their son, the complainant’s brother, in Serbia proper. Despite the fact that UNMIK was made aware that Mr Milorad Radovanović and Mrs Zorka Radovanović had disappeared together, a missing person file on Mrs Zorka Radovanović was opened by the MPU only in 2003, under case file no. 2003-00058, as stated in UNMIK Police report mentioned in § 34 above).
42. The Panel notes that in 2002, a first criminal complaint was filed concerning the alleged kidnapping and killing of Mrs Zorka Radovanović and Mr Milorad Radovanović with the DPPO in Pejë/Peć, which prompted the opening of a criminal investigation by the Police WCIU in the same year under case file no. 2002-00079. As acknowledged by the SRSG, since some time in 2003, UNMIK Police had been provided with the names and possible locations of alleged perpetrators (see § 66 above). Also, in May 2003, though a letter addressed by Mr Milorad Radovanović’s family to the SRSG, UNMIK was made aware, of the possible burial site of Mrs Zorka Radovanović and Mr Milorad Radovanović, and requested to take action in this respect. Information that Mrs Zorka Radovanović and Mr Milorad Radovanović could be possibly buried “somewhere” in the courtyard of their house was also contained in the WCIU Ante Mortem Investigation Report of 13 December 2004 (see § 34 above).
43. However, the Panel notes that there is no evidence in the file that any action was carried out by the UNMIK Police to follow up on these leads or on the request of the complainant’s family. The Panel notes that the only actions undertaken by UNMIK Police from the moment the disappearance was reported in 2000 until October 2005, are mainly related to filling Victim Identification Forms and recording ante-mortem information provided by other actors, such as the ICRC or the complainant’s family. The Panel also notes that the only documented investigation activity of this period - the attempt, reportedly unsuccessful, of the UNMIK Police to contact the complainant’s brother via telephone in December 2004 – besides being delayed, was not carried out with due diligence. The Panel observes that one year later UNMIK Police was able to contact the complainant’s brother at the same telephone number provided in the Victim Identification Forms and available to the investigators, which was deemed to be “wrong” in the WCIU Ante Mortem Investigation Report of 13 December 2004 (see § 34 above). The Panel also notes with concern the contradictory statements contained in the same Report that Mrs Zorka Radovanović and Mr Milorad Radovanović had been buried “somewhere in the courtyard” of their house and the conclusion of the investigators that there was “no information leading to MP’s location”.

1. Coming to the period within its jurisdiction, starting from 23 April 2005, the Panel notes that after that critical date the failure to conduct the necessary investigative actions, including those at the initial stage, persisted. Accordingly, inadequacies existing up until that date were not addressed. Thus, in accordance with the continuing obligation to investigate (see § 84 above), the assessment of the whole investigation is brought within the period of the Panel’s jurisdiction.
2. The Panel notes that UNMIK Police (MPU and WCIU) did carry out some investigation in the period between October 2005 and May 2006, which was aimed mainly at locating the bodies of Mrs Zorka Radovanović and Mr Milorad Radovanović. Between October and November 2005 the complainant’s brother was contacted and interviewed by telephone by the UNMIK Police; UNMIK Police visited Osek Hilë/Osek Hilja village and interviewed the neighbour indicated as a potential witness by the complainant’s brother; a court order for exhumation was obtained by the District Court in Pejë/Peć in December 2005; the alleged place of burial of Mrs Zorka Radovanović and Mr Milorad Radovanović was excavated in May 2006, although with no results.
3. Nonetheless, the Panel notes that these investigative activities were not carried out with the required promptness and thoroughness. The Panel notes that no explanation has been provided by UNMIK for the reasons why the excavation of the possible gravesite was conducted about six months after the release of the court order. The Panel further notes that no witness statements from the complainant’s brother and the neighbour interviewed by UNMIK Police can be found in the file. The Panel notes that it is not appropriate to refuse to pursue interviewing potential witnesses simply because the Police anticipate that that they will not be impartial (see § 34 above).
4. Further, there is no indication in the file that any effort was made at this time by the UNMIK Police to fill the gaps in the investigation thus far, including locating and interviewing potential witnesses and suspects from Osek Hilë/Osek Hilja and neighbouring villages. The Panel notes with great concern that, although the investigative file shows that in the period under review UNMIK Police had been made aware of the names and location of several potential witnesses, as well as those of suspects, no action whatsoever was taken to locate and interview them.
5. The Panel notes that, in September 2007, the case was reviewed by UNMIK WCIU investigators who clearly stated “there is no documentation of a preliminary investigation being conducted in regards to these victims. No incident report included in the case file”. The reviewing officer further suggested that part of the investigative file could be missing as it did not contain the names of all potential witnesses and suspects contained in the WCIU database with respect to the case of Mrs Zorka Radovanović and Mr Milorad Radovanović. The reviewing investigator recommended that full file be located and all witnesses and suspects be interviewed; however there is no indication in the file that either of these recommendations was subsequently implemented.
6. The Panel notes that another review of the case took place in September 2008. The Panel notes that no mention was made on this occasion to the matter of the missing file, or to the fact that a list of potential witnesses and suspects had been provided to the Police (including with the criminal complaint mentioned in § 101 above) and no action had been taken in that regard. The only comment of the reviewing investigators was that the neighbour interviewed by the UNMIK WCIU as potential witness in 2005 was probably withholding information because of fear. It was therefore recommended to offer protection to the aforementioned witness. There is no indication in the file that this was done. The Panel also notes that, during this review, it was noted by the reviewing investigator that, as of September 2008, there was no information as to whether DNA information had been collected from family members. It is not clear when the collection of DNA information, a basic investigative step in this kind of investigations, was subsequently gathered and by which institution.
7. In light of the failures described above, the Panel disagrees with the SRSG that there were limited avenues available to the UNMIK Police to further investigate the case due to factors such as the lack of information, investigative leads and forensic evidence, the inconsistencies concerning the date of Mrs Zorka Radovanović and Mr Milorad Radovanović’s disappearance, or the reluctance of witnesses to provide information on the case. In this respect, the Panel has already held that finding the necessary information to fill the gaps of an investigation is the main goal of any investigative activity. Therefore, a lack of information should not be used as an argument to defend inaction by the investigative authorities. As has been shown, instead of actively searching for information and leads, UNMIK Police simply waited for further information to appear by itself.
8. The apparent lack of any adequate reaction from UNMIK Police may have suggested to perpetrators that the authorities were either not able, or not willing to investigate such criminal acts. Such an attitude of the authorities towards the gravest crimes in any society, and especially in post-conflict circumstances, inevitably creates a culture of impunity among the criminals and can only lead to a worsening of the situation. The problems which UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently.
9. The Panel has already noted the principle that proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigation to their handing over, is crucial to the continuation of such investigations and could thus raise per se issues under Article 2. The Panel also notes that it is evident in the present case that the poor maintenance of the investigative file, along with the inadequate review of the case seriously undermined the effectiveness of the investigation and its continuation, including by EULEX.
10. It is also not clear to the Panel if this investigation was reviewed by a prosecutor at any stage. The Panel notes in this respect that UNMIK was in receipt of two criminal reports concerning the disappearance and probable killing of Mrs Zorka Radovanović and Mr Milorad Radovanović and filed with the DPPO in Pejë/Peć in 2002 and 2007 respectively. However, no formal instructions from any prosecutor are on file.
11. The Panel is aware that the duty to investigate is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, such an investigation must be undertaken in a serious manner and not be a mere formality.
12. The Panel considers that, having regard to all the circumstances of the particular case, not all reasonable steps were taken by UNMIK towards determining the whereabouts of Mrs Zorka Radovanović and Mr Milorad Radovanović or identifying the perpetrators and bringing them to justice. In this sense the Panel considers that the investigation was not adequate and did not comply with the requirements of promptness, expedition and effectiveness (see § 81 above), as required by Article 2.
13. As concerns the requirement of public scrutiny, the Panel recalls that Article 2 also requires the victims’ next-of-kin to be involved in the investigation to the extent necessary to safeguard his or her legitimate interests.
14. The SRSG in substance acknowledges that there was no contact whatsoever between UNMIK and the complainant. He does not contest the identity of the complainant as the daughter of Mrs Zorka Radovanović and Mr Milorad Radovanović or her victim status in the proceedings before the Panel. However, for the purpose of evaluating the compliance of the investigation with Article 2 of the ECHR, the SRSG argues that UNMIK Police was not aware of the existence of the complainant and of her “interest in the investigation”. The SRSG states that the Victim Identification Forms issued by the UNMIK MPU only list the complainant’s brother among the next-of-kin of the victims, and that the complainant’s name did not appear in the criminal complaints filed with the DPPO in Pejë/Peć.
15. In this respect, the Panel first notes that other documents included in the investigative file (such as the Post Mortem Investigation Report of 17 May 2006 mentioned in § 37 above, which states “according to the information received by the requesting agency from the MP’s *children* presently living in Serbia”) suggested that Mrs Zorka Radovanović and Mr Milorad Radovanović had more than one child. Secondly, the Panel notes that, had the UNMIK Police investigated thoroughly the matter, including all the relations of Mrs Zorka Radovanović and Mr Milorad Radovanović, they would have become aware of the complainant’s interest in the investigation.
16. Considering the involvement of the rest of the complainant’s family in the investigation, the Panel notes that, notwithstanding the fact that they had reported Mrs Zorka Radovanović and Mr Milorad Radovanović’s disappearance to UNMIK bodies at different times (such as the letter from the complainant’s uncle sent to the SRSG in March 2003 and the criminal complaints filed with the DPPO in Pejë/Peć in 2002 and 2007), it emerges from the investigative file that UNMIK Police contacted the complainant’s family (specifically her brother) only once, by telephone in October or November 2005, with the view of asking for further information with respect to the potential gravesite of his parents. The Panel also notes that there is no indication in the file that, following this contact, the complainant’s family was actually informed of the results of the exhumation. Further, it appears that no witness statement was ever taken from the complainant’s family members throughout the investigation.
17. For this reason, the Panel considers that the investigation was not accessible to the complainant and her family, as required by Article 2.
18. In light of the deficiencies and shortcomings described above, the Panel concludes that UNMIK failed to carry out an effective investigation into the killing of Mrs Zorka Radovanović and Mr Milorad Radovanović. There has been accordingly a violation of Article 2, procedural limb, of the ECHR.
19. **Alleged violation of Article 3 of the ECHR**
20. The Panel considers that the complainant invokes, in substance, a violation of the right to be free from inhumane or degrading treatment, guaranteed by Article 3 of the ECHR.
21. **The scope of the Panel’s review**
22. The Panel will consider the allegations under Article 3 of the ECHR, applying the same scope of review as was set out with regard to Article 2 (see §§ 46 - 51 above).
23. The Panel recalls that the European Court of Human Rights has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 in respect of close relatives of the victim. It emphasises that, concerning Article 3, “the essence of such a violation does not so much lie in the fact of the ‘disappearance’ of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention” (see, e.g., ECtHR [GC], *Çakici v. Turkey*, no. 23657/94, judgment of 8 July 1999, § 98, *ECHR*, 1999-IV; ECtHR [GC], *Cyprus v. Turkey*, no. 25781/94, judgment of 10 May 2001, § 156, *ECHR*, 2001-IV; ECtHR, *Orhan v. Turkey*, no. 25656/94, judgment of 18 June 2002, § 358; ECtHR, *Bazorkina v. Russia*, cited in § 146 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 81 above, at § 74; ECtHR, *Alpatu Israilova v. Russia*, no. 15438/05, judgment of 14 March 2013, § 69; see also HRAP, *Zdravković*, no. 46/08, decision of 17 April 2009, § 41). “It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct” (see, among others, ECtHR, *Er and Others v. Turkey*, no. 23016/04, judgment of 31 July 2012, § 94).
24. Lastly, where mental suffering caused by the authorities’ reactions to the disappearance is at stake, the alleged violation is contrary to the substantive element of Article 3 of the ECHR, not its procedural element, as is the case with regard to Article 2 (ECtHR, *Gelayevy v. Russia*, no. 20216/07, judgment of 15 July 2010, §§ 147-148).
25. **The parties’ submissions**
26. The Panel considers that the complainant invokes, in substance, a violation of the right to be free from inhumane or degrading treatment, guaranteed by Article 3 of the ECHR.
27. The complainant in substance complains that the lack of information and certainty surrounding the disappearance of her family members, particularly because of UNMIK’s failure to properly investigate their case, caused mental suffering to them and their family.
28. With respect to Article 3, the SRSG acknowledges that the European Court of Human Rights has established in its case-law that the situation of the relatives of missing persons may disclose inhuman and degrading treatment contrary to Article 3. In particular, the Court has determined that the finding of such a violation is not limited to cases where the respondent authority has been held responsible for the disappearance, but can arise where “the failure of the authorities to respond to the quest for information by the relatives or the obstacles placed in their way, leaving them to bear the brunt of the efforts to uncover any facts, may be regarded as disclosing a flagrant, continuous and callous disregard of an obligation to account for the whereabouts and fate of a missing person”.
29. With regard to the involvement of the complainant in the attempts to obtain information about her parents, the SRSG argues that “as discussed above, the records evidence that UNMIK Police were not aware of the Complainant or her interest in the investigation”. For this reason, UNMIK was not in a position to contact the complainant to seek further information or to inform her about the status of the investigation. The SRSG also states that there is no documentation on record to indicate that the complainant or her brother made inquiries to UNMIK MPU/WCIU. The records show that the complainant’s brother was contacted in October 2005 for the purpose of the investigation; according to the SRSG “it is reasonable to assume” that during this discussion, the complainant’s brother “was informed of the progress of the case and the future actions that would be taken, specifically that an exhumation order would be sought and that an UNMIK team would attend the site to conduct an exhumation. Further, it is reasonable to assume that the results of the investigation would also be communicated”. Concerning the letter addressed from Mr Milorad Radovanović’s brother to the SRSG in 2003, stamped as being received on 5 March 2003, the SRSG states that, as stated above, a copy of the document was not located in the investigative file, “UNMIK is not able to advise whether a response was supplied”. The SRSG states in sum that UNMIK authorities “did contact and made attempts to contact” Mr Zorka Radovanović and Mr Milorad Radovanović’s family members to keep them apprised of the status of the investigation.
30. The SRSG also states that it is clear that UNMIK Police “remained seized of this matter and actively undertook investigations”; further, according to the SRSG, “there are no allegations by the complainant of any bad faith on the part of UNMIK Police involved with the matter, nor of any attitude by UNMIK Police that would have evidenced any disregard for the seriousness of the matter or the emotions of the Complainant”. The SRSG also states that there is no documentation or claim that UNMIK acted inappropriately when responding to enquiries of the complainant or with an attitude amounting to a violation of Article 3 of the ECHR.
31. The SRSG states that the mental anguish and suffering of the complainant cannot be attributed to UNMIK but it is rather “a result of the inherent suffering that results from the disappearance of close family members and the unfortunate fact that to date, despite efforts, the authorities have been unable to determine the whereabouts of Mr and Mrs Radovanić”. He states that, in this sense, the European Court has held that the suffering family members must have a “character distinct” from the emotional distress which may be regarded as inevitably caused to the relatives of a victim of a serious human rights violation.
32. The SRSG therefore argues that there has been no violation of Article 3.
	1. **The Panel’s assessment**
33. *General principles concerning the obligation under Article 3*
34. Like Article 2, Article 3 of the ECHR enshrines one of the most fundamental values in democratic societies (ECtHR, *Talat Tepe v. Turkey*, no. 31247/96, 21 December 2004, § 47; ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 424). As confirmed by the absolute nature conferred on it by Article 15 § 2 of the ECHR, the prohibition of torture and inhuman and degrading treatment still applies even in most difficult circumstances.
35. Setting out the general principles applicable to situations where violations of the obligation under Article 3 of the ECHR are alleged, the Panel notes that the phenomenon of disappearance constitutes a complex form of human rights violation that must be understood and confronted in an integral fashion (see IACtHR, *Velásquez-Rodríguez v. Honduras*, cited in § 77 above, at § 150).
36. The Panel observes that the obligation under Article 3 of the ECHR differs from the procedural obligation on the authorities under Article 2. Whereas the latter requires the authorities to take specific legal action capable of leading to identification and punishment of those responsible, the former is more general and humanitarian and relates to their reaction to the plight of the relatives of those who have disappeared or died.
37. The HRC has also recognised disappearances as a serious violation of human rights. In its decision of 21 July 1983, in the case *Quinteros v. Urugay*, it stated that disappearances constitute serious violations of the rights of the disappeared person’s relatives, who suffer from deep anguish which persists for as long as the uncertainty concerning the fate of their loved one continues, often for many years (see HRC, Communication No. 107/1981, U.N. Doc. CCPR/C/OP/2 at 138 (1990), § 14). Moreover, in its decision of 15 July 1994 in the case *Mojica v. Dominican Republic*, the HRC has deemed that “the disappearance of persons is inseparably linked to treatment that amounts to a violation of article 7 [of the Covenant]”, also prohibiting torture, inhumane or degrading treatment and punishment (see HRC, Communication No. 449/1991, U.N. Doc. CCPR/C/51/D/449/1991 (1994), § 5.7).
38. With respect to the question whether a member of the family of a disappeared person can be considered the victim of a treatment contrary to Article 3 of the ECHR, the Panel refers to the case law of the European Court of Human Rights and to its own case law. The European Court accepts that this may be the case, depending on the existence of “special factors which give the suffering of the [family member] a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation”. The Court further holds that “relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries” (see ECtHR, *Basayeva and Others v. Russia*, cited in § 135 above, at § 159; ECtHR, *Er and Others v. Turkey*, cited in § 181 above, at § 120).
39. The Panel takes note that, when assessing the emotional suffering of the victims, the European Court also considers the following circumstances: the length of the disappearance itself and of the period with no information on the fate of the missing person and on the investigation undertaken by the authorities; the delay in initiation of criminal investigation into the disappearance; the absence of any “meaningful” action by the authorities, despite the fact that the complainants approached them to report the disappearance of their relative and to share with them the information they had; lack of any plausible explanation or information as to the fate of their missing relatives despite personal or written inquiries with official bodies (see, among others, ECtHR, *Er and Others v. Turkey,* cited above, at § 96; ECtHR, *Osmanoğlu v. Turkey,* no. 48804/99, judgment of 24 January 2008, § 97). Another factor leading to a finding of violation of Article 3 of the ECHR is the continuous nature of the psychological suffering of relatives of a victim of a disappearance (ECtHR, *Salakhov and Islyamova v. Ukraine,* no. 28005/08, judgment of 14 March 2013, § 201).
40. The Court has exceptionally found a violation of Article 3 also in those cases, including instantaneous killings, where there was not a distinct long-lasting period during which relatives sustained uncertainty, anguish and distress characteristic to the phenomenon of disappearances but where the corpses of the victims were “dismembered and decapitated and where the applicants had been unable to bury the dead bodies of their loved ones in a proper manner, which, according to the Court, “in itself must have caused them profound and continuous anguish and distress”. The Court thus considered that “in the specific circumstances of such cases the moral suffering endured by the applicants had reached a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation” (see, ECtHR, *M. and Others v. Italy and Bulgaria*, no. 40020/03, judgment of 31 July 2012, § 75; ECtHR, *Khadzhialiyev and Others v. Russia*, no. 3013/04, judgment of 6 November 2008 § 121; and ECtHR, *Akpınar and Altun v. Turkey*, no. 56760/00, § 86, 27 February 2007).
41. The HRC has also considered the issue and recognised family members of disappeared or missing persons as victims of a violation of Article 7 of the Covenant: parents (*Boucherf v. Algeria*, Communication No. 1196/2003, views of 30 March 2006, § 9.7, CCPR/C/86/D/1196/2003), children (*Zarzi v. Algeria*, Communication No. 1780/2008, views of 22 March 2011, § 7.6, CCPR/C/101/D/1780/2008), siblings (*El Abani v. Libyan Arab Jamahiriya,*Communication No. 1640/2007, views of 26 July 2010, § 7.5, CCPR/C/99/D/1640/2007), spouses (*Bousroual v. Algeria*, Communication No. 992/2001, views of 30 March 2006, § 9.8, CCPR/C/86/D/992/2001), aunts and uncles (*Benaniza v Algeria,* views of 26 July 2010, § 9.4, CCPR/C/99/D/1588/2007) (*Bashasha v. Libyan Arab Jamahiriya*, views of 20 October 2010, § 7.2, CCPR/C/100/D/1776/2008). It justifies this broad understanding of victim status by the suffering and distress that is caused to family members by the disappearance of an individual, which is often exacerbated by the authorities’ insufficient efforts to investigate the disappearance in order to establish the fate of the victim and to bring perpetrators to justice (*Aboussedra v. Libyan Arab Jamahiriya*, Communication No. 1751/2008, views of 25 October 2010, § 7.5, CCPR/C/100/D/1751/2008). In the *Amirov v. Russian Federation* the Committee observed that “[w]ithout wishing to spell out all the circumstances of indirect victimisation, the Committee considers that the failure of a State party responsibly to discharge its obligations to investigate and clarify the circumstances of the harm suffered by the direct victim will be usually be a factor. Additional factors may be necessary. In the present case, the Committee notes the horrific conditions in which the author came to find his wife's mutilated remains (…), followed by the dilatory, sporadic measures undertaken to investigate the circumstances that have led to the above findings of violations of articles 6 and 7, read together with article 2, paragraph 3. The Committee considers that, taken together, the circumstances require the Committee to conclude that the author's own rights under article 7 have also been violated” (HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, cited in § 92 above, at § 11.7).
42. The Panel also takes into account that according to the European Court, the analysis of the authorities’ reaction should not be confined to any specific manifestation of the authorities’ attitudes, isolated incidents or procedural acts; on the contrary, in the Court’s view, an assessment of the way in which the authorities reacted to the applicants’ enquiries should be global and continuous (see ECtHR, *Açiș v.Turkey*, no. 7050/05, judgment of 1 February 2011, § 45).
43. In this respect, it is the position of the European Court that findings under the procedural limb of Article 2 would also be of direct relevance in considering the existence of a violation of Article 3 (see ECtHR, *Basayeva and Others v. Russia*, cited in § 133 above, at § 109; ECtHR, *Gelayevy v. Russia*, no. 20216/07, judgment of 15 July 2010, § 147; ECtHR, *Bazorkina v. Russia*, cited in § 91 above, at § 140).
44. The Panel observes that the European Court has already found violations of Article 3 of the ECHR in relation to disappearances in which the State itself was found to be responsible for the abduction (see ECtHR, *Luluyev and Others v. Russia*, no. 69480/01, judgment of 9 November 2006, §§ 117-118; ECtHR, *Kukayev v. Russia*, no. 29361/02, judgment of 15 November 2007, §§ 107-110). However, in contrast, in the case under the Panel’s consideration, in no way is UNMIK implicated in the actual disappearance and UNMIK cannot be held responsible for the applicant’s mental distress caused by the commission of the crime itself.
45. The Panel is mindful that in the absence of a finding of State responsibility for the disappearance, the European Court has ruled that it is not persuaded that the authorities’ conduct, albeit negligent to the extent that it has breached Article 2 in its procedural aspect, could have in itself caused the applicant mental distress in excess of the minimum level of severity, which is necessary in order to consider treatment as falling within the scope of Article 3 (see, among others, ECtHR, *Tovsultanova v. Russia*, no. 26974/06, judgment of 17 June 2010, § 104; ECtHR, *Shafiyeva v. Russia*, no. 49379/09, judgment of 3 May 2012, § 103).
46. *Applicability of Article 3 to the Kosovo context*
47. With regard to the applicability of the above standards to the Kosovo context, the Panel first refers to its view on the same issue with regard to Article 2, developed above (see §§ 87-95 above).
48. The Panel reiterates that a normally functioning law enforcement system should take into account the protection needs of victims and witnesses, as well as to consider the special vulnerability of displaced persons in post-conflict situations. The Panel has already considered the fact that by 2003 the police and justice system in Kosovo was described by the UN Secretary-General as being “well-functioning” and “sustainable” (see § 17 above).
49. The Panel again notes that it will not review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the complaint before it, considering the particular circumstances of the case.
50. For these reasons, the Panel considers that it has to establish with regard to each case whether the attitude and reactions of UNMIK authorities to the disappearance itself and to the complainants’ quest for information with regard to the fate of their relatives and the criminal investigation, would amount to a violation of the obligation under Article 3, having regard to the realities in Kosovo at the relevant time.
51. *Compliance with Article 3 in the present case*
52. Against this background, the Panel discerns a number of factors in the present cases which, taken together, raise the question of violation of Article 3 of the ECHR.
53. The Panel notes the proximity of the family ties between the complainant and the victims in these cases. The complainant is the daughter of the victims.
54. Concerning the SRSG’s objection that UNMIK did not contact the complainant because it was not informed of the existence of the complainant and of her interest in the investigation, the Panel, recalling its reasoning on the matter concerning the compliance of the investigation with Article 2 of the ECHR, notes it should have been one of the tasks of the UNMIK Police to verify the family relations of Mrs Zorka Radovanović and Mr Milorad Radovanović, with a view to gathering information for the purpose of the investigation and providing feedback to the family.
55. The Panel notes that it is evident from the file that, apart from the initial reporting of the disappearance of Mrs Zorka Radovanović and Mr Milorad Radovanović, members of the complainant’s family addressed UNMIK institutions at different times and levels to convey information (about the circumstances of the disappearance and possible killing, potential witnesses and suspects as well as the possible burial site of Mrs Zorka Radovanović and Mr Milorad Radovanović) and requested the authorities to take action. In particular, the Panel notes that in March 2003, the complainant’s uncle addressed the SRSG and requested him to verify if Mrs Zorka Radovanović and Mr Milorad Radovanović’s mortal remains were buried in their courtyard as per witnesses’ accounts, and that two criminal complaints, in 2002 and 2007 respectively, were filed with the DPPO in Pejë/Peć.
56. The Panel also notes, as acknowledged by the SRSG, that there is no document in the file to show that the SRSG ever responded to the letter from the complainant’s uncle and that, for a prolonged period of time, which lasted until May 2006 the investigating authorities failed, as described above, to carry out actions to confirm or exclude the possibility that the mortal remains of Mrs Zorka Radovanović and Mr Milorad Radovanović were buried in the courtyard of their house. The only contact between the complainant’s family and UNMIK, as documented in the file, was a telephone call made by UNMIK Police to the complainant’s brother in October 2005. Even if the SRSG states that it could be “assumed” that, following the excavation in Mrs Zorka Radovanović and Mr Milorad Radovanović’s courtyard in May 2006, the complainant's brother was informed of the negative results of the excavation, the Panel notes that there is no evidence in the file that this actually occurred. The Panel also notes that the two criminal complaints filed with the DPPO in Pejë/Peć, as well as the complaint filed with the ICTY, evidence the frustration felt by the complainant’s family members. The Panel reiterates that from the standpoint of Article 3 it may examine UNMIK’s reactions and attitudes to the complainant and her family in its entirety.
57. Drawing inferences from UNMIK’s failure to provide another plausible explanation for the absence of sustained and regular contact with the complainant, the Panel considers that this situation, which continued into the period of the Panel’s temporal jurisdiction, caused grave uncertainty to the complainant and her family about Mrs Zorka Radovanović and Mr Milorad Radovanović’s fate and the status of the investigation. As concerns the SRSG’s argument that the complainant or her family did not make enquiries specifically with the UNMIK MPU/WCIU, it seems to the Panel not relevant or fully appropriate, in the circumstances of the case as described above, to implicitly attribute the failure of such contact to the victims’ families.
58. In view of the above, the Panel concludes that the complainant has suffered severe distress and anguish for a prolonged and continuing period of time on account of the way the authorities of UNMIK have dealt with the case and as a result of their inability to find out what happened to Mrs Zorka Radovanović and Mr Milorad Radovanović and to locate their mortal remains. In this respect, it is obvious that, in any situation, the pain of a family who has to live in uncertainty about the fate of a close member of the family must be unbearable.
59. For the aforementioned reasons, the Panel concludes that, by its behaviour, UNMIK contributed to the complainant’s distress and mental suffering in violation of Article 3 of the ECHR.
60. **CONCLUDING COMMENTS AND RECOMMENDATIONS**
61. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
62. The Panel notes that enforced disappearances constitute serious violations of human rights which shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate and prosecute those responsible for the disappearance and probable killing of Mrs Zorka Radovanović and Mr Milorad Radovanović, and that its failure to do so constitutes a further serious violation of the rights of the victims and their next-of-kin, in particular the right to have the truth of the matter determined.
63. The Panel notes the SRSG’s own concerns that the inadequate resources, especially at the outset of UNMIK’s mission, made compliance with UNMIK’s human rights obligations difficult to achieve.
64. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted above (see § 19), UNMIK’s responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008, with EULEX assuming full operational control in the area of rule of law. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.
65. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.

**With respect to the complainant and the case the Panel considers appropriate that UNMIK:**

* + - In line with the case law of the European Court of Human Rights on situations of limited State jurisdiction (see ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 333; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC]), *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109), must endeavour, with all the diplomatic means available to it *vis-à-vis* EULEX and the Kosovo authorities, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the disappearance and probable killing of Mrs Zorka Radovanović and Mr Milorad Radovanović will be established and that perpetrators will be brought to justice. The complainant and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary;
		- Publicly acknowledges, within a reasonable time, responsibility with respect to UNMIK’s failure to adequately investigate the disappearance and probable killing of Mrs Zorka Radovanović and Mr Milorad Radovanović, as well as the distress and mental suffering subsequently incurred, and makes a public apology to the complainant and her family in this regard;
		- Takes appropriate steps towards payment of adequate compensation to the complainant for the moral damage suffered due to UNMIK’s failure to conduct an effective investigation as well as for distress and mental suffering incurred by the complainant as a consequence of UNMIK’s behaviour.

**The Panel also considers appropriate that UNMIK:**

* + - In line with the UN General Assembly Resolution on “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (A/Res/60/147, 21 March 2006), takes appropriate steps, through other UN affiliated entities operating in Kosovo, local bodies and non-governmental organisations, for the realisation of a full and comprehensive reparation programme, including restitution compensation, rehabilitation, satisfaction and guarantees of non-repetition, for the victims from all communities of serious violations of human rights which occurred during and in the aftermath of the Kosovo conflict;
		- Takes appropriate steps before competent bodies of the United Nations, including the UN Secretary-General, towards the allocation of adequate human and financial resources to ensure that international human rights standards are upheld at all times by the United Nations, including when performing administrative and executive functions over a territory, and to make provision for effective and independent monitoring;

**FOR THESE REASONS,**

The Panel, unanimously,

1. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE PROCEDURAL OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
2. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE SUBSTANTIVE OBLIGATION UNDER ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
3. **RECOMMENDS THAT UNMIK:**
4. **URGES EULEX AND OTHER COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE DISAPPEARANCE AND PROBABLE KILLING OF MRS ZORKA RADOVANOVIĆ AND MR MILORAD RADOVANOVIĆ IS CONTINUED IN COMPLIANCE WITH ARTICLE 2 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**
5. **PUBLICLY ACKNOWLEDGES RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE DISAPPEARANCE AND PROBABLE KILLING OF MRS ZORKA RADOVANOVIĆ AND MR MILORAD RADOVANOVIĆ, AS WELL AS FOR DISTRESS AND MENTAL SUFFERING INCURRED, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANT;**
6. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION OF THE COMPLAINANT FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2 AND ARTICLE 3 OF THE ECHR;**
7. **TAKES APPROPRIATE STEPS TOWARDS THE REALISATION OF A FULL AND COMPREHENSIVE REPARATION PROGRAMME;**
8. **TAKES APPROPRIATE STEPS AT THE UNITED NATIONS AS A GUARANTEE OF NON REPETITION;**
9. **TAKES IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND TO INFORM THE COMPLAINANT AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

 Andrey Antonov Marek Nowicki

 Executive Officer Presiding Member

*Annex*

**ABBREVIATIONS AND ACRONYMS**

**CCIU** - Central Criminal Investigation Unit

**CCPR –** International Covenant on Civil and Political Rights

**DOJ** - Department of Justice

**DPPO** - District Public Prosecutor’s Office

**ECHR** - European Convention on Human Rights

**ECtHR**- European Court of Human Rights

**EU** – European Union

**EULEX** - European Union Rule of Law Mission in Kosovo

**FRY** - Federal Republic of Yugoslavia

**HRAP** - Human Rights Advisory Panel

**HRC** – United Nation Human Rights Committee

**IACtHR**– Inter-American Court of Human Rights

**ICMP** - International Commission of Missing Persons

**ICRC** - International Committee of the Red Cross

**ICTY** - International Criminal Tribunal for former Yugoslavia

**KFOR** - International Security Force (commonly known as Kosovo Force)

**KLA** - Kosovo Liberation Army

**MoU -** Memorandum of Understanding

**MPU** - Missing Persons Unit

**NATO** - North Atlantic Treaty Organization

**OMPF** - Office on Missing Persons and Forensics

**OSCE** - Organization for Security and Cooperation in Europe

**RIU** - Regional Investigation Unit

**SRSG** - Special Representative of the Secretary-General

**SPRK** - EULEX Special Prosecution Office

**UN** - United Nations

**UNHCR** - United Nations High Commissioner for Refugees

**UNMIK** - United Nations Interim Administration Mission in Kosovo

**VRIC** - Victim Recovery and Identification Commission

**WCIU** - War Crimes Investigation Unit

1. A list of abbreviations and acronyms contained in the text can be found in the attached Annex. [↑](#footnote-ref-1)
2. The references drawn upon by the Panel in setting out this general background include: OSCE, “As Seen, as Told”, Vol. 1 (October 1998 – June 1999) and Vol. II (14 June – 31 October 1999); quarterly reports of the UN Secretary-General on the United Nations Interim Administration in Kosovo; UNMIK Police Annual Reports (2000, 2001); Humanitarian Law Centre, “Abductions and Disappearances of non-Albanians in Kosovo” (2001); Humanitarian Law Centre, “Kosovo Memory Book” (htpp://www.kosovomemorybook.org); UNMIK Office on Missing Persons and Forensics, Activity Report 2002-2004; European Court of Human Rights, *Behrami and Behrami v. France* and *Saramati v. France, Germany and Norway*, nos. 71412/01 and78166/01, decision of 2 May 2007; International Commission on Missing Persons, “The Situation in Kosovo: a Stock Taking” (2010); data issued by the United Nations High Commissioner for Refugees, (available at [www.unhchr.org](http://www.unhchr.org)) and by the International Committee of the Red Cross (available at <http://familylinks.icrc.org/kosovo/en>). [↑](#footnote-ref-2)
3. The ICMP database is available at: <http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en> (accessed on 28 May 2014). [↑](#footnote-ref-3)