

**OPINION**

**Date of adoption: 17 October 2014**

**Case No. 252/09**

**Verica PATRNOGIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 17 October 2014,

with the following members taking part:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Andrey Antonov, Executive Officer

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

Having deliberated, 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 complaint was introduced on 10 April 2009 and registered on 30 April 2009.
3. On 23 December 2009, the Panel requested additional information from the complainant.

However, no response was received.

1. On 13 October 2010, the Panel reiterated its request for additional information to the complainant. The Panel received the complainant’s response on 25 October 2010.
2. On 19 April 2011, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1), for UNMIK’s comments on admissibility. The SRSG submitted UNMIK’s response on 31 May 2011.
3. On 16 December 2011, the Panel declared the complaint partially admissible.
4. On 19 December 2011, the Panel forwarded its decision to the SRSG requesting UNMIK’s comments on the merits of the complaint, as well as copies of the investigative files relevant to the case.
5. On 2 March 2012, the SRSG provided UNMIK’s comments on the merits of the complaint, together with the relevant documentation.
6. On 29 September 2014, the Panel requested UNMIK to confirm if the disclosure of files concerning the case could be considered final. On 6 October 2014, UNMIK provided its response.
7. **THE FACTS**
8. **General background [[2]](#footnote-2)**
9. 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).
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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”.
18. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. On 5 November 2001, UNMIK signed the UNMIK-FRY Common Document, which among other things reiterated the commitment of solving the fate of missing persons from all communities and recognised that the exhumation and identification programme is only part of the activities related to missing persons. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a Memorandum of Understanding 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.
19. 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.
20. On the same date, UNMIK and EULEX signed an agreement 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.

**B. Circumstances surrounding the abduction and killing of Mr Mlađan Mavrić**

1. The complainant is the wife of Mr Mlađan Mavrić. She states that her husband was wounded during the NATO bombing. After the arrival of KFOR in Kosovo they stayed in the village of Hoçë e Madhe/Velika Hoča, municipality of Rahovec/Orahovac, until 12 October 1999, when Mr Mlađan Mavrić was kidnapped by unknown persons.
2. The complainant states that on the day of the abduction her husband was returning with his vehicle from the Serbian part of Rahovec/Orahovac town to the village of Hoçë e Madhe/Velika Hoča. She states that Mr Mlađan Mavrić had left in the morning to buy food supplies in Rahovec/Orahovac, where he was last seen at about 11:00. He went missing with his car.
3. The complainant states that, on the day of the disappearance, she reported the kidnapping of her husband to the German KFOR and to the UNMIK Police. She provided them with the information she had at that moment and also with a picture of her husband. She was not given any document to prove that she had reported the matter.
4. The complainant states that she did not receive any information on her husband’s fate for four years following his disappearance. In November 2003, she was informed that the mortal remains of her husband had been located on 22 November 2002 in the village of Brestovc/Brestovac and that the process of his identification had lasted for one year. Mr Mlađan Mavrić was buried on 30 November 2003 in Hoçë e Madhe/Velika Hoča.
5. The complainant states that she does not know the name of those who kidnapped and killed her husband and that he was killed only because of his ethnicity. She states that she was pregnant when her husband disappeared and that her child was never able to meet her father.
6. The name of Mr Mlađan Mavrić appears in the database compiled by the UNMIK OMPF[[3]](#footnote-3). The entry in relation to Mr Mlađan Mavrić in the online database maintained by the ICMP[[4]](#footnote-4) reads in relevant fields: “Sufficient Reference Samples Collected” and “ICMP has provided information on this missing person on 11-06-2003 to authorized institution. To obtain additional information, contact EULEX Kosovo Headquarters.”

**C. The investigation**

1. *Disclosure of relevant files*
2. In the present case, the Panel received from UNMIK only the investigative documents previously held by the UNMIK OMPF.
3. 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.

1. *The OMPF file concerning Mr Mlađan Mavrić*
2. The earliest document in the OMPF file is an ICRC Victim Identification Form for Mr Mlađan Mavrić dated 16 August 2001. Besides containing ante-mortem information concerning Mr Mlađan Mavrić, the Form provides the full address and telephone number in Kosovo of Mr Mlađan Mavrić’s brother.
3. The file also contains an MPU Case Continuation Report concerning Mr Mlađan Mavrić affixed with MPU case file no. 2001-001222. The Report has three entries, dated respectively 27 August 2001, 8 September 2001, and 10 September 2001. The first and the second entry read “D.B. input – ok” and “DVI-input ok” respectively, and suggest that the ante-mortem data on Mr Mlađan Mavrić transmitted by the ICRC was inputted in the MPU database on the above mentioned dates. The third entry reads: “photo from German KFOR”.
4. A printout of the UNMIK OMPF database, generated on 12 November 2003, states that a post-mortem investigation took place on 22 November 2002, after human remains of an unknown person, later identified as Mr Mlađan Mavrić, were located “on surface in a forest” near the village of Brestovc/Brestovac.
5. According to an OMPF Autopsy Report included in the file, on 2 December 2002 the OMPF conducted an autopsy on the mortal remains discovered in Brestovc/Brestovac, establishing that the death had been caused by “gunshot wounds to the head”.
6. On 4 November 2003, the ICMP issued a DNA Report confirming that the mortal remains located in Brestovc/Brestovac were those of Mr Mlađan Mavrić.
7. The file further contains OMPF documents recording two visits to the family, which were conducted on 17 November 2003 and on 30 November 2003 by the OMPF to inform Mr Mlađan Mavrić’s family about the identification of his mortal remains and the forthcoming handover procedure.
8. On 30 November 2003, the mortal remains of Mr Mlađan Mavrić, along with the OMPF Death Certificate, Identification Certificate and Confirmation of Identity Certificate, were handed over to his family. The remaining documents in the OMPF file relate to the arrangements made by the UNMIK MPU and the UNMIK OMPF, upon request of the Serbian authorities, to provide an escort for the family members of Mr Mlađan Mavrić willing to attend his funeral on 30 November 2003 in the Orthodox cemetery of Hoçë e Madhe/Velika Hoča.
9. The last document in the file is a document of the UNMIK Police MPU concerning Mr Mlađan Mavrić, MPU case file no. 2001-001222, dated 2 January 2004. A handwritten note on the document states “4/01/04 No matches found in the KPIS [Kosovo Police Information System] Database”. The document also states “Closed Case”.
10. **THE COMPLAINT**
11. The complainant complains about UNMIK’s alleged failure to properly investigate the abduction and killing of Mr Mlađan Mavrić. 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).
12. **THE LAW**
13. **Alleged violation of the procedural obligation underArticle 2 of the ECHR**
	1. **The scope of the Panel’s review**
14. Before turning to the examination of the merits of the complaint, the Panel needs to clarify the scope of its review.
15. In determining whether it considers that there has been a violation of Article 2 (procedural limb) 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.
16. 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.
17. 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.
18. 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 § 40). 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.
19. 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**
20. The complainant in substance alleges a violation concerning the lack of an adequate criminal investigation into the abduction and killing of Mr Mlađan Mavrić.
21. At the outset, the SRSG states that UNMIK obtained from EULEX only copies of the documents previously held by the UNMIK OMPF. The SRSG also states that UNMIK received a communication from EULEX that they were not able to find any WCIU files with respect to Mr Mlađan Mavrić.
22. In his comments on the merits of the complaint, dated 2 March 2012, the SRSG first summarises the activities undertaken by the UNMIK Police in the present case, as documented in the available files. The SRSG states that, based on these documents, the UNMIK MPU opened a missing person file on Mr Mlađan Mavrić in 2001 and that a “Victim Identification Form was filed with [the MPU] on 16 August 2001”. The MPU Case Continuation Report included in the file shows “three entries for the period August/September 2001”. On 22 November 2002, the mortal remains of an unidentified person were found in Brestovc/Brestovac and an autopsy was conducted on 2 December 2002, establishing that the death had been caused by gunshot injuries to the head. On 12 November 2003 the mortal remains were identified as those of Mr Mlađan Mavrić based on DNA testing and comparison of ante-mortem and post-mortem information. They were handed over to the family on 29 November 2003 and buried the following day.
23. The SRSG recalls that in his earlier comments of 31 May 2011, UNMIK raised no objection to the admissibility of the case as far as the complaint under Article 2 of the ECHR is concerned. However, in his subsequent comments of 2 March 2012, the SRSG partially rectifies the abovementioned submission to argue that a distinction shall be made between the different components of the obligation to conduct an effective investigation pursuant to Article 2 of the ECHR.
24. The SRSG states that, according to the case law of the European Court on Human Rights, the procedural obligation under Article 2 is two-pronged entailing “both (i) an obligation to determine through investigation the fate and/or whereabouts of the missing persons, and (ii) an obligation to conduct an investigation capable of determining whether there was an unlawful disappearance, also leading to the identification and punishment of those responsible for the disappearance of the missing persons”.
25. Concerning the present case, the SRSG submits that, based on the facts as illustrated above, UNMIK complied with its obligation to determine the fate and whereabouts of Mr Mlađan Mavrić. As the procedure of identification and handover of Mr Mlađan Mavrić’s mortal remains was completed in November 2003, well before the start of the Panel’s jurisdiction *ratione temporis*, a continuing violation of the “first prong of the Article 2” cannot be invoked in this respect. Therefore, this part of the complaint shall be declared inadmissible as ill-founded.
26. Concerning the obligation to identify and punish those responsible for the abduction and killing of Mr Mlađan Mavrić, the SRSG states that the investigation into the present case shall be assessed within the broader context of UNMIK’s investigation in post-conflict Kosovo.
27. According to the SRSG, when examining the complaint under Article 2, due consideration shall be given to “the difficulties inherent in post-conflict situations, and the concomitant problems that limit the ability of investigating authorities when conducting investigations of such nature”. The SRSG further observes that obligations under Article 2 must be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court of Human Rights in the case *Palić v. Bosnia and Herzegovina*, stating at paragraph 70:

“The Court takes into account the complex situation in Bosnia and Herzegovina, notably in the first ten years following the war. In such a post-conflict situation, what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and context. In this connection, the Court notes that more than 100,000 people were killed, almost 30,000 people went missing and more than two million people were displaced during the war in Bosnia and Herzegovina. Inevitably choices had to be made in terms of post-war priorities and resources. Furthermore, after a long and brutal war, Bosnia and Herzegovina underwent fundamental overhaul of its internal structure and political system: Entities and Cantons were set up pursuant to the Dayton Peace Agreement, power-sharing arrangements were introduced in order to ensure effective equality between the “constituent peoples” in the post-conflict society (see *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, ECHR 2009 ...), new institutions had to be created and the existing ones had to be restructured. Some reluctance on the part of the former warring parties to work with those new institutions could be expected in the post-war period, as evidenced in the present case. While it is difficult to pinpoint when exactly this process ended, the Court considers that the domestic legal system should have become capable of dealing effectively with disappearances and other serious violations of international humanitarian law by 2005, following comprehensive vetting of the appointment of police and judiciary and the establishment of the War Crimes Sections within the Court of Bosnia and Herzegovina. All this considered and since there has been no substantial period of inactivity post-2005 on the part of the domestic authorities in the present case, the Court concludes that, in the circumstances obtaining at the material time, the domestic criminal investigation can be considered to have been conducted with reasonable promptness and expedition”.

1. In the view of the SRSG, the situation that UNMIK faced in Kosovo “from 1999 to 2008 was in most respects similar to that in Bosnia and Herzegovina from 1995”. The SRSG states that during the Kosovo conflict thousands of people went missing, at least 800,000 people were displaced and thousands were killed.
2. The SRSG argues that fundamental to conducting effective investigations is a professional, well trained and well-resourced police force and that such a force did not exist in Kosovo in the aftermath of the conflict. In the policing vacuum following the end of the conflict, UNMIK had to build a new Kosovo Police Service from scratch, a long and challenging task, which, according to the SRSG, is still in progress. The SRSG also states that UNMIK Police faced numerous challenges in exercising law enforcement functions gradually transferred to it by KFOR in 1999-2000. In this regard, he refers to the UNMIK Police Annual Report of 2000 describing the situation as follows:

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

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

1. The SRSG states that UNMIK Police WCIU included both international UNMIK Police and local Kosovo Police Service officers and focused on the criminal investigation of cases of missing persons. Their responsibility included locating illicit graves, identifying the perpetrators and collecting evidence relating to the crime. UNMIK international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and cultures, with limited support from the still developing Kosovo Police.
2. He further states that, after the conflict, all local institutions in Kosovo, including law-enforcement institutions and those responsible for locating the missing, were non-functional and had to be established from scratch. In addition, investigators were often faced with situations where individuals holding relevant knowledge on the whereabouts and fate of missing persons did not want to disclose this information. According to the SRSG, all these constraints inhibited the ability of the UNMIK Police to conduct investigations according to the standards that may be expected from States with more established institutions and 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 an institution such as UNMIK to conduct all investigations in a manner, when viewed systematically, that may be demonstrated by, or at least expected from, other States with more established institutions and not dealing with a post-conflict context”.
4. With respect to the case of Mr Mlađan Mavrić, the SRSG states that “the available UNMIK OMPF files do not provide clear evidence with respect to the second aspect of the procedural element of Article 2” and that “it is unclear from a review of the files which steps were concretely taken by UNMIK Police/CCIU at the different dates listed in the Case Continuation Report, and notably what was done by the UNMIK Police to clarify, for instance through witness statements, the circumstances of the abduction or to develop any other investigative leads … which it could concretely follow up, either on the occasion of the initial report by Mr Mavrić’s relatives of the alleged abduction, or on any other occasion”.
5. The SRSG concludes that “due to the dearth of relevant information as regards any follow-up investigative action, at this point in time UNMIK is not in a position to comment appropriately on the extent and effectiveness of UNMIK’s efforts aimed at establishing whether there was an unlawful disappearance, as well as at identifying the perpetrators”. The SRSG therefore reserves his right to make further comments on the matter, should any additional information be brought to UNMIK’s attention.
	1. **The Panel’s assessment**
6. The Panel considers that the complainant invokes a violation of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the ECHR in that UNMIK did not conduct an effective investigation into the abduction and killing of Mr Mlađan Mavrić.

**Admissibility**

1. The Panel notes the SRSG’s submission that UNMIK was able to locate and identify the mortal remains of Mr Mlađan Mavrić, thus complying with one of the procedural requirements envisaged by Article 2 of the ECHR, namely the obligation to conduct an investigation capable of determining the fate and whereabouts of the missing person. As the procedure of identification and handing over of the mortal remains was completed by November 2003, the SRSG is of the view that the complaint concerning the above-mentioned aspect of Article 2 is ill-founded and shall be therefore declared inadmissible.
2. The Panel notes that, on the other hand, the SRSG accepts that the complaint is admissible with respect to another procedural requirement of Article 2 of the ECHR, namely the obligation to conduct an investigation capable of determining “whether there was an unlawful disappearance and leading to the identification and punishment of those responsible for the abduction” of Mr Mlađan Mavrić.
3. The Panel notes that the SRSG distinguishes between these two procedural requirements of Article 2 of the ECHR. He thus considers that the activities of location and identification of the mortal remains of a missing person can be considered as an independent component of the procedural obligation envisaged by Article 2 of the ECHR.
4. On this point, the Panel refers to the case law of the European Court of Human Rights and its own case law stating that it is true 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*, no. 4704/04, judgment of 15 February 2011, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 43 above, at § 148). However, 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; ECtHR [GC], *Varnava and Others v. Turkey*, cited above, at § 145). The procedural obligation under Article 2 of the ECHR should therefore be seen as a single obligation. 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).
5. For these reasons, the Panel will not separate the obligation to conduct an investigation capable of determining the fate and whereabouts of the missing person from the obligation to conduct an investigation capable of determining whether there was an unlawful disappearance and leading to the identification and punishment of those responsible for the disappearance and death of the victim. The Panel will proceed on the basis of a single continuing obligation. Obviously, however, the fact that the mortal remains of Mr Mlađan Mavrić have been located and subsequently identified is a significant element to be taken into account in the overall assessment of the fulfilment of the procedural obligation under Article 2 of the ECHR (see HRAP, *Simović*, case no. 246/09, opinion of 6 April 2012, at §§ 18-19).
6. The objection raised by the SRSG is therefore dismissed and the complaint under Article 2 is confirmed fully admissible.

**Merits**

1. *Submission of relevant files*
2. At the Panel’s request, on 2 March 2012, the SRSG provided copies of the documents related to this investigation, which UNMIK was able to recover. The SRSG also suggested (see §§ 45 and 57-58 above) that there is a possibility that more information, not contained in the provided documents, exists, but gave no further details. However, on 6 October 2014, UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 8 above).
3. 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).
4. 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.
5. 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).

1. *General principles concerning the obligation to conduct an effective investigation under Article 2*
2. First, the Panel considers that the limited content of the investigative files, in particular in the light of the SRSG’s argument that, for this reason, it is not possible to ascertain whether there was a failure by UNMIK to conduct an effective investigation into the case of Mr Mlađan Mavrić, 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.
3. 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 § 43, at §§ 183-184).
4. 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* [GC], cited above in § 56, 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).
5. 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.
6. 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 (IACtHR) *Velásquez-Rodríguez* (see 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 Articles 2 (3) (right to an effective remedy) of the ICCPR (see United Nations Human Rights Committee (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 (UN Document 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.

1. In order to address the complainant’s allegations, the Panel refers to the well-established case-law of the European Court of 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, 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, § 86, Reports 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).
2. 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 § 43 above, at § 136; ECtHR [GC], *Mocanu and Others v. Romania*, nos 10865/09, 45886/07 and 32431/08, judgment of 17 September 2014, § 317).
3. The authorities must act of their own motion once the matter has come to their attention, and they cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedure (see ECtHR, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, judgment of 6 April 2004, § 310, see also ECtHR, *Isayeva v. Russia*, no. 57950/00, judgment of 24 February 2005, § 210; ECtHR [GC], *Mocanu and Others v. Romania*, cited above § 321).
4. Setting out the standards of an effective investigation, the Court has stated that “besides being independent, accessible to the victim’s family, carried out with reasonable promptness and expedition and affording a sufficient element of public scrutiny of the investigation or its results, the investigation must also be effective in the sense that it 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 § 43 above, at § 191; see also ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 63 above, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited above, at § 312, and ECtHR, *Isayeva v. Russia*, cited above, at § 212).
5. 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 ability to establish the circumstances of the case and the identity of those responsible (see ECtHR, *Kolevi v. Bulgaria*, cited in § 75 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 investigative work (see ECtHR, *Velcea and Mazăre* *v. Romania*, no. 64301/01, judgment of 1 December 2009, § 105). At the same time, “the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation” (see ECtHR [GC], *El Masri v. “the Former Yugoslav Republic of Macedonia”*, no. 39630/09, judgment of 13 December 2012, § 183; ECtHR [GC], *Mocanu and Others v. Romania*, cited above § 322).
6. A requirement of promptness and reasonable expedition is implicit in this context. Even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see ECtHR, *Paul and Audrey Edwards* *v. the United Kingdom*, no. 46477/99, judgment of 14 March 2002, § 72, ECHR 2002‑II; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 76 above, at § 323).
7. 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 § 63 above, § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 43 above, § 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).
8. On the requirement of public scrutiny, the Court has further stated that there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Ahmet Özkan and Others v. Turkey*, cited in § 77 above, at §§ 311‑314; *Isayeva v. Russia*, cited in § 77 above, §§ 211-214 and the cases cited therein).” ECtHR [GC], *Al-Skeini and Others v. United Kingdom*, no. 55721/07, judgment of 7 July 2011, § 167, ECHR 2011; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 76 above, at § 324).
9. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired thereby satisfying the right to truth not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri v. “the Former Yugoslav Republic of Macedonia”*, cited in § 76 above, § 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).
10. *Applicability of Article 2 to the Kosovo context*
11. The Panel is conscious that Mr Mlađan Mavrić was abducted and killed shortly after the deployment of UNMIK in Kosovo in the aftermath of the armed conflict, when crime, violence and insecurity were rife.
12. 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.
13. 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.
14. 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).
15. 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 § 63 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 § 82 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 § 77 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 77 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
16. The Court has acknowledged that “where the death 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, 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 § 67 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 above, at §§ 215‑224; ECtHR, *Musayev and Others v. Russia*, nos. 57941/00 and others, judgment of 26 July 2007, §§ 158-165).
17. 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 § 67 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).
18. 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).
19. 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.
20. 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 policingg 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 § 63 above, at § 70; *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
21. *Compliance with Article 2 in the present case*
22. The SRSG in essence states that, from the documentation contained in the investigative file, it is not possible to establish what was done by the UNMIK Police to investigate the disappearance of Mr Mlađan Mavrić. For this reason, he is not in a position to provide comments as to whether UNMIK conducted an effective investigation in this case.

1. In this regard, the Panel first addresses the issue of the burden of proof. At the admissibility stage, the Panel was satisfied that the complainants’ allegations were not groundless, thus it accepted the existence of a *prima facie* case: that Mr Mlađan Mavrić disappeared in life threatening circumstances and that UNMIK had become aware of his abduction at the latest in August 2001 (see § 30 above).
2. Accordingly, applying the principles discussed above (see §§ 70-73), the Panel considers that the burden of proof has shifted to the respondent, so that it is for UNMIK to present the Panel with evidence of an adequate investigation as a defense against the allegations put forward by the complainant and accepted by the Panel as admissible. UNMIK has not discharged its obligation in this regard, as it has neither presented a complete investigative file, nor has it in a “satisfactory and convincing” way explained its failure to do so. Accordingly, the Panel will draw inferences from this situation.
3. The Panel notes that according to the 2000 Annual Report of UNMIK Police, at least from mid-September 1999 the whole system of criminal investigation in Prizren region was under the full control of UNMIK. 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 investigation (EULEX, see § 19 above); and third, that the investigative files could be traced and retrieved, should a need arise at any later stage.
4. The Panel infers from the limited content of the investigative file that one of the following situations occurred: no investigation was carried out; UNMIK deliberately opted not to present the file to the Panel, despite its obligation to cooperate with the Panel and to provide it with the necessary assistance, including the release of documents relevant to the complaints under Section 15 of UNMIK Regulation No. 2006/12 (cited in § 67 above); the file was not properly handed over to EULEX; or UNMIK failed to retrieve the file from the current custodian.
5. The Panel has already noted above that it has no reason to doubt UNMIK’s good faith in seeking to provide the investigative file for the Panel’s review. However, the Panel considers that whichever of these potential explanations is applicable, it indicates a failure, which is directly attributable to UNMIK, either when it was exercising its executive functions, or in its current capacity.
6. The Panel notes that there were obvious shortcomings in the conduct of the investigation since its inception, having in mind that the initial stage of the investigation is of the utmost importance. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 43), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigations with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the case at that date (ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 63 above, at § 70). The period under review ends on 9 December 2008, with EULEX taking over responsibility in the area of administration of justice (see §§ 19-20 above).
7. The complainant states that she reported Mr Mlađan Mavrić’s abduction on the day of his disappearance to the UNMIK Police and that she was not provided with a copy of the report or any similar document. Having noted the lack of specific documentation in this respect, as stated above, the Panel considers that UNMIK became aware of the disappearance at the latest in August 2001. By this time, the UNMIK Police MPU had opened a file on Mr Mlađan Mavrić, following information received by the ICRC (see § 30 above).
8. The Panel notes that, apart from opening a missing person case file and registering the ante-mortem information provided by the ICRC, no step whatsoever was taken by the UNMIK Police to investigate the abduction of Mr Mlađan Mavrić. The file indicates that no statement was ever taken from the complainant or Mr Mlađan Mavrić’s brother, whose telephone number and home address in Kosovo were included in the information provided by the ICRC (see § 29 above), or from other family members, in order to clarify the circumstances surrounding the disappearance of Mr Mlađan Mavrić. The Panel notes that, based on the files available, no basic investigative steps were taken by the UNMIK Police such as visiting the location where Mr Mlađan Mavrić had been allegedly seen for the last time to try and better understand the circumstances of his abduction, or identifying and interviewing individuals residing at or located in the area of the alleged crime (“canvassing” the area) or persons who knew the victim, as they might have had knowledge of possible motives. Further, there is no indication in the file that the UNMIK Police made any effort to locate Mr Mlađan Mavrić’s car, which had gone missing with him.
9. The Panel notes that, in November 2002, in circumstances not directly linked to the investigation into Mr Mlađan Mavrić’s abduction, the UNMIK OMPF discovered the mortal remains later identified as those of Mr Mlađan Mavrić. An autopsy was conducted in December 2002, which established that the death had been caused by gunshot wounds to the head. In November 2003, the mortal remains were identified through DNA as those of Mr Mlađan Mavrić and handed over to his family on 29 November 2003.
10. The last documented investigative action in the file is a scanning of the Kosovo Police database in January 2004, which showed that there was no trace there of the criminal case concerning Mr Mlađan Mavrić.
11. 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 § 81 above), the assessment of the whole investigation is brought within the period of the Panel’s jurisdiction.
12. Although the identification of Mr Mlađan Mavrić and the handover of his mortal remains to the family 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 discovery and identification of his mortal remains, especially as they showed signs of a violent death. As those responsible for the abduction and 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 that any new evidence had been considered, as well as to inform the relatives of Mr Mlađan Mavrić regarding the progress of the investigation.
13. The Panel notes with concern that, based on the investigative file, and in apparent deviation from normal WCIU procedure, the case was never reviewed and that no other action was taken after the handover of Mr Mlađan Mavrić’s mortal remains to his family.
14. 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.
15. 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 identifying the perpetrators and bringing them to justice. In this sense the Panel considers that the investigation was not adequate and did not comply with the requirements of promptness, expedition and effectiveness (see § 78 above), as required by Article 2 of the ECHR.
16. As concerns the requirement of public scrutiny, the Panel recalls that Article 2 also requires the victims’ next-of-kin to be involved in the investigation to the extent necessary to safeguard his or her legitimate interests.
17. The complainant states that she received no feedback from UNMIK on the investigation concerning her husband. The Panel notes that the only documented contact between the complainant and UNMIK was the handover of Mr Mlađan Mavrić’s mortal remains from the OMPF to his family in 2003. As the Panel has already noted, no statement was ever taken from the complainant or other family members and no information was given to them concerning any progress of the investigation. The Panel therefore considers that the investigation was not accessible to the complainant’s family as required by Article 2.
18. In light of the deficiencies and shortcomings described above, the Panel concludes that UNMIK failed to carry out an effective investigation into the abduction and killing of Mr Mr Mlađan Mavrić. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.

**V. CONCLUDING COMMENTS AND RECOMMENDATIONS**

1. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
2. The Panel notes that enforced disappearances and arbitrary executions 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 killings, abductions or disappearances in life threatening circumstances. 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.
3. 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.
4. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted above (see § 19), UNMIK’s responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the unilateral declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.
5. 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 means available to it *vis-à-vis* the competent authorities in Kosovo, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the abduction and killing of Mr Mlađan Mavrić. 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 abduction and killing of Mr Mr Mlađan Mavrić and make 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. **RECOMMENDS THAT UNMIK:**
3. **URGES THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE ABDUCTION AND KILLING OF MR MLAƉAN MAVRIĆ IS CONTINUED IN COMPLIANCE WITH ARTICLE 2 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**
4. **PUBLICLY ACKNOWLEDGES RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE ABDUCTION AND KILLING OF MR MLAƉAN MAVRIĆ AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANT;**
5. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION to the complainant FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2 of the echr;**
6. **TAKES APPROPRIATE STEPS TOWARDS THE REALISATION OF A FULL AND COMPREHENSIVE REPARATION PROGRAMME;**
7. **TAKES APPROPRIATE STEPS AT THE UNITED NATIONS AS A GUARANTEE OF NON REPETITION;**
8. **TAKES IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND TO INFORM THE COMPLAINANT AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

Andrey Antonov Marek Nowicki

Executive Officer Presiding Member

*Annex*

**ABBREVIATIONS AND ACRONYMS**

**CCIU** - Central Criminal Investigation Unit

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

**DOJ** - Department of Justice

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

**ECHR** - European Convention on Human Rights

**ECtHR** - European Court of Human Rights

**EU** – European Union

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

**FRY** - Federal Republic of Yugoslavia

**FYROM** - Former Yugoslav Republic of Macedonia

**HRAP** - Human Rights Advisory Panel

**HRC** - United Nation Human Rights Committee

**HQ** - Headquarters

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

**ICMP** - International Commission of Missing Persons

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

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

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

**KLA** - Kosovo Liberation Army

**MPU** - Missing Persons Unit

**NATO** - North Atlantic Treaty Organization

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

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

**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 OMPF database is not open to public. The Panel accessed it with regard to this case on 15 October 2014. [↑](#footnote-ref-3)
4. The ICMP database is available at: <http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en> (accessed on 15 October 2014). [↑](#footnote-ref-4)