

**OPINION**

**Date of adoption: 6 August 2014**

**Case Nos. 237/09 & 238/09**

**Ljiljana ŠLJIVIĆ-ĆERANIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 6 August 2014,

with the following members present:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Anna Maria Cesano, Acting Executive Officer

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

Having deliberated, makes the following findings and recommendations:

1. **PROCEEDINGS BEFORE THE PANEL**
2. The complaints were introduced on 30 April 2009 and registered on the same date.
3. On 23 December 2009 and again on 6 October 2010, the Panel requested additional information from the complainant.
4. On 9 September 2010, the Panel decided to join cases nos 237/09 and 238/09 pursuant to Rule 20 of the Panel’s Rules of Procedure.
5. On 27 October 2010, the complainant submitted a response to the Panel’s requests mentioned above (see § 2 above).
6. On 30 November 2010, the Panel communicated the cases to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1) for UNMIK’s comments on the admissibility of the complaints. On 23 February 2011, the SRSG provided UNMIK’s response.
7. On 24 February 2011, the SRSG informed the Panel that he had requested information on the case from the KFOR.
8. On 18 March 2011, the Panel declared the complaints admissible. On 30 November 2010, the Panel communicated the decision on admissibility to the SRSG, inviting UNMIK’s observations on the merits of the cases, together with the investigative files.
9. On 9 May 2011 and on 8 August 2011, the SRSG provided UNMIK’s response.
10. On 22 April 2014, the Panel requested UNMIK to confirm whether the disclosure of the investigative files concerning the cases could be considered final. On the same day, 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 killing of Mr Milan Šljivić and Mrs Olga Šljivić**
26. The complainant is the daughter of Mr Milan Šljivić (case no. 237/09) and Mrs Olga Šljivić (case no. 238/09). She states that on 30 September 1999 her parents, both pensioners, were killed in their house in Prizren by “Albanian terrorists”.
27. The complainant states that the murder of her parents was immediately reported to UNMIK and KFOR. On 1 October 1999, during a press conference held in Prishtinë/Priština, the KFOR spokesperson announced that in the morning hours of the previous day a Serbian couple had been found dead in their home and that an investigation was on-going. The complainant states that the bodies of her parents were subsequently buried in an unmarked plot at Prizren’s cemetery without the knowledge of the family. She also states that their house was not sealed following the death and was looted and destroyed.
28. The complainant states that, starting from July 2001 on several occasions she requested information from UNMIK on the fate and whereabouts of her parents; however all her efforts to contact UNMIK authorities were “unsuccessful”. She submits to the Panel copies of two letters, dated 31 July 2001 and 11 May 2006 respectively, addressed to the UNMIK Office in Belgrade (UNOB) in which she requests UNMIK’s assistance in locating the mortal remains of her parents and retrieving possession of their house. In these letters she also asks for information about the details of their killing, whether any criminal proceedings were initiated against those responsible, information as to who was living at that time in her parents’ house, and how she could retrieve possession of the house. With respect to the letter dated 11 May 2006, the complainant also provided the Panel with a copy of a postal receipt dated 12 May 2006. She states that she never received any response to these letters. She also states that, as far as she is aware, no court proceedings were ever initiated concerning the killing of her parents, nor have their perpetrators ever been found.
29. The names of Mr Milan Šljivić and Mrs Olga Šljivić appear in the databases compiled by the UNMIK OMPF[[3]](#footnote-3) and by the ICMP; the entries concerning Mr Milan Šljivić and Mrs Olga Šljivić in the ICMP online database, read in relevant fields “Sufficient Reference Samples Collected” and “ICMP has provided information on this missing person(s) … to authorized institution”.

**C. The investigation**

1. In the present case, the Panel received from UNMIK investigative documents previously held by the UNMIK OMPF, the UNMIK Police WCIU and the EULEX WCIU. The Panel notes that UNMIK has confirmed that all available documents have been provided.
2. Concerning disclosure of information contained in the files, the Panel recalls that UNMIK has made available investigative files for the Panel’s review under a pledge of confidentiality. In this regard, the Panel must clarify that, although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of relevant investigative steps taken by investigative authorities is provided in the paragraphs to follow.
3. The earliest investigative document in the file is a Report of the UNMIK Police MPU dated 26 November 2004 concerning the killing of Mr Milan Šljivić, which states that the MPU had opened a file on the matter on 18 February 2003, under case file no. 2003-000018. In the field “Modus” the report states: “MP murdered together with his wife Olga in their house in Prizren. MP was murdered with 7 shots and wife with 16 knife stabs, by the statement of the priest [I.]. Death certificates was issued priest [A.N.]”. The report indicates that this occurred on 30 September 1999. The file also contains an MPU Case Continuation report for the case of Mr Milan Šljivić, no. 2003-000018 indicating that on 18 February 2003 information on the disappearance of Mr Milan Šljivić and his ante-mortem information were inputted in the MPU database. A Victim Identification Form for Mr Milan Šljivić is included in the file, which also indicates the address and telephone number of the complainant in Serbia proper.
4. Included in the file is also an “Anti Mortem Investigation Report” of the UNMIK Police WCIU concerning the case of Mr Milan Šljivić, which was initiated on 14 March 2005 and completed on 16 March 2005. In the field “Background of the case” the report reads “Milan Šljivić murdered together with his wife Olga in their house in Prizren. MP was murdered with 7 shots and wife with 16 knife stabs, by the statement of the priest [I]. Death.” The report further states that the investigators had tried to call the missing person’s daughter on the telephone, but “nobody ever responds”. As no information was found on the “available databases”, the WCIU investigators concluded that there was “no info leading to a possible MP’s location” and that the case should remain “open inactive” within the WCIU.
5. Also included in the file is an undated document of the UNMIK OMPF labelled “Form for recording details of clothing exhibition”. This document states that some clothing found on an unidentified body suspected to be that of Mr Milan Šljivić was submitted to the complainant for possible identification. The document states that the complainant was very “unsure” that the clothing item belonged to her father; for this reason the result of the comparison of ante-mortem and post-mortem data concerning Mr Milan Šljivić was considered to be “bad”. It is also stated in this document that the complainant had given blood samples to the ICMP for the purpose of DNA testing.
6. The investigative files show that, on 24 April 2007, upon a request filed by the International Prosecutor of the District Public Prosecutor’s Office in Prizren, the District Court of Prizren issued an Order for Exhumation, Autopsy and Expert Analysis of mortal remains suspected being located in unmarked gravesites at the Tusos cemetery, near Prizren. This order was issued based on the information provided by two employees at the cemetery to the UNMIK OMPF on 22 February 2007. These two employees had stated that during and in the aftermath of the Kosovo conflict 70 unidentified corpses were brought to the cemetery chapel for subsequent burial in different localities of Kosovo. They had shown to the OMPF several locations in the Tusos cemetery where unidentified corpses were buried. The Order states that, according to the OMPF records, five exhumations had taken place in that cemetery since 2002, and only one of the indicated burial locations was as yet “unchecked”; therefore the OMPF was requested to conduct an exhumation on that location.
7. Following the issuance of the exhumation order above, from 15 May to 17 May 2007 the UNMIK Police WCIU conducted an ante-mortem investigation into the issue of the unidentified gravesites. According to an Ante-Mortem Report included in the file, on 15 May 2007, the WCIU interviewed one of the cemetery employees mentioned in § 31 above. The latter stated that during the conflict he buried with his colleague three unidentified bodies “near the Catholics cemetery” in Prizren. After the conflict they informed UNMIK Police of the burials and several bodies had therefore been exhumed. Nonetheless, he believed that there were still undiscovered bodies in that part of the cemetery. For this reason, he was requesting the authorities to investigate the gravesite.
8. According to a WCIU Post Mortem Investigation Report referencing investigation no. 0016/INV/07, from 23 to 25 May 2007, a joint team composed of representatives of the UNMIK WCIU and OMPF and experts of the ICMP conducted an exhumation at two suspected gravesites in the Tusos cemetery. The mortal remains of 10 unidentified persons, among them the bodies later identified as those of Mr Milan Šljivić and Mrs Olga Šljivić, were discovered in the first gravesite. The exhumation at the second gravesite produced no results. All mortal remains were handed over to the OMPF for autopsy and expert analysis.
9. Two OMPF autopsy reports included in the file show that, on 11 June 2007, an autopsy was carried out on the bodies later identified as those of Mr Milan Šljivić and Mrs Olga Šljivić, which established that their deaths had been caused by gunshot wounds to the head and chest. On 27 May 2008, the OMPF issued death certificates, identification certificates and confirmation of identity certificates for both Mr Milan Šljivić and Mrs Olga Šljivić, stating that their bodies had been identified, through DNA analysis as well as through the comparison of their ante-mortem and post-mortem information, from among those discovered in May 2007 at the Tusos cemetery. On 30 May 2008, the OMPF handed over the mortal remains of Mr Milan Šljivić and Mrs Olga Šljivić to the complainant and closed their respective cases.
10. An updated WCIU Post Mortem Investigation Report concerning investigation no. 0016/INV/07 (see § 33 above) states that on 30 May 2008 the bodies of Mr Milan Šljivić and Mrs Olga Šljivić had been identified and that they had been handed over to the family. The report states that the case was “pending”.
11. The last document included in the investigative file is a Case Analysis Report of the EULEX WCIU dated 10 January 2011 which states that there are no records that the case was subsequently “dealt with” by the EULEX WCIU or the EULEX Special Prosecution Office. The report further states “in this context it has to be noted that the crime took place outside of the war crimes timeframe”.
12. However, it is not clear from the investigative file whether the criminal investigation concerning the killing of Mr Milan Šljivić and Mrs Olga Šljivić and the disappearance of their bodies was handed over to local law enforcement authorities.
13. **THE COMPLAINTS**
14. The complainant complains about UNMIK’s alleged failure to properly investigate the killing of her parents and the lengthy disappearance of their bodies. 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).
15. The complainant also complains about the mental pain and suffering allegedly caused to her and her family by this situation. In this regard, she relies on Article 3 of the ECHR.
16. **THE LAW**
17. **Alleged violation of the procedural obligation under Article 2 of the ECHR** 
    1. **The scope of the Panel’s review**
18. In determining whether it considers that there has been a violation of Article 2 (procedural limb) of the ECHR, the Panel is mindful of the existing case-law, notably that of the European Court of Human Rights. However, the Panel is also aware that the complaints before it differ in some significant ways from those brought before that Court. First, the respondent is not a State but an interim international territorial administration mandated to exercise temporary responsibilities in Kosovo. No suspicion attaches to UNMIK with respect to the substantive obligations under Article 2 of the ECHR. Second, as in a limited number of cases before the European Court, those suspected of being responsible for the alleged killings and/or abductions are in all cases before the Panel non-state actors, mostly but not exclusively connected to the conflict. These are factors for the Panel to take into consideration as it assesses for the first time the procedural positive obligations of an intergovernmental organisation with respect to acts committed by third parties in a territory over which it has temporary legislative, executive and judicial control.
19. Before turning to the examination of the merits of the complaints, the Panel needs to clarify the scope of its review.
20. 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.
21. The Panel also notes that Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel provides that the Panel “shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of (their) human rights”. It follows that only acts or omissions attributable to UNMIK fall within the jurisdiction *ratione personae* of the Panel. In this respect, it should be noted, as stated above, that as of 9 December 2008, UNMIK no longer exercises executive authority over the Kosovo judiciary and law enforcement machinery. Therefore UNMIK bears no responsibility for any violation of human rights allegedly committed by those bodies. Insofar as the complainants complain about acts that occurred after that date, they fall outside the jurisdiction *ratione personae* of the Panel.
22. 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 § 42). 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.
23. 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**
24. The complainant in substance alleges violations concerning the lack of an adequate criminal investigation into the killing of Mr Milan Šljivić and Mrs Olga Šljivić.
25. The complainant also states that, notwithstanding her repeated requests to the UNOB, she was not informed as to whether an investigation was conducted and what the outcome was. She states that in July 2001 and in May 2006 she sent letters to the UNOB requesting UNMIK’s assistance in locating the mortal remains of her parent, investigating their killing and retrieving possession of their house. However, she did not receive any response from UNMIK (see § 24 above).
26. Concerning the complainant’s submission that she addressed UNMIK on several occasions, to no avail, the SRSG states at the outset that the UNOB conducted a careful search of its archives but was unable to find any correspondence from the complainant. In particular, they could not find any record of the letters that the complainant reportedly sent to UNOB on 31 July 2001 and 11 May 2006. The SRSG states that all material concerning individual missing persons cases submitted to the UNOB would be transmitted from the latter to the UNMIK Police MPU, which had a specific mandate over those cases. Further, the SRSG states that, even if there were MPU officers assigned to the UNOB, they would act predominantly “in a liaison function” and that “all important materials and records, including correspondence as well as other sensitive materials related to missing persons cases were kept and managed” by the UNMIK Police in its Prishtinë/Priština Headquarters. The SRSG further argues that no records of the letters sent by the complainant could be found either in the UNMIK Police and OMPF files that had been made available to him. He argues that, for this reason, “it is difficult to determine the extent of contact between the Complainant and UNOB and/or UNMIK MPU in relation to this matter”. The SRSG states that despite his request for information to KFOR “with respect to the deaths and disappearance” of Mr Milan Šljivić and Mrs Olga Šljivić, no response was received.
27. On the merits of the complaints the SRSG does not contest that UNMIK had a responsibility to investigate the killing of Mr Milan Šljivić and Mrs Olga Šljivić under Article 2 of the ECHR. The SRSG states that in this case, as neither the family nor UNMIK were informed of the place of burial of Mr Milan Šljivić and Mrs Olga Šljivić, UNMIK was also required to determine the location of their bodies.
28. Nonetheless, according to the SRSG, when examining the complaint under Article 2, due consideration shall be given to “the difficulties inherent in post-conflict situations, and the concomitant problems that limit the ability of investigating authorities when conducting investigations of this nature”. The SRSG further observes that obligations under Article 2, must be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court of Human Rights in the case *Palić v. Bosnia and Herzegovina*, stating at paragraph 70:

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

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

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

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

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

1. The SRSG states that UNMIK Police WCIU included both international UNMIK Police and local Kosovo Police Service officers and focused on the criminal investigation of cases of missing persons. Their responsibility included locating illicit graves, identifying the perpetrators and collecting evidence relating to the crime. UNMIK international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and country, with limited support from the still developing Kosovo Police.
2. He further states that, after the conflict, all local institutions in Kosovo, including law-enforcement institutions and those responsible for locating the missing, were non-functional and had to be established from scratch. In addition, investigators were often faced with situations where individuals holding relevant knowledge on the whereabouts and fate of missing persons did not want to disclose this information. According to the SRSG, all these constraints inhibited the ability of the UNMIK Police to conduct investigations according to the standards that may be expected from States with more established institutions and which are not faced with the high number of cases of this nature associated with a post-conflict situation.
3. The SRSG therefore argues that the constraints described above inhibited the ability of UNMIK to conduct all investigations in a manner that “may be demonstrated, or at least expected, in other States with more established institutions and without the surge in cases of this nature associated with a post-conflict situation”. The SRSG states that the work of the OMPF contributed greatly to determining the whereabouts and fate of many of the missing persons from the Kosovo conflict; however, it was not possible to locate all those missing within the timeframe and the resources available at that time.
4. With respect to the investigation into the case of Mr Milan Šljivić and Mrs Olga Šljivić, the SRSG states that, based on the investigative documents available, UNMIK opened missing persons files on Mr Milan Šljivić and Mrs Olga Šljivić in 2003. In May 2007, after information was provided to UNMIK on the existence of unidentified gravesites around the Tusos cemetery, UNMIK OMPF and UNMIK Police exhumed several bodies from the cemetery, including those one year later identified as those of Mr Milan Šljivić and Mrs Olga Šljivić. On 30 May 2008, their bodies were handed over to the family.
5. The SRSG argues that UNMIK fully discharged its procedural obligation under Article 2 of the ECHR to locate and identify the bodies of Mr Milan Šljivić and Mrs Olga Šljivić. Indeed, UNMIK acted promptly upon receiving information regarding the burial site, conducted an exhumation of the site and successfully identified through DNA analysis, as well as through comparison of ante-mortem and post-mortem information, the bodies of Mr Milan Šljivić and Mrs Olga Šljivić.
6. With respect to the investigation aimed at identifying the perpetrators and bringing them to justice, the SRSG states that “it has been very difficult, based on the information available, to determine the extent and effectiveness of the investigation”. The SRSG states that, however, the WCIU Anti Mortem Investigation Report included in the investigative file indicates that the UNMIK Police did open a criminal investigation on the matter; also, the MPU opened missing persons files on Mr Milan Šljivić and Mrs Olga Šljivić in February 2003.
7. The SRSG also states that documents in the investigative file make reference to a statement about the killing of Mr Milan Šljivić and Mrs Olga Šljivić as provided by a priest, whose name, “I.Death”, was probably misspelled in the investigative documents. According to the statement of the aforementioned priest, Mr Milan Šljivić and Mrs Olga Šljivić were killed with “7 shots” and “16 knife stabs”; however, this information was not corroborated by the post-mortem examination conducted by the UNMIK OMPF in 2007 and 2008.
8. The SRSG further states that, according to the investigative file, UNMIK Police took some investigative actions in 2004 and 2005. UNMIK investigators attempted to contact Mr Milan Šljivić and Mrs Olga Šljivić’s daughter by telephone, although no response was ever received. They also took note that there was no information about the missing persons in the available databases and, as there were no suspects and no witnesses, the case was left pending “until new information came to light that may have been able to further advance the investigation”.
9. While reserving UNMIK’s right to make further comments on the matter, as there is the possibility that more information exists, the SRSG states that, “based on the paucity of information that was made available it is not able to be asserted with the requisite amount of certainty whether the investigation aimed at bringing the perpetrators of the killings to justice could be considered effective in the sense of Article 2, ECHR”.
   1. **The Panel’s assessment**

*Submission of relevant files*

1. The SRSG observes that all available files regarding the investigation have been presented to the Panel. However, the SRSG notes that there is a possibility that more documents related to this case may exist (see § 63 above). On 22 April 2014, UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 9 above).
2. 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).
3. The Panel also notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigations until their completion, including the proper record of all handovers, which may have taken place, is crucial to the continuation of such investigations and failure to do so could thus raise *per se* issues under Article 2. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative files. However, the Panel notes that UNMIK has not provided any explanation as to why the documentation may be incomplete, nor with respect to which parts.
4. 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 of 15 March 2011, § 146).
5. *General principles concerning the obligation to conduct an effective investigation under Article 2*
6. First, the Panel considers that the SRSG comment that, “due to the paucity of information that was made available” it is not possible to ascertain whether an investigation was conducted in accordance with Article 2 of the ECHR, raises issues of the burden of proof. In this regard, the Panel refers to the approach of the European Court on Human Rights as well as of the United Nations Human Rights Committee (HRC) on the matter. The general rule is that it is for the party who asserts a proposition of fact to prove it, but that this is not a rigid rule.
7. Following this general rule, at the admissibility stage an applicant must present facts, which are supportive of the allegations of the State’s responsibility, that is, to establish a *prima facie* case against the authorities (see, *mutatis mutandis*, ECtHR, *Artico v. Italy*, no. 6694/74, judgment of 13 May 1980, §§ 29-30, Series A no. 37; ECtHR, *Toğcu v. Turkey*, no. 27601/95, judgment of 31 May 2005, § 95). However, the European Court further holds that “... where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities … The burden of proof may then be regarded as resting on the authorities to provide a satisfactory and convincing explanation” (see ECtHR [GC], *Varnava and Others v Turkey*,cited above in § 45, at §§ 183-184).
8. The European Court also states that “... it is for the Government either to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred, failing which an issue under Article 2 and/or Article 3 of the Convention will arise” (see ECtHR, *Akkum and Others v. Turkey*, no. 21894/93, judgment of 24 June 2005, § 211, ECHR 2005-II (extracts)). The Court adds that “… [i]f they [the authorities] then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn” (see ECtHR, *Varnava and Others v Turkey*,cited above in § 45, at § 184; see also, HRC, *Benaniza v Algeria,* Views of 26 July 2010, § 9.4, CCPR/C/99/D/1588/2007; HRC, *Bashasha v. Libyan Arab Jamahiriya*, Views of 20 October 2010, § 7.2, CCPR/C/100/D/1776/2008).
9. The Panel understands that the international jurisprudence has developed in a context where the Government in question may be involved in the substantive allegations, which is not the case with UNMIK. The Panel nevertheless considers that since the documentation was under the exclusive control of UNMIK authorities, at least until the handover to EULEX, the principle that “strong inferences” may be drawn from lack of documentation is applicable.
10. Secondly, 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.
11. 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).
12. 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 § 45 above, at § 136).
13. 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).
14. 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 § 45 above, at § 191; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited above, at § 312; and *Isayeva v. Russia*, cited above, at § 212).
15. 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 § 74 above, at § 201). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation’s effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigation work (see ECtHR, *Velcea and Mazăre v. Romania*, no. 64301/01, judgment of 1 December 2009, § 105).
16. Specifically with regard to persons disappeared and later found dead, 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 § 77 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 53 above, at § 148, *Aslakhanova and Others v. Russia*, nos. 2944/06 and others, judgment of 18 December 2012, § 122). However, the Court also stresses that this procedural obligation “does not come to an end even on discovery of the body .... This only casts light on one aspect of the fate of the missing person and the obligation to account for the disappearance and death, as well as to identify and prosecute any perpetrator of unlawful acts in that connection, will generally remain” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 45 above, at § 145). While the location and the subsequent identification of the mortal remains of the victim may in themselves be significant achievements, the procedural obligation under Article 2 continues to exist (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, at § 64).
17. 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 § 76 above, at §§ 311‑314; ECtHR, *Isayeva v. Russia*, cited in § 76 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).
18. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired thereby satisfying the right to truth not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri v. The Former Yugoslav Republic of Macedonia*, no. 39630/09, judgment of 13 December 2012, § 191; ECtHR, *Al Nashiri v. Poland*, no. 28761/11, judgment of 24 July 2014, §§ 495-496). United Nations bodies also recognise the importance of the right to truth. In the words of the United Nations Secretary-General, “the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons … it also implies the right to know the fate and whereabouts of the victim” (see Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5; see also HRC  *Schedko and Bondarenko v. Belarus*, Communication no. 886/1999, views of 3 April 2003, § 10.2, CCPR/C/77/D/886/1999; HRC, *Mariam, Philippe, Auguste and Thomas Sankara v. Burkina Faso*, Communication no. 1159/2003, views of 8 March 2006, § 10.2, CCPR/C/86/D/1159/2003; UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; Preamble and Article 24 (2) of the Convention for the Protection of All People from Enforced Disappearance, cited in § 106 above; see also Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Ben Emmerson, *Framework Principles for securing the accountability of public officials for gross and systematic human rights violations committed in the context of State counter-terrorist initiatives*, UN Document A/HRC/22/52, 1 March 2013, § 23-26).
19. *Applicability of Article 2 to the Kosovo context*
20. The Panel is conscious of the fact that the killing of Mr Milan Šljivić and Mrs Olga Šljivić 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.
21. 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.
22. The Panel considers that the SRSG’s arguments raise two main questions: first, whether the standards of Article 2 continue to apply in situation of conflict or generalised violence and, secondly, whether such standards shall be considered fully applicable to UNMIK.
23. 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).
24. Concerning the applicability of Article 2 to situations of conflict or generalised violence, the Panel recalls that the European Court on Human Rights has established the applicability of Article 2 to post-conflict situations, including in countries of the former Yugoslavia (see, among other examples, ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 77 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 § 80 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 § 76 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 76 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
25. The Court has acknowledged that “where the death [and disappearances] to be investigated under Article 2 occur in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed” (see, ECtHR [GC], *Al-Skeini and Others v. the United Kingdom,* cited above, at § 164; ECtHR, *Bazorkina v. Russia*, no. 69481/01, judgment of 27 July 2006, § 121). Nonetheless, the Court has held that “the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (see, amongst many other examples, ECtHR, *Kaya v. Turkey*, cited in § 74 above, at §§ 86‑92; ECtHR, *Ergi v Turkey,* cited above, at §§ 82-85; ECtHR [GC], *Tanrıkulu v. Turkey*, no. 23763/94, judgment of 8 July 1999, §§ 101-110, ECHR 1999-IV; ECtHR, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, judgment of 24 February 2005, §§ 156-166; ECtHR, *Isayeva v. Russia*, cited in § 76 above, at §§ 215‑224; ECtHR, *Musayev and Others v. Russia*, nos. 57941/00 and others, judgment of 26 July 2007, §§ 158-165).
26. Similarly, the HRC has held that the right to life, including its procedural guarantees, shall be considered as the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (see, HRC, General Comment No. 6, cited in § 69 above, at § 1; HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, communication no. 1447/2006, views of 22 April 2009, § 11.2, CCPR/C/95/D/1447/2006). Further, the HRC has stated the applicability of Article 2 (3), 6 and 7 of the ICCPR with specific reference to UNMIK’s obligation to conduct proper investigations on disappearances and abductions in Kosovo (see HRC, Concluding Observations of the Human Rights Committee: Kosovo (Serbia), 14 August 2006, §§ 12-13, CCPR/C/UNK/CO/1).
27. The Panel appreciates the difficulties encountered by UNMIK during the first phase of its deployment. The Panel notes that the appropriate importance attached to the issue of missing persons in Kosovo meant that UNMIK had to take into account both the humanitarian and criminal dimensions of the situation. In particular, the Panel considers that the importance attached to the criminal investigations and the difficulties in Kosovo that limited the abilities of investigating authorities to conduct such investigations, made it crucial that UNMIK establish from the outset an environment conducive to the performance of meaningful investigations. This would involve putting in place a system that would include such elements as the allocation of overall responsibility for the supervision and monitoring of progress in investigations, provision for the regular review of the status of investigations, and a process for the proper handover of cases between different officers or units of UNMIK Police. Such a system should also take account of the protection needs of victims and witnesses (see, *mutatis mutandis*, ECtHR, *R.R. and Others v. Hungary*, no. 19400/11, judgment of 4 December 2012, §§ 28-32), as well as to consider the special vulnerability of displaced persons in post-conflict situations (see ECtHR [GC], *Sargsyan v. Azerbaijan,* no. 40167/06, decision of 14 December 2011, § 145; and ECtHR [GC], *Chiragov and Others v. Armenia*, no. 13216/05, decision of 14 December 2011, § 146). While understanding that the deployment and the organisation of the police and justice apparatus occurred gradually, the Panel deems that this process was completed in 2003 when the police and justice system in Kosovo was described as being “well-functioning” and “sustainable” by the UN Secretary-General (see § 18 above).
28. The Panel further notes that its task is not to review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the particular circumstances of a situation subject of a complaint before it (see, ECtHR, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, § 53, Series A no. 145-B). The Panel therefore determines that the nature and degree of scrutiny to determine whether the effectiveness of the investigation satisfies the minimum threshold depends on the circumstances of the particular case. For these reasons, the Panel considers that it will establish with regard to each case if all reasonable steps were taken to conduct an effective investigation as prescribed by Article 2, having regard to the realities of the investigative work in Kosovo.
29. *Compliance with Article 2 in the present case*
30. Turning to the circumstances of the present case, the Panel notes the complainant’s statement that her parents’ death was promptly reported to KFOR and UNMIK (see § 23 above). The Panel considers that at the latest by February 2003, when the MPU opened missing persons files for Mr Milan Šljivić and Mrs Olga Šljivić (see § 28 above), UNMIK was informed about their killing and the fact that their mortal remains could not be located. The Panel notes that, since that time, the complainant’s address and her telephone number in Serbia proper were available to UNMIK (see § 28 above).
31. Examining the particulars of the case, the Panel notes that there were major failures in the conduct of the investigation since its inception, having in mind that the initial stage of the investigation is of the utmost importance. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 45), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the case at that date (ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 77 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 §§ 20-21 above).
32. The Panel notes that, after the opening by the MPU of missing persons cases on Mr Milan Šljivić and Mrs Olga Šljivić and after recording their ante-mortem information, no meaningful investigative action was taken by UNMIK, at least until the discovery of their bodies in 2007, in order to establish their whereabouts and identify the perpetrators of their death. Recalling the SRSG’s submission that UNMIK took some investigative actions in 2004-2005, the Panel notes that in November 2004, more than one year after the opening of the case, the MPU issued a report containing some details on the killing of Mr Milan Šljivić and Mrs Olga Šljivić, as they had been reportedly provided by a priest (I., only first name provided, see § 28 above). The report indicates also the name and surname of another priest, A.N., who had allegedly issued their death certificate. However, there is no indication in the file that any follow-up action was made to this report, including efforts to locate and interview the two priests mentioned above, who may have provided further information about the crime, such as about the circumstances of the killing, potential witnesses and perpetrators, the place of burial of Mr Milan Šljivić and Mrs Olga Šljivić and how they came to know about the crime.
33. In March 2005, another unit of the UNMIK Police, the WCIU, conducted an ante-mortem investigation on the matter. The Panel notes, however, that the work of the investigators was limited to copying the information already contained in the MPU report mentioned above. The Panel notes with concern that, in this process, the name of a potential witness to the crime, the priest I., already mentioned in the MPU report was copied wrongly to become “I.Death”, while the name of a second potential witness (A.N.) was omitted. Further, according to the file, no basic steps were taken by the WCIU investigators at this stage, such as visiting the house where Mr Milan Šljivić and Mrs Olga Šljivić had been allegedly killed to try and better understand the circumstances of their deaths, or identifying and interviewing individuals residing at or located in the area of the alleged crime (“canvassing” the area), and persons who knew the victims, as they might have knowledge of possible motives. Nor they apparently made efforts to investigate the looting and destruction of the house.
34. The Panel notes that a document in the investigative file shows that the complainant was on an unspecified date contacted by the UNMIK OMPF with the purpose of ascertaining whether the clothing found on an unidentified body discovered by the OMPF could belong to Mr Milan Šljivić. This document also states that DNA samples had been gathered from the complainant, although it is not specified when. Despite this, the Panel notes that no genuine effort – only a telephone call, reportedly with “no answer” - was made by the investigators to locate the complainant and take a formal statement from her.
35. Coming to the period within its jurisdiction, starting from 23 April 2005, the Panel notes that after that critical date the failure to conduct the necessary investigative actions, including those at the initial stage, persisted. Accordingly, inadequacies existing up until that date were not addressed. Thus, in accordance with the continuing obligation to investigate (see § 45 above), the assessment of the whole investigation is brought within the period of the Panel’s jurisdiction.
36. In May 2007, following upon the information received from two cemetery employees about the existence of unidentified gravesites at the Tusos cemetery, UNMIK succeeded in locating the bodies of Mr Milan Šljivić and Mrs Olga Šljivić, which were identified and handed over to the complainant about one year later, in May 2008. Although this must be considered in itself an achievement, the Panel recalls that the procedural obligation under Article 2 did not come to an end with the identification of the bodies, especially because an autopsy had confirmed they had been killed. As those responsible for the killing had not been located, UNMIK was obligated to use the means at its disposal to regularly review the progress of the investigation to ensure that nothing had been overlooked and any new evidence had been considered, as wellas to inform the relatives ofMr Milan Šljivić and Mrs Olga Šljivić regarding the progress of the investigation.
37. The investigative file shows that a review of the case by the UNMIK WCIU took place on 30 May 2008 and that the only step taken by the UNMIK WCIU in this occasion was to record the information that the mortal remains of Mr Milan Šljivić and Mrs Olga Šljivić had been identified and handed over to their family. The Panel notes that the handover of the bodies was a moment of renewed contact with the family. Nonetheless, no further investigative action was carried out to identify the perpetrators.
38. The apparent lack of any immediate reaction from UNMIK Police, and of any adequate action at later stages, may have suggested to the perpetrators that the authorities were either not able, or not willing to investigate such criminal acts. Such an attitude of the authorities towards the gravest crimes in any society, and especially in post-conflict circumstances, inevitably creates a culture of impunity among the criminals and can only lead to a worsening of the situation. The problems that UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently.
39. The SRSG in essence argues that due to the unavailability of investigative leads it was not possible for the UNMIK Police to undertake meaningful investigation (see § 63 above). In this respect, the Panel notes 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 such activity. Thus, it appears that, instead of actively searching for information and 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*., no. 48/09, opinion of 31 October 2013, § 107).
40. The Panel therefore considers that, having regard to all the circumstances of the particular case, not all reasonable steps to identify the perpetrators and to bring them to justice were taken by UNMIK. 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 § 77 above), as required by Article 2.
41. 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.
42. In this regard, the Panel finds not fully appropriate the SRSG’s statement that no record could be found in the UNOB archives, or in the archives of the UNMIK Police or OMPF to show that the complainant on several occasions addressed UNMIK asking for information about her parents, as she states. The Panel notes that the complainant submitted the copies of two letters, including a postal receipt for one of them (see § 24 above), addressed to the UNOB, which by the SRSG’s own admission, included a liaison presence from the UNMIK MPU.
43. As the Panel has already noted, there is no evidence that a statement was ever taken from the complainant or that any feedback was given to her concerning the status of the investigation. The Panel therefore considers that the investigation was not accessible to the complainant’s family as required by Article 2.
44. In light of the deficiencies and shortcomings as described above, the Panel concludes that UNMIK failed to carry out an adequate and effective investigation into the abduction and killing of the complainant’s parents. There has been accordingly a violation of Article 2 of the ECHR.
45. **Alleged violation of Article 3 of the ECHR**
46. 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. She alleges that the lack of information and certainty surrounding the death of her parents, particularly because of UNMIK’s failure to properly investigate their case, caused mental suffering to her and her family.
47. In its decision of 18 March 2011, the Panel declared the complaints admissible. Nevertheless, the Panel has to reassess the admissibility of this part of the complaints, in light of subsequent developments in the Panel’s case law concerning the admissibility of complaints under Article 3 of the ECHR.
48. The Panel has already held that, where the disappeared person is later found dead, the applicability of Article 3 of the ECHR is in general limited to the distinct period during which the member of the family sustained uncertainty, anguish and distress appertaining to the specific phenomenon of disappearances (see, *e.g.*, ECtHR, *Luluyev and Others v. Russia*, no. 69480/01, judgment of 9 November 2006, §§ 114-115, *ECHR*, 2006-XIII; see also ECtHR, *Gongadze v. Ukraine*, no. 34056/02, judgment of 8 November 2005, § 185, *ECHR*, 2005-XI).
49. In this respect, the question arises whether the complaint has been filed in time. Section 3.1 of UNMIK Regulation No. 2006/12 states that the Panel “may only deal with a matter ... within a period of six months from the date on which the final decision was taken”. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the complainant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the complainant (ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 45 above, at § 157). Where the complaint relates to a continuing situation, which has come to an end, the six-month time limit starts to run from the date on which the situation has come to an end.
50. The Panel notes that the mortal remains of Mr Milan Šjlivić and Mrs Olga Šjlivić were returned to the complainant’s family on 30 May 2008. It is at that moment that the period during which an issue could arise under Article 3 of the ECHR, came to an end. For the purpose of Section 3.1 of UNMIK Regulation No. 2006/12, the six-month time limit therefore started to run from that date.
51. The complaint was filed with the Panel on 30 April 2009, that is after the expiration of the above-referred six-month period.
52. The Panel has no doubts as to the profound suffering caused to the complainant by the killing of her parents. Nevertheless, the Panel must conclude that this part of the complaint falls outside the time-limit set by Section 3.1 of UNMIK Regulation No. 2006/12 and, therefore, must be declared inadmissible.
53. **CONCLUDING COMMENTS AND RECOMMENDATIONS**
54. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
55. 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 killing of Mr Milan Šjlivić and Mrs Olga Šjlivić, 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.
56. 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.
57. 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 § 20), UNMIK’s responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the 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.
58. 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 means available to it *vis-à-vis* competent authorities in Kosovo, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the killing of Mr Milan Šjlivić and Mrs Olga Šjlivić will be established and that perpetrators will be brought to justice. The complainant and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary;
    - Publicly acknowledges, within a reasonable time, responsibility with respect to UNMIK’s failure to adequately investigate the killing of Mr Milan Šjlivić and Mrs Olga Šjlivić, 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.

**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 THE COMPLAINT UNDER ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IS INADMISSIBLE;**
3. **RECOMMENDS THAT UNMIK:**
4. **URGES COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE KILLING OF MR MILAN ŠJLIVIĆ AND MRS OLGA ŠJLIVIĆ 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 KILLING OF MR MILAN ŠJLIVIĆ AND MRS OLGA ŠJLIVIĆ, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANT;**
6. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION OF THE COMPLAINANT FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2;**
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.**

Anna Maria CESANO Marek NOWICKI

Executive Officer Presiding Member

*Annex*

**ABBREVIATIONS AND ACRONYMS**

**CCIU** - Central Criminal Investigation Unit

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

**DOJ** - Department of Justice

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

**ECHR** - European Convention on Human Rights

**ECtHR**- European Court of Human Rights

**EU** – European Union

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

**FRY** - Federal Republic of Yugoslavia

**HRAP** - Human Rights Advisory Panel

**HRC** – United Nation Human Rights Committee

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

**ICMP** - International Commission of Missing Persons

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

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

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

**KLA** - Kosovo Liberation Army

**MoU -** Memorandum of Understanding

**MPU** - Missing Persons Unit

**NATO** - North Atlantic Treaty Organization

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

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

**RIU** - Regional Investigation Unit

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

**SPRK** - EULEX Special Prosecution Office

**UN** - United Nations

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

**UNOB** – United Nations Office in Belgrade

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

**VRIC** - Victim Recovery and Identification Commission

**WCU** - 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 OMPF database is not open to public. The Panel accessed it with regard to this case on 4 August 2014. [↑](#footnote-ref-3)