

**OPINION**

**Date of adoption: 13 December 2014**

**Case No. 163/09**

**Gavrilo MILOSAVLJEVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 13 December 2014,

with the following members present:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Andrey Antonov, Executive Officer

Having considered the aforementioned complaint, introduced pursuant to Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the establishment of the Human Rights Advisory Panel,

Having deliberated, makes the following findings and recommendations:

1. **PROCEEDINGS BEFORE THE PANEL**
2. The complaint was introduced on 8 April 2009 and registered on 30 April 2009.
3. On 18 August 2010, and again on 23 March 2011, the Panel requested the complainant to provide additional information. No response was received.
4. On 1 April 2011, the Panel gathered some additional information from the complainant by telephone. On 25 July 2011, the Panel reiterated its request for further submissions to the complainant. However, no response was received.
5. On 29 December 2011, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1), for UNMIK’s comments on the admissibility of the case.
6. On 23 February 2012, the SRSG provided UNMIK’s response.
7. On 12 September 2012, the Panel declared the complaint admissible.
8. On 4 October 2012, the Panel forwarded its decision on admissibility to the SRSG requesting UNMIK’s comments on the merits of the complaint, as well as copies of the investigative files relevant to the case.
9. On 21 March 2013, the SRSG presented UNMIK’s response in relation to the merits of the complaint, together with the copies of the relevant documents.
10. On 4 November 2014, the Panel requested UNMIK to confirm whether the disclosure of the investigative files concerning the cases could be considered final.
11. On 6 November 2014, UNMIK provided its response.
12. **THE FACTS**
13. **General background[[2]](#footnote-2)**
14. 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).
15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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”.
23. 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. On 5 November 2001, UNMIK signed the UNMIK-FRY Common Document reiterating, among other things, its commitment to solving the fate of missing persons from all communities, and recognizing that the exhumation and identification programme is only a part of the activities related to missing persons. 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.
24. On 9 December 2008, UNMIK’s responsibility with regard to police and justice in Kosovo ended with 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.
25. On the same date, UNMIK and EULEX signed a Memorandum of Understanding 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.
26. **Circumstances surrounding the abduction and disappearance of Mrs Ljubomirka Ðurić**
27. The complainant is the son of Mrs Ljubomirka Ðurić.
28. The complainant states that Mrs Ljubomirka Ðurić was abducted from her flat in Istog/Istok by “Albanian perpetrators” on an unspecified day in 1999. Since that time his mother’s whereabouts have remained unknown.
29. The complainant states that the abduction was reported to KFOR, the ICRC, the Yugoslav Red Cross, UNMIK, the OSCE and the International Prosecutor of the District Public Prosecutor’s Office (DPPO) in Prishtinё/Priština. He submits a copy of a tracing request of the Yugoslav Red Cross which states that Mrs Ljubomirka Ðurić Milosavljević[[3]](#footnote-3) was abducted in Istog/Istok by armed KLA members sometime between 20 June 1999 and 5 July 1999.
30. On 1 April 2011, the complainant informed the Panel that he did not know the details of his mother’s disappearance, that he had appealed to “several institutions” asking for more information without receiving any documents or response. The complainant also stated that the International Criminal Tribunal for the former Yugoslavia (ICTY) had a file on his mother’s disappearance; however, he was not able to provide any further information concerning this file.
31. An ICRC tracing request for Mrs Ljubomirka Ðurić, which indicates 17 June 1999 as the date of her disappearance, is still open. The name of Mrs Ljubomirka Ðurić appears in two letters from the ICRC to UNMIK, dated 12 October 2001 and 11 February 2002 respectively, forwarding the list of missing persons for whom the ICRC had collected ante-mortem data in Serbia proper, as well as in the database compiled by the UNMIK OMPF[[4]](#footnote-4). The entry in relation to Mrs Ljubomirka Ðurić in the online database maintained by the ICMP[[5]](#footnote-5), stating 1 July 1999 as the date of her disappearance, reads in relevant fields: “Sufficient Reference Samples Collected” and “No DNA match found”.
32. **The investigation**

*Disclosure of relevant files*

1. In the present case, the Panel received from UNMIK a copy of the case file previously held by the UNMIK OMPF and UNMIK Police. The Panel notes that UNMIK has confirmed that all documents available to it have been provided.
2. Concerning disclosure of the information contained in the files, the Panel recalls that UNMIK has made available investigative files for the Panel’s review under a pledge of confidentiality. In this regard, the Panel must clarify that, although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of relevant investigative steps taken by investigative authorities is provided in the paragraphs to follow.

*OMPF file*

1. The UNMIK OMPF file contains only two sets of documents: copies of an undated ICRC Victim Identification Form for Mrs Ljubomirka Đurić; a printout of the UNMIK MPU database generated on 8 January 2005, which is affixed with MPU case no. 2001-001021 and reproduces the same information as in the ICRC Victim Identification Form. Besides containing Mrs Ljubomirka Đurić’s (who in both documents is also reffered to as Mrs Ljubomirka Milosavjević) ante-mortem information gathered by the ICRC, these documents provide the full addresses and telephone number in Serbia proper of her son, the complainant, as well as the telephone numbers of her sister. According to these documents, Ljubomirka Đurić disappeared at some time between 20 June and 5 July 1999.

*WCIU file*

1. The earliest document in this part of the investigative file is an MPU Case Continuation Report concerning Mrs Ljubomirka Milosavjević, affixed with MPU case no. 2001-001021. The Report states that the first “input” on the case was made on 2 April 2001 “according to HLC”. The Report has three additional entries: one entry dated 13 March 2002 which states “DVI input according to the AMD received from ICRC Belgrade; and two remaining entries, both dated 10 June 2002, both reading “additional input DB – ok”.
2. The next document in this part of the file is an interoffice memorandum from the UNMIK Police Liaison Office (PLO) in Belgrade to the MPU Head of Investigations, dated 31 August 2002, which in the field “Subject” reads: “Istok Missing Persons”. The memorandum states that on 30 August 2002, three informants visited the PLO with respect to the disappearance of their family members in Istog/Istok. Among them were the complainant, with respect to the disappearance of his mother, Mrs Ljubomirka Milosavljević (MPU case file no. 2001-001021), and Mrs N.O., with respect to the disappearance of her parents, Mr M.P. and Mrs S.P. (MPU cases nos 2001-01024 and 2001-01025 respectively). They gave information to the PLO about two possible burial sites in Istog/Istok: the Istog/Istok old cemetery, where the Spanish KFOR had reportedely buried six to eight unidentified bodies belonging to Serbs and the area of the cattle market in Istog/Istok where “two Albanians” were alleged to have buried two unidentified Serbs. The memorandum further states that the PLO planned to visit “another informant about Istok MP” and to come back with the information gathered. Attached to the memorandum is a sketch of the area of the Istog/Istok cattle market prepared by the complainant, Mr Gavrilo Milosavljević, and copies of the written statement provided by Mrs N.O., which, in the opinion of the PLO, “could be used for MP and criminal investigations”. No statement of the complainant is included in the file.
3. The statement of Mrs N.O. contained the following details gathered by the family on the abduction and killing of her parents: that a late neighbour (only first name provided) and a KLA member, M.Z., had seen her father lying dead at “the market place” in “the vicinity of the mosque” on 1 July 1999; the name of an interpreter, M., working for the Spanish KFOR in 1999 who had reportedly assisted the Spanish contingent in the burial of her father at the Istog/Istok cemetery; the name and surname of the person who reportedly killed her father; the name and surname of N.S., the KLA commander allegedly responsible for the “murders”, “harrassments” and “torturing” of “Serbs from Istog”; the name and surname of M.L., a survivor who had manage to escape from KLA detention in Istog/Istok. Concerning the disappearance of her mother, Mrs N.O. stated that she was abducted three days later and probably thrown into a creek near Istog/Istok, burnt alive in her house or brought to a detention centre on the way to Albania.
4. An Investigation Report, dated 5 September 2002, documents the investigation activities carried out by the MPU on the Istog/Istok cases, following the information received by the PLO in Belgrade. According to this report, on 31 August 2002, MPU investigators had visited the Orthodox cemetery and the cattle market in Istog/Istok and concluded that more information was needed in order to locate the gravesites as both areas were “very extensive”. The Report also stated that the case of Mrs Ljubomirka Milosavljević was “not registered in the MPU database”.
5. The file also contains another interoffice memorandum from the Belgrade UNMIK Police PLO to the MPU Head of Investigations concerning the “Istok Missing Persons”, which is dated 27 October 2002. In this memorandum the PLO wrote that, again on 24 October 2002, he had received “two informants”, the complainant and Mrs N.O. (the daughter of Mr M.P. and Mrs S.P., who also had gone missing in Istog/Istok in June 1999, see §§ 32-33 above). The memorandum states that they wanted an update on what had been done with the information they had previously provided. In this respect the PLO states: “The families have some doubt about our efficiency and they are ready to investigate by themselves if they don’t receive other information. I succeeded to dissuade them for the present”. The PLO made recommendations to contact the Spanish KFOR deployed in the Istog/Istok area to gather information about “the burials that they performed in this period” and to contact the UNMIK CCIU “to know about their investigations”. Further, the PLO provided the full name and telephone number of a former KFOR interpreter (the same interpreter referred as M. in § 33 above), the full name of a doctor, E.B., who used to deliver humanitarian aid in the “enclaves” and the name of Father S. from Goreoč monastery, all potential informants or witnesses on the Istog/Istok events, according to the complainant and Mrs N.O.
6. A response to the interoffice memorandum mentioned above is also in the file. In this response memorandum, the Deputy Head of the MPU states that some investigation had been conducted on the case in August 2002 by a named MPU officer, although this investigation “did not convince” him. For this reason, he had ordered further inquiries to be made. On 26 October 2002, MPU investigators met the Spanish KFOR; on 27 October they visited the “Goric Monastery” in Istog/Istok where they spoke to a nun, who, in turn, referred them to Father M., the last priest in charge of the Orthodox monastery in Istog/Istok; subsequently they had contacted Father S. in the Deçan/Dečani monastery and made contact with the former KFOR interpreter mentioned in §§ 33 and 35 above.
7. The file further contains records – MPU field reports, MPU interoffice memoranda, correspondence with external bodies such as the Spanish KFOR, the Government of Spain and the Serbian Government, witness statements, maps and sketches – of extensive investigation activities conducted by the UNMIK MPU between 26 October 2002 and 2 April 2004, under investigation no. 0354/INV/2002. The earlier field reports, until March 2003, in the field “Nature of operations” read: “Investigations concerning case [M.P.] and [S.P.], [N.O.], [L.V.] and Gavrilo Milosavljević [the complainant]”. The reports after March 2003, also affixed with investigation no. 0354/INV/2002, refer only to “Investigations concerning [M.P.] and [S.P.], bearing no mention to the complainant or to the case of Mrs Ljubomirka Milosavjević. In both sets of documents (those displaying the complainant’s name in the heading of the reports and those that do not), there is no specific mention of the disappearance of Mrs Ljubomirka Milosavjević as the investigation as a matter of fact focuses on the disappearance of Mr M.P. and his wife, Mrs S.P.
8. The MPU investigation no. 0354/INV/2002 can be summarised as follows. Between October and December 2002, following up on the leads provided by the complainant and by the daughters of Mr M.P. and S.P., the MPU had several meetings with the Spanish KFOR in Istog/Istok as well as with Orthodox priests and nuns in the area (Pejë/Peć, Deçan/Dečani, Goreoč monastery) requesting information concerning possible burial sites, names of potential informants, witnesses and perpetrators in general with respect to the Istog/Istok events of June 1999 and in particular about the disappearance of Mr M.P. and Mrs S.P. (see §§ 32 and 33 above). In the period between January and March 2003, the MPU located and made arrangements through the Spanish KFOR to take statements abroad (in the former Yugoslav Republic of Macedonia and in Spain) from three former KFOR interpreters who reportedly had assisted the KFOR in the burial of Serb victims in Istog/Istok in June 1999. Copies of their statements, included in the file, show that the three former interpreters were asked questions with respect to: the alleged discovery of a body in a river in Istog/Istok, suspected to be the body of Mrs S.P.; other cases of killings and discoveries of bodies that they were aware about; the information they had specifically about the missing persons Mr M.P. and Mrs S.P., Mrs D.V. No questions were asked to them with respect to Mrs Ljubomirka Đurić. During the same period, the MPU also met with the Orthodox priest responsible for nine years for the Istog/Istok area; took photos of the old Orthodox cemetery in Istog/Istok; met with the daughters of Mr M.P. and Mrs S.P. and updated them on the status of the investigation; held further meetings at the Spanish KFOR in Istog/Istok and requested access to all Spanish KFOR files from the relevant period and made efforts to locate N.S. and M.Z., a former KLA commander and a former KLA member respectively from Istog/Istok (the same persons mentioned in § 33 above), as well as a confidential informant.
9. In April and May 2004, the MPU questioned the aforementioned confidential informant, M.Z. and X.G., the latter an individual indicated by M.Z. as a potential witness. Concerning the confidential informant, a report dated 26 March 2003, states that he provided details about Kosovo Serbs killed in Istog/Istok in June 1999, possible gravesites and possible perpetrators, including N.S. The report states that the MPU showed him “the list of the Serbians from Istok still missing” (not included in the file) and that he was able to provide some information on the circumstances surrounding the disappearance of Mr M.P., Mrs S.P and others from Istog/Istok. There is no mention in this report nor in the statements taken from M.Z. and X.G. to the complainant’s mother, Mrs Ljubomirka Đurić. Other activities of the MPU for this period include: running background checks on all the individuals named as witnesses or perpetrators, liaising with the UNMIK OMPF to obtain the list of exhumations previously conducted by the ICTY in the Istog/Istok area; checking the reports of killings and disappearances made to the Spanish KFOR in June and July 1999. Concerning the latter, the relevant field report, dated 2 April 2004, states that the MPU officers checked one by one the records related to murders, kidnappings, disappearances and discoveries of mortal remains that had occurred in Istog/Istok up to mid-July 1999; however there was “nothing mentioned about [Mrs M.P. and Mrs S.P.]”. The report does not mention if any record concerning the abduction and disappearance of the complainant’s mother was sought or found. The last documents concerning the MPU investigation no. 0354/INV/2002 are two interoffice memoranda between the MPU and the Ministry of Internal Affairs of the Republic of Serbia, dated 10 December 2003 and 2 February 2004 respectively, by which it was stated that the mortal remains of Mr M.P. had been discovered and identified in Serbia proper and that the respective MPU case, no. 2001/01024, had been subsequently closed.
10. The file further contains an UNMIK MPU Anti-Mortem Investigation Report, dated 8 January 2005, of a one-day investigation conducted by the WCIU into the case of Mrs Ljubomirka Milosavjević, affixed with MPU case no. 2001-001021. The report states that Mrs Ljubomirka Milosavjević disappeared together with another woman, Mrs D.K., on 18 June 1999. The UNMIK MPU opened a missing person file on 2 April 2001. In the field “Statement of witness” the report states that an “Albanian friend” had told the family of Mrs D.K. that he met the latter “on 28 June 1999” [*sic*] . On this occasion, Mrs D.K. told this Albanian friend that she had moved in with Mrs Ljubomirka Milosavjević. The Albanian friend had also said that all the remaining Serbs in Istog/Istok killed and that their bodies were buried “near the former stock market in the town”. In the field “Further Investigation”, the Report states that the investigators were “unable to contact witness” and that the abovementioned account was based on an “article” of the Humanitarian Law Centre (HLC). The field “Conclusion” reads: “After investigations, it’s impossible at this time to find an impartial witness around the place event. Remains of the MP could be buried near the former stock market in Istok. This case should remain open pending within the WCU”. Attached to the report is an extract of the HLC publication on abductions and disappearances of non-Albanians in Kosovo which speaks about the disappearance of Mrs Ljubomirka Milosavjević and Mrs D.K. Apart from the information contained in the Report mentioned above, this extract also states that a local priest, Father S., had reportedly advised the remaining Serbs in Istog/Istok to flee to Serbia or go unarmed to the Serbian Orthodox church. The priest also went to Mrs D.K.’s house and advised her to leave, but she refused. There is no mention in this Report of the investigation activities previously carried out by the MPU into the “Istog/Istok cases” (see §§ 32-39).
11. The remaining documents in the investigative file consist mainly of interoffice memoranda, dating back to October 2002, concerning “non registered Serbian bodies” of Kosovo Serbs who had been killed in 1999 and buried by the KFOR without the knowledge of their families. In this part of the file there are also several e-mails between the MPU and PLO in Belgrade dating back to October and November 2002 and related to the alleged failure from the PLO’s side to provide data on the presumptive identification of a number of missing Kosovo Serbs. No mention can be found in these documents of the case of Mrs Ljubomirka Milosavljević or other Istog/Istok missing persons cases.
12. **THE COMPLAINT**
13. The complainant complains about UNMIK’s alleged failure to properly investigate the abduction and disappearance of Mrs Ljubomirka Đurić. 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).
14. The complainant also complains about the mental pain and suffering allegedly caused to him by this situation. In this regard, he relies on Article 3 of the ECHR.
15. **THE LAW**
16. **Alleged violation of the procedural obligation under Article 2 of the ECHR**
	1. **The scope of the Panel’s review**
17. 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.
18. Before turning to the examination of the merits of the complaints, the Panel needs to clarify the scope of its review.
19. 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.
20. 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.
21. 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 § 46). 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.
22. 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**
23. The complainant in substance alleges violations concerning the lack of an adequate criminal investigation into the abduction and disappearance of Mrs Ljubomirka Đurić. The complainant also states that he was not informed as to whether an investigation was conducted and what the outcome was.
24. The SRSG generally accepts that Ljubomirka Duric’s abduction and disappearance occurred in life threatening circumstances. The SRSG states that Mrs Ljubomirka Đurić disappeared in June 1999, soon after the establishment of UNMIK in Kosovo and that the security situation at that time was “tense, with a number of serious criminal incidents targeting Kosovo-Serbs and Kosovo-Albanians, including abductions and killings”. Citing the UN Secretary-General’s report to the United Nations Security Council of 12 June 1999, the SRSG describes the situation as follows:

“The general situation in Kosovo has been tense but is stabilizing. The KLA has rapidly moved back into all parts of Kosovo, in particular the south-west, and a large number of Kosovo Serbs have left their homes for Serbia. While the first wave of Kosovo Serb departures was prompted by security concerns rather than by actual threats, a second wave of departures resulted from an increasing number of incidents committed by Kosovo Albanians against Kosovo Serbs. In particular, high profile killings and abductions, as well as looting, arsons and forced expropriation of apartments, have prompted departures. This process has now slowed down, but such cities as Prizren and Pec are practically deserted by Kosovo Serbs, and the towns of Mitrovica and Orahovac are divided along ethnic lines.

The security problem in Kosovo is largely a result of the absence of law and order institutions and agencies. Many crimes and injustices cannot be properly pursued. Criminal gangs competing for control over scarce resources are already exploiting this void. While KFOR is currently responsible for maintaining public safety and civil law and order, its ability to do so is limited due to the fact that it is still in the process of building up its forces. The absence of a legitimate police force, both international and local, is deeply felt, and therefore will have to be addressed as a matter of priority.”

1. Accepting that Mrs Ljubomirka Đurić disappeared in life-threatening circumstances, the SRSG does not dispute UNMIK’s responsibility to conduct an investigation into her abduction under Article 2 of the ECHR, procedural part. In the words of the SRSG, “the essential purpose of such investigation [was] 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.”
2. The SRSG underlines that the complainant does not allege a violation of the substantive part of Article 2, but rather of its procedural element. The SRSG states that “the procedural element of Article 2 is essentially two-fold: (i) an obligation to determine through investigation the fate and/or whereabouts of the missing person; and (ii) an obligation to conduct an investigation capable of determining whether the death was caused unlawfully and leading to the identification and punishment of those responsible for the disappearance and/or death of the missing person.”
3. The SRSG further observes that when determining applications under Article 2, procedural part, consideration must be given to not imposing an impossible or disproportionate burden on UNMIK. 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 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 faced a very similar situation in Kosovo “from 1999 to 2008” as the one in Bosnia and Herzegovina “from 1995 to 2005”.
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 the persons who went missing were abducted, killed, and buried in unmarked graves inside or outside Kosovo, which made very difficult locating and recovering their mortal 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 its 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, 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 crimes. UNMIK international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and cultures, 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 without going through the difficulties associated with a post-conflict situation.”
3. With regard to this particular complaint, the SRSG lists the actions undertaken by UNMIK authorities with respect to the case of Mrs Ljubomirka Đurić. He states that, according to the OMPF file, the disappearance of Mrs Ljubomirka Đurić was registered with the MPU under case file no. 2001-001021. With respect to the efforts carried out to locate her mortal remains, the SRSG states that, upon receiving information from the complainant, the UNMIK PLO in Belgrade informed the Deputy Head of the MPU in Prishtinë/Priština “to contact the Spanish KFOR and other residents in Istog/Istok for information surrounding the disappearance of Mrs. Ljubomirka Đurić and others including possible burial sites”. Contacts were made with the Spanish KFOR and “other individuals based in the area”; however, this investigation did not result in establishing the circumstances of Mrs Ljubomirka Durić’s disappearance or the whereabouts of her mortal remains. The SRSG refers to the conclusion of the “Anti Mortem Investigation Report” of the UNMIK WCIU dated 6 January 2005, according to which “after investigations, it’s impossible at this time to find an impartial witness around the place of event. Remains of the missing person could be buried near the former stok market [*sic*] in Istok. This case should remain pending within the WCU”.
4. With respect to identifying the perpetrators and bringing them to justice, the SRSG states that “the lack of information in the instant case posed a real hurdle to the conduct of any investigation by UNMIK. The lack of witnesses or suspects impeded the identification of possible perpetrators to be brought to justice”. The SRSG states that, based on the OMPF documents and on the WCIU Report mentioned above, “it is evident that UNMIK Police did open and pursue an investigation” into the disappearance of Mrs Ljubomirka Đurić. However, despite these investigative efforts, UNMIK Police was unable to locate the mortal remains of Mrs Ljubomirka Durić or to identify the perpetrators.
5. The SRSG further states that “as there is the possibility that additional and conclusive information exists, beyond the documents mentioned above, UNMIK reserves its right to make further comments on this matter”.
	1. **The Panel’s assessment**
6. The Panel considers that the complainant invokes a violation of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the ECHR in that UNMIK Police did not conduct an effective investigation into the abduction and disappearance of Mrs Ljubomirka Durić.
7. *Submission of relevant files*
8. The SRSG observes that all available files regarding the investigation have been presented to the Panel, but he suggests that further documentation might exist which is not included in the abovementioned files (see § 64 above). On 6 November 2014, UNMIK confirmed to the Panel that the disclosure may be considered complete (see § 10 above).
9. 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, *Çelikbilek v. Turkey*, no. 27693/95, judgment of 31 May 2005*,* § 56).
10. 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. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative files. However, the Panel likewise notes that UNMIK has not provided any further explanation as to whether or not any additional documentation may exist, nor with respect to which parts of the investigation.
11. 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).
12. *General principles concerning the obligation to conduct an effective investigation under Article 2*
13. 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.
14. In order to address the complainants’ 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).
15. 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 § 49 above, at § 136; ECtHR [GC], *Mocanu and Others v. Romania*, nos 10865/09, 45886/07 and 32431/08, judgment of 17 September 2014, § 317).
16. 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; ECtHR [GC], *Mocanu and Others v. Romania*, cited above, § 321).
17. Setting out the standards of an effective investigation, the Court has stated that besides 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 § 49 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 ECtHR, *Isayeva v. Russia*, cited above, at § 212).
18. 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 § 71 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 Mazăre v. Romania*, no. 64301/01, judgment of 1 December 2009, § 105). At the same time, the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see ECtHR [GC], *El-Masri v. “the Former Yugoslav Republic of Macedonia”*, no. 39630/09, judgment of 13 December 2012, § 183; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 72 above, at § 322).
19. 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; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 72 above, at § 323).
20. 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 § 74 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 49 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 § 49 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 in § 74 above, at § 64).
21. 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 *Ahmet Özkan and Others v. Turkey*, cited in § 73 above, at §§ 311‑314; *Isayeva v. Russia*, cited in 67 above, §§ 211-214 and the cases cited therein).” ECtHR [GC], *Al-Skeini and Others v. United Kingdom*, no. 55721/07, judgment of 7 July 2011, § 167, ECHR 2011; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 72 above, at § 324).
22. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired thereby satisfying the right to truth 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”*, cited in § 75 above, at § 191; ECtHR, *Al Nashiri v. Poland*, no. 28761/11, judgment of 24 July 2014, §§ 495-496). United Nations bodies also recognise 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 HRC,  *Schedko and Bondarenko v. Belarus*, Communication no. 886/1999, views of 3 April 2003, § 10.2, CCPR/C/77/D/886/1999; HRC, *Mariam, Philippe, Auguste and Thomas Sankara v. Burkina Faso*, Communication no. 1159/2003, views of 8 March 2006, § 10.2, CCPR/C/86/D/1159/2003; UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; Preamble and Article 24 (2) of the Convention for the Protection of All People from Enforced Disappearance, cited in § 106 above; see also Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr 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, § 23-26).

*a) Applicability of Article 2 to the Kosovo context*

1. The Panel is conscious of the fact that the abduction and disappearance of Mrs Ljubomirka Đurić took place shortly after the deployment of UNMIK in Kosovo in the aftermath of the armed conflict, when crime, violence and insecurity were rife.
2. 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.
3. 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.
4. 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).
5. 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 § 74 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 § 78 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 § 72 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 72 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
6. 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 § 70 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 § 72 above, at §§ 215‑224; ECtHR, *Musayev and Others v. Russia*, nos 57941/00 and others, judgment of 26 July 2007, §§ 158-165).
7. 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 § 69 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).
8. 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 § 19 above).
9. In response to the SRSG’s objection that Article 2 must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, either in the context of policing activities or that of priorities and resources, the Panel takes into account that the European Court has established that what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and contexts (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 74 above, at § 70; *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
10. However, the Panel considers that, in the context of most serious crimes committed against civilian populations, Article 2 requires that the authorities take all investigative efforts in order to establish the facts and bring perpetrators to justice. Such cases shall be given the highest priority.
11. The Panel also 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.
12. The Panel puts on record that it has already analysed the effectiveness under Article 2 of numerous investigations conducted by UNMIK with respect to killings, abductions and disappearances related to the conflict in Kosovo. The Panel has identified common shortcomings in these investigations such as delays in the registration of the cases and lengthy periods of inactivity from the outset and in the period within the Panel’s jurisdiction; failure to take basic investigative steps and follow obvious lines of enquiry; lack of coordination among different units of UNMIK Police; lack of regular and meaningful reviews of cases; lack of prosecutorial oversight and failure to provide family members with minimum necessary information on the status of the investigation (compare with ECtHR, *Aslakhanova and Others v. Russia*, cited in § 77 above, § 123). The Panel also records systemic failures such as a deficient system of setting investigative priorities and lack of proper handover. In the great majority of these cases the Panel has found that the investigations were not effective in the meaning of Article 2 and that UNMIK’s failures, which persisted throughout the period of the Panel’s jurisdiction, could not be justified in the light of difficulties encountered by UNMIK at the beginning of its mission.
13. *Compliance with Article 2 in the present case*
14. With respect to the present case, the Panel notes that there were obvious shortcomings in the conduct of the investigation from its commencement. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 49 above), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigations with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the cases at that date (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 74 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 § 21 above).
15. The Panel recalls the complainant’s statement that the abduction and disappearance of Mrs Ljubomirka Đurić was reported to KFOR, the ICRC, the Yugoslav Red Cross, UNMIK, the OSCE and an International Prosecutor in Prishtinё/Priština. Lacking specific documentation in this regard, the Panel considers that in any event by 2 April 2001, at the latest, UNMIK must have been fully aware about the abduction and disappearance of the complainant’s mother. On this date, the UNMIK MPU recorded Mrs Ljubomirka Đurić’s disappearance under case no. 2001-001021, apparently on the basis of the information provided by the HLC (see § 31 above). In October 2001, UNMIK received from the ICRC the ante-mortem information for Mrs Ljubomirka Đurić (see § 27 above); however, the investigative file shows that this information was recorded in the MPU database several months later, in March and July 2002 (see § 31 above). No other action was taken at this time.
16. At the end of August 2002, following the visit to the UNMIK PLO in Belgrade of the complainant and family members of the other persons who were disappeared from Istog/Istok in June 1999, including also one daughter of Mr M.P. and Mrs S.P., the MPU conducted some investigative activities aimed at locating possible burial sites. This investigation consisted merely in taking pictures of the Istog/Istok old Orthodox cemetery and of the cattle market, the two sites indicated by the family members mentioned above as possible gravesites. The conclusion of the investigators, as shown in an Investigation Report dated 5 September 2002, was that the sites were “too extensive” to conduct any further assessment. The same Report mistakenly states that the case of Mrs Ljubomirka Đurić was not registered with the MPU.
17. After the complainant and the daughter of Mr M.P. and Mrs S.P. again visited the UNMIK PLO in Belgrade in October 2002, the Deputy Head of the MPU requested that further investigations be conducted on the Istog/Istok cases. According to the headings of the relevant reports, the investigation concerned the case of Mrs Ljubomirka Đurić as well as of other missing persons from Istog/Istok. The Panel notes, however, that records of the investigation show that investigative actions focused essentially, if not exclusively, on the cases of Mr M.P. and Mrs S.P., and that the investigation ended in April 2004, after the mortal remains of Mr M.P. were identified. In contrast, there is no indication in the file that any basic investigative steps were taken to clarify the circumstances surrounding the abduction and disappearance of Mrs Ljubomirka Đurić such as: checking whether the case was registered with the MPU and taking remedial action accordingly (i.e. correcting the mistake made by previous investigators who stated that the case was not recorded with the MPU); taking a statement from the complainant (for example whether he visited the Belgrade PLO in August and in October 2002) or other family members; questioning the identified witnesses in the Istog/Istok events (i.e. the confidential informant, the three former KFOR interpreters, the former KLA member, N.S., mentioned in §§ 38 and 39 above) also with respect to Mrs Ljubomirka Đurić; searching the records made available by the Spanish KFOR concerning killings, abductions and disappearances in Istog/Istok in June and July 1999 also with respect to the disappearance of the complainant’s mother; “canvassing” the area in which she was residing in Istog/Istok to locate and interview any additional potential witnesses who could provide additional information on the case. The Panel also notes that, in the context of the investigation into the case of Mr M.P. and Mrs S.P., the MPU received information from different sources that a former KLA commader, N.S., was responsible for the killing, abduction and disappearance of the Kosovo Serbs who had remained in Istog/Istok at the end of June 1999; however, there is no indication in the file that UNMIK Police tried to locate and interview him.
18. The Panel also notes that in January 2005, UNMIK Police MPU conducted a one-day investigation specifically concerning the case of Mrs Ljubomirka Đurić. This WCIU investigation consisted merely in reproducing in the “Anti-Mortem Investigation Report” dated 8 January 2005 (see § 40 above) the information on Mrs Ljubomirka Đurić contained in the HLC publication, which had been available to the MPU since the registration of the case in April 2001 (see § 31 above). The Panel further notes that, even though some investigative leads were provided in the account of the HLC (i.e. that Mrs Ljubomirka Đurić spent her last days in Istog/Istok in the company of Mrs D.K., who also went missing, and that an “Albanian friend” of Mrs D.K. was reportedly the last person to hear of them), there is no record in the file of any additional investigation conducted by the WCIU aimed at following these investigative leads.
19. 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 persisted, thus, in accordance with the continuing obligation to investigate (see § 77 above), bringing the assessment of the whole investigation within the period of the Panel’s jurisdiction.
20. The Panel considers that, as the mortal remains of Mrs Ljubomirka Đurić had not been located and those responsible for the crime had not been identified, UNMIK was obliged to use the means at its disposal to regularly review the progress of the investigation to ensure that nothing had been overlooked and any new evidence had been considered, as well as to inform her relatives regarding any possible new leads of enquiry.
21. No other action whatsoever was taken by the UNMIK Police in the period within the Panel’s temporal jurisdiction. In light of the above, the Panel cannot agree with the SRSG’s conclusion that the lack of information in the instant case constituted a “real hurdle to the conduct of any investigation by UNMIK” and that the lack of witnesses or suspects impeded the identification of the perpetrators. In this regard, the Panel, again, stresses that almost any investigation at its initial stage lacks information. Finding the necessary information to fill those gaps is the main goal of any investigative activity. Therefore, a lack of information at the beginning of the investigation should not be used as an argument to defend inaction by the investigative authorities. The file, as made available to the Panel, shows that extensive investigative activities were conducted into the cases of Mr M.P. and Mrs S.P., who also disappeared from Istog/Istok in June 1999, while no such activity was carried out with respect to the case of Mrs Ljubomirka Đurić. In the Panel’s view, such a passivity and the failure by UNMIK Police to keep both investigations equally active and mutually reinforcing may have led to the loss of potential evidence (see the Panel’s approach in the case *Ð.L.*, no. 88/09, opinion of 22 November 2013, at § 123; see also HRAP, *Stojković*, no. 87/09, opinion of 14 December 2013, § 164 ).
22. The apparent lack of an adequate reaction from UNMIK Police, and of any adequate action at later stages, may have suggested to the 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 that UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently.
23. The Panel considers that, having regard to all the circumstances of the particular case, not all reasonable steps were taken by UNMIK towards towards locating and identifying the mortal remains of Mrs Ljubomirka Đurić and 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 § 68 above), as required by Article 2 of the ECHR.
24. In relation to the procedural requirement of public scrutiny, the Panel recalls that Article 2 also entails that the victim’s next-of-kin be involved in the investigation to the extent necessary to safeguard his or her legitimate interests.
25. The investigative file shows that the complainant, along with Mrs N.O. and relatives of missing persons, visited the UNMIK PLO in Belgrade on two occasions, in August and again in October 2002, and that these visits prompted the UNMIK Police to initiate an investigation into several missing persons cases from Istog/Istok, including the case of Mrs Ljubomirka Đurić. While it is documented in the file that the MPU took statements of Mrs N.O. and subsequently met the latter and her sister to give them updates on the investigation concerning her parents (see § 38 above), there is no indication in the file that the MPU ever took a statement from the complainant or contacted him in order to inform him about any progress or obstacle concerning the investigation into his mother’s abduction and disappearance. The Panel therefore considers that the investigation was not open to any public scrutiny, as required by Article 2 of the ECHR.
26. In light of the shortcomings and deficiencies in the investigation described above, the Panel considers that the case of Mrs Ljubomirka Đurić, as well as other cases of killings, abductions and disappearances previously examined, well exemplify a pattern of perfunctory and unproductive investigations conducted by the UNMIK Police into killings and disappearances in Kosovo (see § 91 above; compare with HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, cited in § 86 above; see also HRAP, *Bulatović*, no. 166/09, opinion of 13 November 2014, §§ 85 and 101). Indeed, the investigative file with respect to Mr M.P. and Mrs S.P. shows, even within the constraints raised by the SRSG, how thorough an investigation could be.
27. In light of the deficiencies and shortcomings described above, the Panel concludes that UNMIK failed to carry out an effective investigation into the abduction and disappearance of Mrs Ljubomirka Đurić. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.
28. **Alleged violation of Article 3 of the ECHR**
29. The Panel considers that the complainant invokes, in substance, a violation of the right to be free from inhumane or degrading treatment arising out of the abduction and disappearance of his mother, as guaranteed by Article 3 of the ECHR.
30. **The scope of the Panel’s review**
31. 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 §§ 44 - 49 above).
32. 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 § 85 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 74 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).
33. 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).
34. **The Parties’ submissions**
35. The complainant alleges that the lack of information and certainty surrounding the abduction and disappearance of Mrs Ljubomirka Đurić, particularly because of UNMIK’s failure to properly investigate her disappearance, caused mental suffering to him and his family.
36. With respect to Article 3, the SRSG states that while most of the jurisprudence on Article 3 has developed in relation to disappearances attributable to the State or its agents, the European Court has also determined that a violation of Article 3 can also 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”.
37. Concerning the case at issue, the SRSG acknowledges the existence of a close relationship between the complainant and Mrs Ljubomirka Đurić, the complainant being her son. He further states that it appears that the complainant did not witness the abduction, neither he was “in close proximity of the location at the time the disappearance occurred”. With respect to the conduct of the authorities, the SRSG argues that no allegations have been made by the complainant “of any bad faith on the part of the UNMIK staff involved in the matter, nor of any action by UNMIK that would have evidenced disregard for the seriousness of the matter or the emotions of the complainant and of his family in relation with the disappearance of Mrs Ljubomirka Đurić”. The SRSG further states that, “there is no evidence that UNMIK, when responding to enquiries of the complainant, acted in a manner which may amount to a violation of Article 3 of the ECHR”.
38. The SRSG does not dispute the mental anguish and suffering of the complainant; however he argues that this is not attributable to UNMIK as it is rather “a result of the inherent suffering that results from the disappearance of a close family member”. 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.
39. The SRSG therefore argues that there has been no violation of Article 3.
40. **The Panel’s assessment**
41. *General principles concerning the obligation under Article 3*
42. 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.
43. 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 § 70 above, at § 150).
44. 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.
45. 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).
46. 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*, nos. 15441/05 and 20731/04, judgment of 28 May 2009, § 159; ECtHR, *Er and Others v. Turkey*, cited in § 107 above, at § 94).
47. 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, § 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).
48. 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 case *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 lead 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 § 86 above, at § 11.7).
49. 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 of the respondent State reacted to the applicants’ enquiries should be global and continuous (see ECtHR, *Açiș v.Turkey*, no. 7050/05, judgment of 1 February 2011, § 45).
50. 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 § 119 above, at § 109; ECtHR, *Gelayevy v. Russia*, cited in § 108 above, at § 147; ECtHR, *Bazorkina v. Russia*, cited in § 85 above, at § 140).
51. 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.
52. 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).
53. *Applicability of Article 3 to the Kosovo context*
54. 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 §§ 80-99 above).
55. 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 § 19 above).
56. 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.
57. 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.
58. *Compliance with Article 3 in the present case*
59. Against this background, the Panel discerns a number of factors in the present case which, taken together, raise the question of violation of Article 3 of the ECHR.
60. The Panel notes the proximity of the family ties between the complainant and Mrs Ljubomirka Đurić, as the latter is the complainant’s mother.
61. The Panel recalls the failure established above in relation to the procedural obligation under Article 2, despite the fact that UNMIK Police had the minimum necessary information to pursue investigation from the outset. In this respect, the Panel reiterates that from the standpoint of Article 3 it may examine UNMIK’s reactions and attitudes to the complainant in their entirety.
62. The Panel recalls that, on his own initiative, the complainant visited twice the UNMIK PLO in Belgrade in August and October 2002, which prompted the authorities to open an investigation on several Istog/Istok missing persons cases, including the one of Mrs Ljubomirka Đurić. Nonetheless, there is no record of any subsequent contact between the MPU and the complainant to inform him about the progress of the investigation. Although an extensive investigation was conducted with respect to other Istog/Istok missing persons cases, no statement was ever taken from the complainant, any other family member or witness with specific reference to the abduction and disappearance of Mrs Ljubomirka Đurić. The Panel notes that no explanation is given by the SRSG in this respect.
63. Drawing inferences from UNMIK’s failure to provide a plausible explanation for the absence of any 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 his family about Mrs Ljubomirka Đurić’s fate and the status of the investigation.
64. 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 his inability to find out what happened to his mother. In this respect, it is obvious that, in any situation, the pain of a son who has to live in uncertainty about the fate of his mother must be unbearable.
65. 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.
66. **CONCLUDING COMMENTS AND RECOMMENDATIONS**
67. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
68. 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 the abduction and disappearance of Mrs Ljubomirka Đurić, 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.
69. 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.
70. 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 § 21 above), UNMIK’s responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008. 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 unilateral 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.
71. 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*, cited in § 114 above, at § 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 means available to it *vis-à-vis* competent authorities in Kosovo, 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 abduction and disappearance of Mrs Ljubomirka Đurić will be established and that the possible 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, including through media, within a reasonable time, responsibility with respect to UNMIK’s failure to adequately investigate the abduction and disappearance of Mrs Ljubomirka Đurić, as well as the distress and mental suffering subsequently incurred, and makes a public apology to the complainant and his 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 him 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 THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE ABDUCTION AND DISAPPEARANCE OF MRS LJUBOMIRKA ĐURIĆ IS CONTINUED IN COMPLIANCE WITH ARTICLE 2 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**
5. **PUBLICLY ACKNOWLEDGES, INCLUDING THROUGH MEDIA, RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE ABDUCTION AND DISAPPEARANCE OF MRS LJUBOMIRKA ĐURIĆ, AS WELL AS FOR DISTRESS AND MENTAL SUFFERING INCURRED, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANT AND HIS FAMILY;**
6. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION TO 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**

**CCKM** - Coordination Centre of the Federal Republic of Yugoslavia and Republic of Serbia for Kosovo and Metohija

**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

**MPU** - Missing Persons Unit

**MUP** - Ministry of Internal Affairs of the Republic of Serbia

**NATO** - North Atlantic Treaty Organization

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

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

**PLO** - Police Liaison Office

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

**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 complainant’s mother is known by both names, Mrs Ljubomirka Ðurić and Mrs Ljubomirka Milosavljević. [↑](#footnote-ref-3)
4. The OMPF database is not open to public. The Panel accessed it with regard to this case on 10 December 2014. [↑](#footnote-ref-4)
5. The ICMP database is available at: http://www.ic-mp.org/fdmsweb/index.php?w=mp\_details&l=en (accessed on 10 December 2014). [↑](#footnote-ref-5)