

**OPINION**

**Date of adoption: 14 April 2014**

**Cases Nos 167/09, 174/09 and 175/09**

**Sonja KORIĆANIN**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 14 April 2014,

with the following members taking part:

Mr Marek Nowicki, Presiding Member

Ms Christine Chinkin

Ms Françoise Tulkens

Assisted by

Mr 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, including through electronic means, in accordance with Rule 13 § 2 of its Rules of Procedure, makes the following findings and recommendations:

1. **PROCEEDINGS BEFORE THE PANEL**
2. The complaints were introduced on 7 April 2009 and registered on 30 April 2009.
3. On 23 December 2009, the Panel requested the complainant to provide additional information. No response was received.
4. On 6 October 2010, the Panel decided to join the complaints, pursuant to Rule 20 of the Panel’s Rules of Procedure.
5. On 18 April 2012, the complaints were communicated to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1), for UNMIK’s comments on its admissibility.
6. On 24 May 2012, the SRSG provided UNMIK’s response.
7. On 23 August 2012, the Panel declared the complaints admissible.
8. On 10 September 2012, the Panel forwarded its decision to the SRSG requesting UNMIK’s comments on the merits of the complaints, as well as copies of the investigative files relevant to the case.
9. On 11 February 2013, the SRSG provided UNMIK’s comments on the merits of the complaints, together with the relevant documentation.
10. On 9 April 2014, the Panel requested UNMIK to confirm whether the disclosure of files concerning the case could be considered final. On the same day, UNMIK provided its response.
11. **THE FACTS**
12. **General background[[2]](#footnote-2)**
13. 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).
14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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”.
22. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a Memorandum of Understanding (MoU) between UNMIK and the Sarajevo-based International Commission of Missing Persons (ICMP), supplemented by a further agreement in 2003, the identification of mortal remains was carried out by the ICMP through DNA testing.
23. On 9 December 2008, UNMIK’s responsibility with regard to police and justice in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX) assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.
24. On the same date, UNMIK and EULEX signed an MoU on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK International Prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were supposed to be handed over to EULEX.
25. **Circumstances surrounding the abduction and disappearance of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić**
26. Mrs Sonja Korićanin is the daughter of Mrs Jelena Lalić (case no. 167/09) and Mr Vojislav Lalić (case no. 174/09), and a granddaughter of Mrs Milosava Lalić (case no. 175/09). According to the complainant, all three were abducted by KLA members, on 20 June 1999, from their home in Stupeli/Stupelj village, Klinë/Klina municipality, Pejё/Peć region. Since that time their whereabouts have remained unknown.
27. The complainant states that the abduction was reported to KFOR, UNMIK, including the International Prosecutors in Prishtinё/Priština and Pejë/Peć, the ICRC, the Serbian Ministry of Internal Affairs (MUP), the Serbian Red Cross.
28. The complainant provided to the Panel copies of the ICRC tracing request with regard to the three victims. The tracing requests with regard to Mr Vojislav Lalić and Mrs Jelena Lalić were opened on 5 May 2000, while the one with regard to Mrs Milosava Lalić on 29 May 2001. All three ICRC tracing requests remain open until now[[3]](#footnote-3).
29. The three certificates of the Serbian Red Cross, dated 13 June 2005, also provided by the complainant, state that Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić had disappeared on 1 August 1999, and that they are still in the list of the persons who went missing in the territory of Kosovo.
30. The complainant also provided the Panel with copies of the certificates issued by relevant organs of the Serbian MUP in relation to all three victims. These similar certificates state that Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić were abducted by KLA members in June 1999, and that a criminal report in this regard was filed with the Serbian Prosecutor for the Pejё/Peć region, displaced in Leskovac, Serbia proper, on 15 August 2001.
31. The complainant provided a copy of an undated criminal report (in Serbian) against unknown perpetrators, in relation to the abduction of Mr Vojislav Lalić and Mrs Jelena Lalić. This criminal report was addressed by her sister, Mrs Ž.K., to the International Public Prosecutor of the Pejë/Peć District Public Prosecutor’s Office (DPPO). An almost identical criminal report was also sent to the International Public Prosecutor of the Pejë/Peć DPPO by the complainant’s sister in relation to the abduction of Mrs Milosava Lalić. A copy of this undated report (in Serbian) was also provided by the complainant.
32. The names of the complainant’s relatives are in the list of missing persons that was forwarded by the ICRC to UNMIK on 12 October 2001, for whom the ICRC had collected ante-mortem data in Serbia proper between 1 July and 20 September 2001, as well as in the database compiled by the UNMIK OMPF[[4]](#footnote-4).
33. The entries in relation to Mr Vojislav Lalić and Mrs Jelena Lalić in the online database maintained by the ICMP[[5]](#footnote-5) reads, in relevant fields: “Sufficient Reference Samples Collected” and “DNA match not found”; the “reported date of disappearance” of Mr Vijislav Lalić is stated as 19 June 1999, while for his spouse it is 17 June 1999. The similar entry in relation to Mrs Milosava Lalić, in turn, reads: “Not Enough Reference Samples Collected” and “DNA match not found”; the date of disappearance is stated as 1 June 1999.
34. **The investigation**
35. In the present case, the Panel received from UNMIK the investigative documents previously held by the UNMIK Police WCIU and the UNMIK OMPF. When presenting the file to the Panel, in February 2013, UNMIK noted that more information in relation to this case, not contained in the presented documents, may exist. Nevertheless, on 9 April 2014, it confirmed to the Panel that no more relevant documents have been obtained.
36. Concerning disclosure of information contained in the files, the Panel recalls that UNMIK has made them available 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 investigation steps taken by investigative authorities is provided in the paragraphs to follow.

*On the disappearance of Mrs Jelena Lalić (case no. 167/09)*

1. The file in relation to Mrs Jelena Lalić contains an undated Victim Identification Form, apparently completed by the ICRC between 1 July and 20 September 2001 (see § 28 above). As well as Mrs Jelena Lalić’s personal details and ante-mortem description, the form provides addresses and telephone numbers in Serbia proper for her sister, Mrs J.S., and her daughter, Mrs Ž.K.. It is stated that Mrs Jelena Lalić was abducted together with other four persons: Mr Vojislav Lalić, Mrs Milosava Lalić, Mrs Miljana Lalić and Mr Ljubomir Lalić. According to this form, she was last seen on 17 June 1999, in Stupeli/Stupelj village. The same information is in another Victim Identification Form, generated from a database on 27 January 2005; this form bears a cross-reference to an UNMIK Police MPU case no. 2003-000086.
2. The file further contains an MPU Case Continuation Report in relation to the case no. 2003-000086, which has only one entry, dated 12April 2003, reading: “Input in DB and DVI.”
3. A printout from the MPU database, generated on 16 March 2005, in relation to the MPU case no. 0423/INV/05, is cross-linked to the cases nos. 2002-000567, 2003-000074, 2003-000084, 2003-000085 and 2003-000086. The field “date received” reads “11-Mar-05 (check)”; the field “Missing Persons Details” has the names of Mr Živko Marušić (case no. 2001-001434), Mrs Cveta Marušić (case no. 2002-000460), Mrs Milica Marušić (case no. 2001-001002) and Mrs Dostana Šutić (case no. 2002-000563).”
4. Another, similar, printout from the MPU database is dated 23 March 2004. In addition to the information in the older printout, the field “Invest. Notes” of this one reads: “On 29/06/99 the KLA activists attacked the MP’s [missing persons] who were in the house. Since the MP’s are missing.”
5. Another form “MPU Report”, generated from the MPU database on 16 March 2005 in relation to the abduction of Mrs Jelena Lalić, case no. 2003-000086, states that she went missing together with Mr Vojislav Lalić, Mrs Milosava Lalić, Mrs Miljana Lalić and Mr Ljubomir Lalić, on 17 June 1999.
6. This part of the file further contains an MPU Ante-Mortem Investigation Report (AMIR), started on 11 March 2005 and completed on 21 March 2005, on the MPU case no. 2003-000086, in relation to the abduction of Mrs Liljana Lalić. The field “Witness” on the front page has the address and telephone number of her daughter, Mrs Ž.K., in Serbia proper. The field “Suspect” has the name of Mr Q.D. This report is related to the cases of 10 missing persons, including Mrs Jelena Lalić: Mr Živko Marušić (case no. 2001-001434), Mr Cveta Marušić (case no. 2002-000460), Mrs Milica Marušić (case no. 2001-001002), Mrs Dostana Šutić (case no. 2002-000563), Mr Vučko Šutić (case no. 2002-000567), Mr Vojislav Lalić (case no. 2003-000074), Mrs Milosava Lalić (case no. 2003-000081), Mr Ljubomir Lalić (case no. 2003-000084), and Mrs Miljana Lalić (case no. 2003-000085)”, as all of them apparently were apparently abducted during the same attack by KLA on the village Stupeli/Stupelj, on 26 June 1999.
7. The field “Summary of Information” of the AMIR reads that all ten victims had disappeared after the KLA attacked the village on 26 June 1999, looting Serbian houses and setting them on fire. According to the report, “There is no available information about the circumstances of [their] disappearance.” The field “Further Investigation” of this report states that the MPU got in contact with the witness, Mrs Ž.K., who named Mr Q.D. as one of the possible perpetrators, and their neighbours, Mr and Mrs T., as possible witnesses. Mrs Ž.K. added that the DNA samples had already been collected.
8. The AMIR further states that the MPU also telephoned Mrs M.Š., a relative of Mrs Milica Marušić, Mrs Dostana Šutić and Mr Vučko Šutić. According to a summary of that conversation provided in the report, Mrs M.Š. stated that on that day, Mr Živko Marušić, Mrs Cveta Marušić, Mrs Milica Marušić, Mrs Dostana Šutić and Mr Vučko Šutić, as well as another person, Mr P.M., were all in the Marušić family’ss house. At around 22:00, Mr P.M., who was at that time behind the house, “heard shots and screaming”. He then ran away into the hills, from where he could see the house being set on fire, and “could hear noise.” When on the next morning Mr P.M. went back to the village, a Kosovo Albanian neighbour told him that he did not see anything that had happened last night, but advised him “to escape as far as he could with God’s help.” According to Mr P.M., the same had happened to the Lalić family members. According to Mrs M.Š., Mr P.M. was not fit to give a statement because of his age, but nevertheless provided his address in Serbia proper. She also mentioned that the blood samples had already been provided.
9. The report also cites the following information, found by the investigator through an internet research in the Humanitarian Law Center’s electronic publication *Abductions and Disappearances of non-Albanians in Kosovo, 24 March 1999 – 31 December 2000[[6]](#footnote-6):*

Marušić, Milica (F, 66); her brother-in-law Marušić, Živko (67); his wife Marušić, Cveta; Šutić, Vučko (M, 67), his wife Šutić, Dostana (64); Lalić, Vojislav (M, 63); his wife Lalić, Jelena (62); Lalić, Ljubomir (M, 66); Lalić, Milijana (F, 60), Serbs, from Štupelj, Klina Municipality – disappeared on 17 June 1999. The son of Milica Marušić recounted that the family heard someone calling to his father to come out of the house at about 10.30 p.m. on 17 June. Recognizing the voice of an Albanian neighbor, Ćazim (Qazim), who was a member of the KLA, the family did not allow the elder Marušić to leave the house. The KLA men then broke down gate, came into the yard and killed the family’s dog. The Marušićs fled through the back door into the fields behind the house, followed by Serbs from neighboring houses. They saw the KLA men loot and set fire to their homes. Fleeing through the woods, the Štupelj Serbs reached the Orthodox church in the nearby village of Budisavci (Budisallc). It was only then that they realized that the Marušićs, Šutićs and Lalićs were not with them.

1. The field “Witnesses Interviewed” reads “none”. At the conclusion of the report, the investigator stated that “There is no information leading to a possible MP’s location. The case should remain inactive within the WCU.”

*On the disappearance of Mr Vojislav Lalić (case no. 174/09)*

1. The file in relation to Mr Vojislav Lalić contains an undated ICRC Victim Identification Form, apparently completed by the ICRC between 1 July and 20 September 2001 (see § 28 above). Besides recording Mr Vojislav Lalić’s personal details and ante-mortem description, the form provides the address of his brother, Mr J.L., and the address and telephone number of his daughter, Mrs Ž.K., in Serbia proper. It is also stated there that Mr Vojislav Lalić was abducted together with other four persons: Mrs Jelena Lalić, Mrs Milosava Lalić, Mrs Miljana Lalić and Mr Ljubomir Lalić. According to this form, he was last seen on 17 June 1999, in Stupeli/Stupelj village. The same information is in another Victim Identification Form, generated from a database on 27 January 2005; this form bears a cross-reference to an UNMIK Police MPU case no. 2003-000074.
2. This part of the file also contains an MPU Case Continuation Report in relation to the case no. 2003-000074, which has only one entry, dated 10 April 2003, reading: “Input in DB and DVI.”
3. The file also contains copies of the same printouts from the MPU database, mentioned above (§§ 33 and 35).
4. An “MPU Report”, generated from the MPU database on 16 March 2005, in relation to the abduction of Mr Vojislav Lalić, case no. 2003-000074, has the same information as in the similar document mentioned in relation to Mrs Jelena Lalić (see § 36).
5. This part of the file further contains an MPU AMIR, started on 11 March 2005 and completed on 21 March 2005, on the MPU case no. 2003-000074, in relation to the abduction of Mr Vojislav Lalić. The content of this report is exactly the same as in the one related to Mrs Jelena Lalić (see §§ 37 - 41 above).
6. Attached to the AMIR is a typed, unsigned and undated summary of a statement of Mrs Ž.K. In addition to the information mentioned above (see § 38), it states that the houses of the Lalić and Marušić families in the village were about 200-300 meters away from each other and that these families are related to each other.

*On the disappearance of Mrs Milosava Lalić (case no. 174/09)*

1. The file in relation to Mrs Milosava Lalić contains an undated ICRC Victim Identification Form, apparently completed by the ICRC between 1 July and 20 September 2001 (see § 28 above). As well as Mr Vojislav Lalić’s personal details and ante-mortem description, the form provides the address of her brother, Mr R.A., in Kosovo, and the address and telephone number of her granddaughter, Mrs Ž.K., in Serbia proper. It is also stated there that Mrs Milosava Lalić was abducted together with other four persons: Mrs Vojislav Lalić, Mrs Jelena Lalić, Mrs Miljana Lalić and Mr Ljubomir Lalić. According to this form, she was last seen on 17 June 1999, in Stupeli/Stupelj village. The same information is in another Victim Identification Form, generated from a database on 27 January 2005; this form cross-references an UNMIK Police MPU case no. 2003-000081.
2. The next document in this part of the file is an MPU Case Continuation Report in relation to the case no. 2003-000081, which has only one entry, dated 10 April 2003, reading: “Input in DB and DVI.”
3. The file further contains copies of the same printouts from the MPU database, mentioned above (§§ 33 and 35).
4. An “MPU Report”, generated from the MPU database on 16 March 2005, in relation to the abduction of Mrs Milosava Lalić, case no. 2003-000081, has the same information as in the similar document mentioned in relation to Mrs Jelena Lalić (see § 36).
5. This part of the file further contains an MPU AMIR, started on 11 March 2005 and completed on 21 March 2005, on the MPU case no. 2003-000081, in relation to the abduction of Mrs Milosava Lalić. The content of this report is exactly the same as in the one related to Mrs Jelena Lalić (see §§ 37 - 41 above).
6. A WCIU Case Report in reference to the case no. 2005-00148, dated 21 October 2007, states that the case was registered in the database on 31 August 2005; the case’s status is “inactive”. It mentions the complainant as the reporting party. There is no cross-reference to any other case in this report. The field “Summary” of this report reads:

Reference is made to a Serbian claim. On June 29, 1999, a group of armed and uniformed people, they were around 15 of them, all KLA members, kidnapped the victim Milosava Lalić, together with a larger group of people of Serbian ethnicity, to unknown location. No information about her whereabouts or if she is alive was available ever since. Report was made to ICRC and KFOR.

1. A WCIU Case Analysis Report, dated 19 November 2007, qualifies the event as “Terrorism, crime against humanity and failing to report a criminal act.” The report states that there was one victim of this crime, one witness, one recorded witness statement, “about 15” known suspects, who were “[a]rmed uniformed persons from KLA.” The field “Summary of the Crime” has a verbatim copy of the text from the “Summary” of the above-mentioned WCIU case report of 21 October 2007. There is no cross-reference to any other case in this report.
2. On 28 December 2007, this Case Analysis Report was reviewed by another WCIU officer, who wrote: “No information about victim and no further details available, close the case – inform DOJ.”
3. The file further contains a letter from the Kosovo ICRC Mission to the OMPF, dated 11 July 2008, with information about an alleged gravesite of Mrs Milosava Lalić. According to the ICRC’s information, in late June 1999, her mortal remains were found by the neighbours near her home in Stupeli/Stupelj village and were subsequently buried in the Orthodox cemetery called “Vakaf” in the same village, “under a big distinctive tree.” The letter continues that “[t]he existence of an alleged grave on the indicated place is confirmed.”
4. In a letter, dated 18 July 2008, the OMPF informed the Kosovo ICRC Mission that they had investigated the area of the reported grave, but had failed to identify the exact location, as the Serbian part of the “Vakaf” cemetery did not have any trees, while another Serbian cemetery nearby had many trees, but not a “big distinctive one”. At the end of this letter, the OMPF requested additional information to be provided.
5. On 9 September 2008, an OMPF officer sent a follow-up e-mail to the Kosovo ICRC Mission. No further communication in this regard is on file.
6. **THE COMPLAINTS**
7. The complainant complains about UNMIK’s alleged failure to properly investigate the abduction and disappearance of her close family members. 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).
8. The complainant also complains about the mental pain and suffering allegedly caused to her by this situation. In this regard, the Panel deems that the complainant relies on Article 3 of the ECHR.
9. **THE LAW**
10. **Alleged violation of the procedural obligation under Article 2 of the ECHR**
	1. **The scope of the Panel’s review**
11. 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 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.
12. Before turning to the examination of the merits of the complaints, the Panel needs to clarify the scope of its review.
13. 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.
14. 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 complainant complains about acts that occurred after that date, they fall outside the jurisdiction *ratione personae* of the Panel.
15. 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 § 31). 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.
16. 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**
17. The complainant in substance alleges violations concerning the lack of an adequate criminal investigation into the abduction and disappearance of her parents and grandmother. The complainant also states that she was not informed as to whether an investigation was conducted at all, and what the outcome was.
18. In his comments on the merits of the complaint under Article 2, the SRSG does not dispute that Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić all disappeared in life threatening circumstances. He notes that “[s]oon after the establishment of UNMIK in June 1999, the security situation in post-conflict Kosovo remained tense. KFOR was still in the process of reaching sufficient strength to maintain public safety and law and order and there were a number of serious criminal incidents targeting Kosovo-Serbs, including abductions and killings.”
19. The SRSG accepts UNMIK’s responsibility to conduct an investigation in the cases of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić under Article 2 of the ECHR, procedural part. In the words of the SRSG, “the essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life, as defined by UNMIK Regulation No. 1999/1 On the Authority of the Interim Administration in Kosovo of 25 July 1999 and subsequently, by UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo of 12 December 1999, as amended.”
20. The SRSG considers that such an obligation is two-fold, including “(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”.
21. 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.”

1. In the view of the SRSG, in the aftermath of the Kosovo conflict, UNMIK was faced with a very similar situation as the one in Bosnia. Many of those persons who were unaccounted for were abducted, killed and buried in unmarked graves inside or outside Kosovo, which made very difficult locating and recovering their mortal remains.
2. The SRSG further explains that, in June 2002, UNMIK created the OMPF with the mandate to determine the fate of the missing; however its work was faced with many challenges at the beginning of the operations, due to the work previously done mostly by actors independent from UNMIK. In particular, the SRSG states that the collection of evidence of war crimes began with the arrival of NATO in 1999 with independent teams from several countries operating under the loose coordination of the ICTY. A lack of standard operating procedures or centralisation led to problems with the evidence gathered in this phase. In 2000, the ICTY launched a large, centralised forensic operation, based at the Rahovec/Orahovac mortuary, with standard operating procedures for all forensic teams except the British one, which operated independently out of Prishtinë/Priština. The SRSG states that, in the effort to demonstrate that crimes were systematic and widespread, the ICTY teams conducted autopsies on as many bodies as possible, carrying out little or no identification work; moreover, unidentified bodies exhumed in 1999 were reburied in locations still unknown to the OMPF. After the ICTY closed their operation in 2000, the UNMIK Police MPU continued small-scale investigations on missing persons “*ex-officio*, without any broader prosecutorial strategy”. As a consequence, a large amount of unstructured information was collected.
3. 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 the OMPF is “testament to the vigour of its work between 2002-2008” and that the process is still ongoing, as “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.”
4. The SRSG further argues that fundamental to conducting effective investigations “is a professional, well trained and well resourced police force” and that “[s]uch a force did not exist in Kosovo in 1999 and had to be established from scratch and progressively developed.” In the policing vacuum following the end of the conflict, UNMIK had to build a new Kosovo Police Service, 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 international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and country, with limited support from the still developing Kosovo Police. He further states that these investigators were often faced with situations where individuals holding relevant knowledge on the whereabouts and fate of missing persons did not want to disclose this information. According to the SRSG, all these constraints inhibited the ability of the UNMIK Police to conduct investigations according to the standards that may be expected from States with more established institutions and which are not faced with the high number of cases of this nature associated with a post-conflict situation.
2. With regard to the part of the investigations aimed at establishing the fate of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić, the SRSG first notes certain discrepancies in various documents with regard to the date of their disappearance. Therefore, he considers that the complainant’s relatives disappeared between 17 and 29 June 1999. He also notes that the matter apparently came to the attention of UNMIK in 2003, when an MPU file was opened.
3. Referring to the UNMIK Police MPU AMIR (see §§ 37 - 41 above), the SRSG states that the MPU contacted a witness, Mrs Ž.K., but “[u]nfortunately, she was not able to provide any new information that could shed some light as to the whereabouts of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić”, that there were no witnesses available and that there was no information leading to the possible location of the missing persons.
4. Recalling the information exchange between the ICRC and the OMPF relating to a possible gravesite of Mrs Milosava Lalić (see §§ 56 - 58 above), the SRSG states that “the investigation efforts of UNMIK Police for a possible location of [the victims] continued at least until 9 September 2008. … [However,] there is no conclusive information as to [their] fate…”
5. With regard to the investigation aimed at identifying the perpetrators and bringing them to justice, the SRSG asserts that an investigation was carried out by UNMIK. In particular, it is seen from the file that UNMIK Police contacted the family members of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić, in order to get more information about the perpetrators. However, according to the SRSG, no information was provided and because of that the case was closed.
6. The SRSG concludes that “it is evident that UNMIK Police did open and pursue an investigation into whereabouts of Mr. Vojislav Lalić, Mrs. Jelena Lalić, and Mrs. Milosava Lalić.” However, as “UNMIK has noted in other missing persons cases […] without witnesses coming forward or physical evidence being discovered, police investigations inevitably stall because of a lack of evidence.”
7. In the SRSG’s opinion, in this case UNMIK Police “did conduct investigative efforts in accordance with the procedural requirements of Article 2, aiming at bringing the perpetrators to justice.” Thus, according to the SRSG, there has been no violation of Article 2 of the ECHR.
8. The SRSG also informed the Panel that he might make further comments on this matter, “[a]s there is a possibility that additional and conclusive information exists”, beyond the documents presented to the Panel. However, no further communication in this regard, other than confirmation of the full disclosure of the investigative files, has been received to date.
	1. **The Panel’s assessment**
9. 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 European Convention on Human Rights (ECHR) in that UNMIK Police did not conduct an effective investigation into the abduction and disappearance of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić.
10. *Submission of relevant files*
11. At Panel’s request, on 11 February 2013, the SRSG provided copies of documents related to this investigation, which UNMIK was able to recover. As mentioned above (see § 83), the SRSG also noted that more information, not contained in the presented documents, may exist in relation to this case. On 9 April 2014, UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 9 above).
12. 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 complaint. 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).
13. The Panel also notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigations to their handing over, is crucial to the continuation of such investigations and failure to do so could thus raise *per se* issues under Article 2.
14. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative documents. However, UNMIK has not provided any satisfactory explanation as to why the documentation may be incomplete, nor with respect to which parts.
15. 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 complaint on the basis of documents made available (in this sense, see ECtHR, *Tsechoyev v. Russia*, no. 39358/05, judgment of15 March 2011, § 146).
16. *General principles concerning the obligation to conduct an effective investigation under Article 2*
17. 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.
18. In order to address the complainant’s allegations, the Panel refers, in particular, to the well-established case-law of the European Court on Human Rights on the procedural obligation under Article 2 of the ECHR. The Court has held that “[The] obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed (see, *mutatis mutandis*, ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, § 105, *Reports of Judgments and Decisions* 1998-I; see also ECtHR, *Jasinskis v. Latvia*, no. 45744/08, judgment of 21 December 2010, § 71). The duty to conduct such an investigation arises in all cases of killing and other suspicious death, whether the perpetrators were private persons or State agents or are unknown (see ECtHR, *Kolevi v. Bulgaria*, no. 1108/02, judgment of 5 November 2009, § 191).
19. 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 § 66 above, at § 136).
20. 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).
21. Setting out the standards of an effective investigation, the Court has stated that “beside being independent, accessible to the victim’s family, carried out with reasonable promptness and expedition, affording a sufficient element of public scrutiny of the investigation and its results, the investigation must also be effective in the sense that is capable of leading to a determination of whether the death was caused unlawfully and if so, to the identification and punishment of those responsible (see ECtHR [GC]*, Varnava and Others v. Turkey*, cited in § 66 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, § 312; and *Isayeva v. Russia*, cited above, § 212).
22. 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 § 91 above, at § 201). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation’s effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigation work (see ECtHR, *Velcea and Mazărev. Romania*, no. 64301/01, judgment of 1 December 2009, § 105).
23. Even with regard to persons disappeared and later found dead, which is not the situation in the present 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 § 94 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 66 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, § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited above, § 145). While the location and the subsequent identification of the mortal remains of the victim may in themselves be significant achievements, the procedural obligation under Article 2 continues to exist (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, § 64).
24. On the requirement of public scrutiny, the Court has further stated that there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see ECtHR, *Ahmet Özkan and Others*, cited in § 93 above, at §§ 311‑314; ECtHR, *Isayeva v. Russia*, cited in § 93 above, at §§ 211-214 and the cases cited therein; ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, judgment of 7 July 2011, no. 55721/07, § 167, ECHR 2011).
25. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired, not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri v. The Former Yugoslav Republic of Macedonia*, no. 39630/09, judgment of 13 December 2012, § 191). The United Nations also recognises the importance of the right to truth. In the words of the United Nations Secretary-General, “the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons … it also implies the right to know the fate and whereabouts of the victim” (see Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5; see also UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; see also the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Framework Principles for securing the accountability of public officials for gross and systematic human rights violations committed in the context of State counter-terrorist initiatives; UN Document A/HRC/22/52, 1 March 2013).
26. *Applicability of Article 2 to the Kosovo context*
27. The Panel is conscious that the abduction and disappearance of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić took place shortly after the deployment of UNMIK in Kosovo in the immediate aftermath of the armed conflict, when crime, violence and insecurity were rife.
28. 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.
29. The Panel considers that this raises two main questions: first, whether the standards of Article 2 continue to apply in situation of conflict or generalised violence and, second, whether such standards shall be considered fully applicable to UNMIK.
30. 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).
31. Concerning the applicability of Article 2 to situations of conflict or generalised violence, the Panel recalls that the European Court of 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 § 94 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 § 97 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 § 93 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 93 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
32. The Court has acknowledged that “where the death [and disappearances] to be investigated under Article 2 occurs 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, § 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 § 91 above, at §§ 86 ‑ 92; ECtHR, *Ergi v Turkey,* cited above, §§ 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 above, §§ 215 ‑ 224; ECtHR, *Musayev and Others v. Russia*, nos. 57941/00 and others, judgment of 26 July 2007, §§ 158 - 165).
33. 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 § 90 above, at § 1; HRC, *Abubakar Amirov and Aïzan Amirova v. Russi*a*n 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).
34. 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, as described by the SRSG, made it crucial that UNMIK establish from the outset an environment conducive to the performance of meaningful investigations. This would involve putting in place a system that would include such elements as the allocation of overall responsibility for the supervision and monitoring of progress in investigations, provision for the regular review of the status of investigations, and a process for the proper handover of cases between different officers or units of UNMIK Police. Such a system should also take account of the protection needs of victims and witnesses (see, *mutatis mutandis*, ECtHR, *R.R. and Others v. Hungary*, no. 19400/11, judgment of 4 December 2012, §§ 28-32), as well as to consider the special vulnerability of displaced persons in post-conflict situations (see ECtHR [GC], *Sargsyan v. Azerbaijan,* no. 40167/06, decision of 14 December 2011, § 145; and ECtHR [GC], *Chiragov and Others v. Armenia*, no. 13216/05, decision of 14 December 2011, § 146). While understanding that the deployment and the organisation of the police and justice apparatus occurred gradually, the Panel deems that this process was completed in 2003 when the police and justice system in Kosovo was described as being “well-functioning” and “sustainable” by the UN Secretary-General (see § 17 above).
35. The Panel further notes that its task is not to review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the particular circumstances of a situation subject of a complaint before it (see, ECtHR, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, § 53, Series A no. 145-B). The Panel thus agrees with the SRSG 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.
36. Lastly, 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 § 94 above, at § 70; *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
37. *Compliance with Article 2 in the present case*
38. Turning to the particulars of this case, the Panel notes the complainant’s statement that the abduction and disappearance of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić was reported to KFOR, UNMIK, including the International Prosecutors in Prishtinё/Priština and Pejë/Peć, the ICRC, the Serbian MUP, the Serbian Red Cross.
39. In this regard, the SRSG, asserts that UNMIK became aware of this case some time in 2003 (see § 77 above). Being unable to verify this fact, the Panel considers that certainly by October 2001, UNMIK was made aware about the alleged abduction and disappearance of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić by the ICRC (see § 28 above) and that by April 2003 UNMIK Police had registered relevant cases in this regard (see §§ 33, 43 and 49 above).
40. The purpose of this investigation was to discover the truth about the events leading to the abduction and disappearance of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić, to establish their fate and to identify the perpetrators. To fulfil these purposes, those conducting the investigation were required to seek, collect and preserve evidentiary material; to identify possible witnesses and to obtain their statements; to identify the perpetrator(s) and bring them before a competent court established by law.
41. The Panel recalls that in order to be effective, the investigative actions must be conducted promptly and expeditiously, with the authorities taking all reasonable steps and following obvious lines of enquiry to secure the evidence concerning the incident, including, *inter alia* eye-witness testimony, forensic evidence etc. The investigation must also ensure a sufficient element of public scrutiny and be reasonably accessible to the victim’s family. The investigation’s conclusion must be based on thorough, objective and impartial analysis of all relevant elements. In addition, the investigation should be periodically reviewed, in order to ensure that all available information is considered. As the obligation to investigate is not an obligation of results but of means, in assessing the investigation’s effectiveness, the circumstances of the particular case and the practical realities of the investigative work must be taken into consideration (see §§ 94 - 95 above).
42. The Panel notes that there were obvious shortcomings in the conduct of the investigation from its inception. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 66 above), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the case at that date (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 94 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 § 20 above).
43. The Panel notes in this regard that according to the 2000 Annual Report of UNMIK Police, the complete executive policing powers in the Pejё/Peć region, including criminal investigations, were under the full control of UNMIK Police by June 2000. Therefore, it was UNMIK’s responsibility to ensure, *first*, that the investigation is conducted expeditiously and efficiently; *second*, that all relevant investigative material is properly handed over to the authority taking over responsibility for the investigation (EULEX); and *third*, that the investigative files could be traced and retrieved, should a need for that arise at any later stage.
44. Having noted the SRSG’s assertion that the file submitted to the Panel may be incomplete, and the lack of further explanation in relation to this (see § 83 above), the Panel assumes that UNMIK cannot guarantee whether the file presented to the Panel is complete or not. In case it is not complete, it would indicate that one of the following situations may have occurred: no proper investigation was carried out; the file was not accurately and fully handed over to EULEX; or UNMIK failed to retrieve the complete file from the current custodian. The Panel has already noted above that it has no reason to doubt UNMIK’s good faith in seeking to provide the complete investigative file for its review (see § 88 above). However, the Panel considers that whichever of these potential explanations is applicable, it would indicate a failure directly attributable to UNMIK, either when it was exercising its executive functions, or in its current capacity.
45. With regard to the first part of the procedural obligation, that is establishing the fate of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić, the Panel notes that their whereabouts remain unknown. The Panel notes that ante-mortem information concerning the complainant’s missing relatives had been gathered by the ICRC between 1 June and 20 September 2001 (see § 28 above). However, according to the relevant entry in the ICMP database, sufficient DNA reference samples to make identification possible have been collected only with regard to Mrs Jelena Lalić and Mr Vojislav Lalić, while the DNA samples in relation to Mrs Milosava Lalić are still insufficient (see § 29 above).
46. In this respect, the Panel notes that the collection of DNA samples is of itself an essential action that secures the necessary material for any future comparative examination and possible identification of any mortal remains that are located. However, in this case, the samples were fully collected only for two victims. In relation to Mrs Milosava Lalić, such samples have still not been collected, fourteen years after she was allegedly abducted and there is no explanation offered by the authorities as to why this has not been done. The Panel further notes that nine years of this period (1999-2008) fall under the period when UNMIK exercised full authority over Kosovo and that the period of inaction starting from 23 April 2005 until the end of UNMIK’s executive mandate in the field of justice, falls within the Panel’s temporal jurisdiction (see § 66 above).
47. It is widely accepted that the only way to have a certain identification of mortal remains after such a long period of time would be through comparison of samples of DNA material. Thus, the collection of sufficient samples from the next-of-kin of a missing person becomes imperative and without this the chances of establishing the identity of mortal remains, if found, are very slim. Therefore, the continuing failure to collect such samples seriously undermines the possibility of identifying Mrs Milosava Lalić’s mortal remains, in case they have been or may in the future be found. The Panel considers therefore, that this part of the procedural obligation under Article 2 of the ECHR, in relation to the case of Mrs Milosava Lalić, is not satisfied (see e.g. HRAP, *Buljević*, no. 146/09, opinion of 13 December 2013, § 95).
48. In this context, the Panel further notes that if the OMPF action in 2008 in response to the ICRC’s information, aimed at identifying Mrs Milosava Lalić’s possible gravesite, had led to locating mortal remains, their proper identification probably would not have been possible without DNA samples.
49. The Panel will now turn to the investigation carried out by UNMIK Police with the aim of identification of perpetrators and bringing them to justice, that is the second element of the procedural obligation under Article 2 of the ECHR.
50. As regards the requirements of promptness and expedition, the Panel is mindful that in any investigation, and particularly in an investigation of a disappearance in life-threatening circumstances, the initial stage is of the utmost importance, and it serves two main purposes: to identify the direction of the investigation and ensure preservation and collection of evidence for future possible court proceedings (see the Panel’s position on a similar matter expressed in the case *X*., nos. 326/09 and others, opinion of 6 June 2013, § 81).
51. In this respect the Panel recalls the complainant’s statement that the abduction of her relatives was reported to KFOR and UNMIK. As established above, UNMIK became aware of the disappearance of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić by October 2001 and the investigation into the matter was opened by UNMIK Police by April 2003 (see § 110 above). However, no immediate action by UNMIK Police whatsoever, except for probably making an initial assessment of the information, registering of the case and entering the information into the database, is reflected in the investigative file.
52. The Panel notes that it is not clear whether KFOR had passed to UNMIK Police the necessary information to initiate a meaningful investigation in September 1999, when the latter had assumed the complete executive policing powers in Pejё/Peć region, in 2000 (see § 114 above). However, as was shown above, by April 2003, UNMIK Police certainly possessed all the necessary information (see § 110). In any event, the only two substantive investigative actions by UNMIK Police in this case, although not properly recorded, were the telephone conversations with the two relatives of the missing persons, Mrs Ž.K. and Mrs M.Š., which probably took place in March 2005 (see §§ 38 - 39 above),almost two years after the case had been opened. Thus, in the Panel’s view, there is an obvious failure of the requirement to conduct an investigation promptly and expeditiously.
53. Assessing this investigation against the need to take reasonable investigative steps and to follow the obvious lines of enquiry to obtain evidence, the Panel takes into account that a properly maintained investigative file should have included records of all investigative actions and particularly of the interviews with the complainant, suspects and all potential witnesses to the disappearance. In all cases, such interviews should take place as soon as possible and should be recorded and retained in the case file[[7]](#footnote-7).
54. The Panel notes in this context that the investigative file reflects only two telephone contacts with potential witnesses (see § 123 above) and the results of an internet research (see § 40 above), in March 2005. In this respect, the Panel considers that those contacts with potential witnesses, more than five years after the abduction, were obviously belated and not even properly recorded, while the evidential value of information openly available in the internet is questionable. The Panel also notes with concern that UNMIK Police had the witnesses contact details from October 2001, while the complainant’s contact details were available from August 2005 (see § 53 above).
55. This is especially important in view of the fact that, despite the SRSG’s assertion that no further leads were provided by the witnesses (see § 78 above), they named a potential suspect, an eye-witness, and at least two more potential witnesses to the abduction (see §§ 38 - 39 above). However, no attempt to locate and interview those persons are registered in the file. With regard to the eye-witness, actually the survivor of the attack on the village, Mr P.M., the police simply accepted the proposition made by Mrs M.Š., that he is not fit to give testimony, and did not pursue this lead (see § 39 above).
56. The police likewise never tried to identify the place where the abduction of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić took place, to better understand the circumstances of the possible crime under investigation, which is a basic step in cases with so little evidence. The Panel also takes into account that in order to be adequate, the investigation into such grave crimes should also have included at least a properly recorded interview with the named suspect and witnesses, identifying and interviewing individuals residing at or located in the area of the alleged crime, especially those who were present there at the time of the abduction and who thus may have witnessed something (“canvassing” the area), as well as persons who knew the victims, as they might have knowledge of possible motives.
57. The Panel notes in this context that if not worked upon, developed, corroborated by other evidence and put in a proper form, any information by itself, however good it might be in relation to a crime under investigation, does not solve it. In order to be accepted in court, information must become evidence, which can only happen through investigative actions undertaken in compliance with the applicable rules of criminal procedure. In this case, the Police appear to have never undertaken any action in this direction (see e.g. HRAP, *Todorovski*, case no. 81/09, opinion of 31 October 2013, § 116).
58. The Panel likewise recalls the SRSG’s argument that “without witnesses coming forward or physical evidence being discovered, police investigations inevitably stall because of lack of evidence” (see § 81 above). In this regard, the Panel must note that almost any investigation at its initial stage lacks a significant amount of information. Finding the necessary information to fill those gaps is the main goal of any investigative activity. Therefore, a lack of information should not be used as an argument to defend inaction by the investigative authorities. The file, as made available to the Panel, does not show any proper activity in this regard and no follow up actions at all. Thus, it appears that, instead of actively searching for information and leads, or working on the available leads, UNMIK Police simply waited for further information to appear by itself. In this situation it may have led to the loss of potential evidence (see e.g. HRAP, *P.S.*, cited in § 118 above, at § 107).
59. It is not clear why there has not been any action on this case, from its registration until March 2005. In the Panel’s view, it is because of the lack of information at the initial stage that this case may have been given a low priority, that is it was left without any action by the MPU. The Panel recalls in this regard its position in relation to the categorisation of cases into “active” and “inactive”, that any “categorisation of an investigation should take place only after the minimum possible investigative actions have been undertaken and obtainable information has been collected and analysed” (see e.g. HRAP, *B.A*., no. 52/09, opinion of 14 February 2013, § 82). In this case, such prioritisation should not have been made at the early stages, before the reporting party and the possible witnesses had been interviewed about the circumstances of the disappearance, especially as it had occurred in obviously life-threatening circumstances, and all obtainable evidence had been collected.
60. 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 § 96 above), bringing the assessment of the whole investigation within the period of the Panel’s jurisdiction.
61. In addition, the Panel considers that, as the mortal remains of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić were not located and those responsible for the crime had not been identified, UNMIK Police was obliged to use the means at their 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 their relatives regarding the progress of this investigation.
62. The Panel understands from the file, that this investigation was twice reviewed by UNMIK Police: in March 2005 (see §§ 37 - 41 above) and in October-November 2007 (see §§ 53 - 55 above). As mentioned above, during the first review the MPU contacted two witnesses (see § 125). Although the names of a suspect and of three witnesses were provided, the investigation was recommended to “remain inactive within the WCU”. This status was maintained until 2007, when only the case in relation to Mrs Milosava Lalić was reviewed by the WCIU. However, during this review the obvious gaps in the investigation were overlooked, including the lack of recorded statements from the reporting parties, witnesses or suspect, the lack of crime scene examination or of DNA samples, and the case was recommended for closure.
63. In addition, although the WCIU in 2007 were obviously informed of other victims who had disappeared during the same circumstances, the investigators failed to link this case to any other existing investigation. This puts into question the level of coordination of actions and sharing of information among UNMIK Police units working in the same field, the MPU and WCIU. As the Panel stated in relation to a similar situation, the obligation to investigate crimes “is not fulfilled simply by the establishment of an adequate framework, but only when it becomes a properly coordinated system that is able to carry out an adequate and effective investigation in accordance with Article 2 of the ECHR” (see HRAP, *Stojković*, no 87/09, § 164).
64. It is not clear to the Panel if this investigation was reviewed by a prosecutor at any stage. The only indication suggesting such review is in the same review report of 2007, reading “…close the case – inform DOJ.” In any event, no formal instructions from any prosecutor are on file. Likewise, it is not clear whether the two criminal reports addressed to international prosecutors (see §§ 23, 27 above) ever in fact reached them.
65. Therefore, in the Panel’s opinion, there was no adequate and thorough review of this case. Both case reviews appear to have been undertaken as mere formalities; as police failed to identify obvious gaps in the investigative process, relied upon unconfirmed or nonexistent facts, carried over the mistakes made by previous investigator(s) and even made new ones.
66. The apparent lack of any **immediate** reaction from UNMIK Police, and of any adequate action at later stages, may have suggested to perpetrators that the authorities were either not able, or not willing to investigate such criminal acts. Such an attitude of the authorities towards the gravest crimes in any society, and especially in post-conflict circumstances, inevitably creates a culture of impunity among the criminals and can only lead to a worsening of the situation. The problems which UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently.
67. The Panel is also aware that the duty to investigate is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, such an investigation must be undertaken in a serious manner and not be a mere formality. The Panel considers that, having regard to all the circumstances of the particular case, not all reasonable steps were taken by UNMIK towards locating the missing persons, identifying the perpetrators and to bring 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 § 112 above), as required by Article 2.
68. As concerns the requirement of public scrutiny, the Panel recalls that Article 2 also requires the victim’s next-of-kin to be involved in the investigation to the extent necessary to safeguard his or her legitimate interests.
69. As shown above, the investigative file records only one contact with two relatives of the missing persons, Mrs Ž.K. and Mrs M.Š. (see § 123 above), one of whom was a sister of the complainant. The other contact with the families of the missing persons, including the complainant, was made by the ICRC staff, between July and September 2001 (see §§ 28, 32, 42 and 48 above). Even though it may be assumed that certain information about the status of the investigation was passed to the families of the missing persons on those occasions, the Panel considers that the investigation was not open to any public scrutiny, as required by Article 2 of the ECHR.
70. 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 Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.
71. **Alleged violation of Article 3 of the ECHR**
72. The Panel considers that the complainant invokes, in substance, a violation of the right to be free from inhumane or degrading treatment, guaranteed by Article 3 of the ECHR.
73. **The scope of the Panel’s review**
74. 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 §§ 61 - 66 above).
75. 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 § 104 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 94 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).
76. 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).
77. **The Parties’ submissions**
78. The complainant alleges that the lack of information and certainty surrounding the abduction and disappearance of her parents, Mrs Jelena Lalić, Mr Vojislav Lalić, and her grandmother, Mrs Milosava Lalić, particularly because of UNMIK’s failure to properly investigate their disappearance, caused mental suffering to her and her family.
79. Commenting on this part of the complaint, the SRSG rejects the allegations. He stresses, first, that the complainant did not witness the disappearance, neither was she in close proximity to the location at the time it occurred, and, second, that there were neither assertions made by her of any bad faith on the part of UNMIK personnel involved with the matter, nor evidence of any disregard for the seriousness of the matter or the emotions of the complainant and her family emanating from the disappearance of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić.
80. The SRSG concludes that the understandable and apparent mental anguish and suffering of the complainant cannot be attributed to UNMIK, but it is “rather a result of inherent suffering caused by the disappearance of a close family member.” Thus, according to the SRSG, the complainant’s suffering lacks 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.
81. Therefore, the SRSG requests the Panel to reject this part of the complaint, as there has not been a violation of Article 3 of the ECHR.
82. **The Panel’s assessment**
83. *General principles concerning the obligation under Article 3*
84. Like Article 2, Article 3 of the ECHR enshrines one of the mostfundamental 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.
85. 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 § 90 above, at § 150)
86. 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.
87. 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).
88. 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 § 144 above, at § 94).
89. 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).
90. 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, *Amirov v. Russian Federation*, cited in § 105 above, at § 11.7).
91. 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).
92. 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 § 154 above, at § 109; ECtHR, *Gelayevy v. Russia*, cited in § 145 above, at § 147; ECtHR, *Bazorkina v. Russia*, cited in § 104 above, at § 140).
93. 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.
94. 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).
95. *Applicability of Article 3 to the Kosovo context*
96. 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 §§ 99 - 108 above).
97. 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 § 18 above).
98. 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.
99. 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.
100. *Compliance with Article 3 in the present case*
101. 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.
102. The Panel notes the proximity of the family ties between the complainant and Mrs Jelena Lalić, Mr Vojislav Lalić, her parents, and Mrs Milosava Lalić, her grandmother.
103. 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. The Panel further notes that the complainant was never contacted by UNMIK authorities at all, including for the purpose of gathering further information on the disappearance, providing an update in the investigation, and involving her in the process of identification of her parents, and her grandmother. 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.
104. As was shown above with regard to Article 2, no proper investigation was conducted in this case. The complainant was never formally interviewed by either UNMIK Police or prosecutors; the ante-mortem data present in the investigative file was collected by the ICRC. Instead of following the available leads, even at later stages, or looking for new ones, the police were simply waiting for information to appear by itself.
105. Drawing inferences from UNMIK’s failure to provide a plausible explanation for the absence of any adequate contact with the complainant, the Panel considers that this situation, which continued into the period of the Panel’s temporal jurisdiction, caused grave uncertainty to the complainant and her family about the fate of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić, as well as about the status of the investigation.
106. 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 her inability to find out what happened to her close family members. In this respect, it is obvious that, in any situation, the pain of a daughter who has to live in uncertainty about the fate of her parents and a grandmother must be unbearable.
107. 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.
108. **CONCLUDING COMMENTS AND RECOMMENDATIONS**
109. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
110. The Panel notes that enforced disappearances constitute serious violations of human rights which shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate and prosecute those responsible for the abduction and disappearance of Mrs Jelena Lalić, Mr Vojislav Lalić and Mrs Milosava Lalić, 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.
111. 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.
112. 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 § 18), UNMIK’s responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008, with EULEX assuming full operational control in the area of rule of law. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.
113. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.

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

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

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

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

**FOR THESE REASONS,**

The Panel, unanimously,

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

 Andrey Antonov Marek Nowicki

 Executive Officer Presiding Member

*Annex*

**ABBREVIATIONS AND ACRONYMS**

**AMIR** - Ante-Mortem Investigation Report by the UNMIK Police MPU

**CCIU** - Central Criminal Investigation Unit

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

**DOJ** - Department of Justice

**DC** - District Court

**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

**IPP** - International Public Prosecutor

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

**KLA** - Kosovo Liberation Army

**MoU -** Memorandum of Understanding

**MPU** - Missing Persons Unit

**MUP -** Serbian Ministry of Internal Affairs (Serbian: *Министарство унутрашних послова*)

**NATO** - North Atlantic Treaty Organization

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

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

**RIU** - Regional Investigation Unit

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

**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 ICRC database is available at: <http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx> (accessed on 10 April 2014). [↑](#footnote-ref-3)
4. The OMPF database is not open to public. The Panel accessed it with regard to this case on 9 April 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 9 April 2014). [↑](#footnote-ref-5)
6. See: Abductions and Disappearances of non-Albanians in Kosovo, 24 March 1999 – 31 December 2000, p. 64 // available on the Humanitarian Law Center’s official webpage at: <http://www.hlc-rdc.org/wp-content/uploads/2013/02/KO-Abductions-and-disappearances-of-non-Albanians-in-Kosovo-1.pdf> (accessed on 9 April 2014) [↑](#footnote-ref-6)
7. See: United Nations Manual On The Effective Prevention And Investigation Of Extra-Legal, Arbitrary And Summary Executions, adopted on 24 May 1989 by the Economic and Social Council, Resolution 1989/65. [↑](#footnote-ref-7)