

**OPINION**

**Date** **of adoption: 13 March 2014**

**Case No. 89/09**

**Milorad PEJČINOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 13 March 2014,

with the following members taking part:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Anna Maria Cesano, Acting 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 8 April 2009 and registered on 30 April 2009.
3. On 9 December 2009, the Panel requested additional information from the complainant. On 30 November 2010, the Panel reiterated its request.
4. On 18 December 2009, the Panel requested from the European Union Rule of Law Mission in Kosovo (EULEX) information with regard to 43 complaints in relation to missing persons filed before the Panel, including the complaint of Mr Milorad Pejčinović.
5. On 23 March 2010, EULEX provided a response to the Panel’s request.
6. On 15 December 2010, the complainant’s wife, on behalf of the complainant, responded to the Panel’s request of 30 November 2010.
7. On 20 April 2011, the complaint was communicated to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1), for UNMIK’s comments on its admissibility.
8. On 2 August 2011, the SRSG provided UNMIK’s response.
9. On 7 November 2011, the Panel declared the complaint admissible.
10. On 8 November 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.
11. On 21 February 2012, the SRSG provided UNMIK’s comments on the merits of the complaint, together with the relevant documentation.
12. On 4 November 2013, the Panel requested UNMIK to confirm if the disclosure of files concerning the case could be considered final. On the same day, UNMIK provided its response.
13. On 27 January 2014, the Kosovo Special Prosecution Office (SPRK) provided the Panel with additional investigative material in relation to this matter.
14. On 28 January 2014, the Panel forwarded the additional investigative documents to the SRSG, with a request for possible additional comments on the merits of this complaint.
15. On 10 February 2014, the SRSG provided UNMIK’s response.
16. On 3 March 2014, the complainant provided additional information to the Panel.
17. **THE FACTS**
18. **General background[[2]](#footnote-2)**
19. The events at issue took place in the territory of Kosovo during the conflict and after the establishment in June 1999 of the United Nations Interim Administration Mission in Kosovo (UNMIK).
20. 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.
21. 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.
22. 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.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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”.
28. 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 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.
29. 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.
30. On the same date, UNMIK and EULEX signed a Memorandum of Understanding on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK international prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were supposed to be handed over to EULEX.
31. **Circumstances surrounding the abduction and disappearance of Mr Slobodan Pejčinović**
32. The complainant is the father of Mr Slobodan Pejčinović.
33. He states that at the end of March of 1999, his neighbours Mr A.B., Mr B.H. and Mr B.K. informed his son of their intention to go to Montenegro, ostensibly to find work and escape from war. Despite the complainant’s and his wife’s protests, Mr Slobodan Pejčinović decided to join Mr A.B., Mr B.H. and Mr B.K.; they left on 26 March 1999. As the complainant found out later, all four of them were stopped in the “Rugova” valley, near Pejë/Peć, by armed members of the KLA. When the KLA members realised that the complainant’s son was Serbian, they separated him from the other three. Mr A.B., Mr B.H. and Mr B.K. were later released, but Mr Slobodan Pejčinović remained in the custody of the KLA members. Since that time his whereabouts have remained unknown.
34. The complainant and his wife, Mrs Desanka Pejčinović, believe that Mr A.B., Mr B.H. and Mr B.K. deceived their son and intentionally “gave” him to the KLA. The complainant informs the Panel that his wife was later told by another neighbour that their son was killed by a KLA member Mr B.L. The same information was independently confirmed to the complainant by Mr B.K’s cousin, Mr T.K., and by the latter’s grandson. It is not clear whether this information was provided to the investigative authorities.
35. The complainant’s wife, Mrs Desanka Pejčinović, adds that on 15 July 1999 she reported her son’s abduction and disappearance to the Italian KFOR, at their camp in Gorazhdevc/Goraždevac village near Pejё/Peć. On 16 July 1999, she reported it to UNMIK Police in Pejё/Peć, where she gave a statement. On 12 August 1999, she again went to UNMIK Police in Pejё/Peć; there she gave another statement and asked for a case number for the investigation that the police had presumably opened in relation to her son’s abduction, but no case number was provided. In October 1999, she reported the abduction and disappearance of Mr Slobodan Pejčinović to the ICRC and the Serbian Red Cross.
36. Some time in 2004, Mrs Pejčinović submitted a criminal report to the UNMIK Police investigation unit in Mitrovicё/Mitrovica. In the same year, together with some other members of the “Association of the Families **of the Kidnapped and Murdered in Kosovo and Metohija”**, she met with the UNMIK Police MPU Liaison Officer in Belgrade, where she gave a statement as well.
37. The complainant’s wife adds that she also reported her son’s case to the International International Criminal Tribunal for former Yugoslavia (ICTY), and personally discussed it with the ICTY’s Chief Prosecutor, during the latter’s visit to Belgrade. In March 2006, Mrs Pejčinović submitted a criminal report against Mr A.B., Mr B.H. and Mr B.K. in relation to the abduction of her son to the Serbian War Crimes Prosecutor’s Office in Belgrade.
38. The complainant’s wife adds that in 2010 she also gave a statement to the EULEX WCIU in Pejё/Peć and in Prishtinё/Priština.
39. The complainant and his wife state that despite all the efforts none of the authorities have provided any response, although they had “promised to work very hard in order to resolve [their] case”.
40. On 5 October 1999, the ICRC opened a tracing request with regard to Mr Slobodan Pejčinović; it remains open until now[[3]](#footnote-3). According to a certificate, dated 26 June 2001, since 5 August 1999 the complainant’s son has been registered as a missing person by the Serbian Red Cross. His name is also present in the list of “persons still unaccounted for as a result of the former armed conflict in Kosovo”, which the ICRC provided to UNMIK on 10 September 2001, in the CCIU “List of Kidnapped Serbs in Kosovo & Metohija”, as well as in the database compiled by the UNMIK OMPF[[4]](#footnote-4). The entry in relation to Mr Slobodan Pejčinović in the online database maintained by the ICMP[[5]](#footnote-5) reads, in relevant fields: “Sufficient Reference Samples Collected” and “DNA match not found”.
41. **The investigation**
42. In the present case, the Panel received from UNMIK investigative documents previously held by the UNMIK Police WCIU and the UNMIK OMPF. When presenting the file to the Panel, in February 2012, UNMIK noted that more information, not contained in the presented documents, may exist in relation to this case. Nevertheless, on 4 November 2013, UNMIK confirmed to the Panel that no more documents in relation to this case have been obtained.
43. In addition to the above, on 27 January 2014, the Panel had obtained some additional investigative documents, previously held by the Criminal Division of the UNMIK DOJ, from the SPRK.
44. Concerning disclosure of information contained in the files, the Panel recalls that UNMIK has made them available under a pledge of confidentiality. In this regard, the Panel must clarify that although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of relevant investigation steps taken by investigative authorities is provided in the paragraphs to follow. The Panel will apply the same approach to the documents received from the SPRK.

*Documents in the file presented by UNMIK*

1. The file contains a copy of a letter from the Head of the Provincial KFOR Liaison Team of the Serbian Ministry of Internal Affairs (MUP), dated 20 June 2001, addressed to the KFOR and UNMIK Police. By that letter, UNMIK authorities were requested to conduct an investigation into the alleged abductors of Mr Slobodan Pejčinović and inform the MUP KFOR Liaison Team and the family about the results.
2. Attached to this letter is a written statement by the complainant and his wife, given in Belgrade, on 12 February 2001. Apart from a very brief description of the circumstances of Mr Slobodan Pejčinović’s abduction and disappearance, it adds that Mr A.B., Mr B.H. and Mr B.K. were arrested by Italian KFOR on 14 August 1999, in Pejё/Peć, and that the arrest was witnessed by three persons, M.B., M.V. and V.V. However, the family was not informed of the results of the interviews with the arrested persons. The father of Mr A.B. told the complainant and his wife that they needed to ask for their son in Rožaje, in Montenegro.A photograph of Mr Slobodan Pejčinović, a copy of the ID card of Mr A.B., and a photograph of the latter’s father, Mr R.B., are annexed to that statement.
3. By a memorandum dated 23 June 2001, UNMIK Police MPU forwarded to the CCIU the above request of the MUP and requested CCIU to undertake the investigation of Slobodan Pejčinović’s abduction and disappearance, as the MPU “[did]n’t have any trace of it”. The investigation in this regard was apparently opened by the MPU under the case no. 2001-001041.
4. In a response memorandum, dated 25 June 2001, the Chief of the CCIU informed the MPU that that they were not able to find anything in relation to this case in the CCIU database. The CCIU requested to be provided with the detailed circumstances of the “alleged abduction”, the names of eye-witnesses and their statements, as well as an explanation of what “Rozaj” means; until the requested clarification is provided, the CCIU would “hold off on [their] investigation.” No response to this request is in the file.
5. An MPU Case Continuation Report has the following relevant entry dated 29 June 2001: “Reply of memo from CCIU. They apparently no intend to carry out further steps in that case and are expecting that we will do it for them. Forwarded to [illegible] Bureau to show them difficulties to work and await cooperation from CCIU.”
6. An UNMIK Police MPU memorandum, dated 22 December 2001, states that the ICRC had presented to the Serbian Coordination Centre for Kosovo and Metohija (CCKM) a list of 75 missing persons for whom the ICRC had collected the ante-mortem data. The list attached to that memorandum contains the name of Mr Slobodan Pejčinović.
7. An undated ICRC Victim Identification Form for Mr Slobodan Pejčinović, apparently completed by the ICRC and presented to the authorities, as mentioned above, contains Mr Slobodan Pejčinović’s ante-mortem description, as well as the name, address and contact telephone numbers of the complainant.
8. Another, undated, written statement signed by Mr and Mrs Pejčinović provides a general description of the circumstances of their son’s abduction and disappearance. The same three persons are mentioned there as suspects. Mr and Mrs Pejčinović add that during the bombing they went to Rožaje, Montenegro, a number of times, to look for their son, but in vain. The statement further reads that, upon Mrs Pejčinović’s insistence, the Carabinieri of Italian KFOR had taken Mr A.B. “and his friends” for interview. As she was not informed of the results of these interviews, she requested the assistance of the “international police” in Pejё/Peć, but when she asked to be updated on the status of the investigation, the police rudely responded that this was not her business. In 2001, Mr and Mrs Pejčinović appealed to the Serbian National Council in North Mitrovica, trying to get information regarding the investigation. Apparently, a meeting between them and officers from the Carabinieri and “international investigators” took place in North Mitrovica around that time. However, despite promises made by those officers, no information in relation to their son’s fate, or the status of the investigation, was provided.
9. A memorandum from the UNMIK Police CCIU to the MPU office in Belgrade, marked “to Desanka and Milorad Pejčinović”, dated 10 April 2003, states that the CCIU was investigating the case of the complainant’s son, no. 2003-00011, since February 2003, as it was only handed over by KFOR to the CCIU in January 2003. It further reads: “For the moment we are checking all suspects and witnesses, which are mentioned in the statement provided by [the complainant]. It would be of great assistance in the continuation of this investigation, if the parents of Slobodan could provide us with any new information, which may have been received between February 2001 and this date.” The memo further provides a contact telephone number for the CCIU investigator in charge of the case.
10. A number of documents, dated between 29 April and 2 May 2003, indicate that at the CCIU’s request, Serbian police contacted Mr and Mrs Pejčinović, who agreed to give a statement to UNMIK Police in relation to the case 2003-00011, on 8 May 2003, in Kuršumlija, Serbia proper. The file contains a copy of Mrs Pejčinović’s statement, recorded by UNMIK Police on 8 May 2003, in Kuršumlija police station, in Serbia proper.
11. In this statement, Mrs Pejčinović indicated that she had no new information directly related to her son’s abduction and disappearance. However, she said that she recognised him among armed members of the paramilitary organisation “Army for Liberation of Preševo, Medveđa and Bujanovac” (Albanian: *Ushtria Çlirimtare e Preshevës, Medvegjës dhe Bujanocit*, UÇPMB), then operating in the southern part of Serbia proper, in a photograph which was published in a Kosovo newspaper in May 2001. Around the same time, she recognised another disappeared Kosovo Serb, Mr I.M., on another photograph, among the UÇPMB members. The photographs were made available to UNMIK Police. She also gave the names of two persons, who were aware of the places and circumstances in which those two photographs had been taken.
12. Mrs Pejčinović added that she had also met with the Head of the OMPF, who then allegedly approached Mr A.B. and asked him about Mr Slobodan Pejčinović’s whereabouts, but Mr A.B. did not say anything. She also stated that the day before Mr Slobodan Pejčinović had disappeared, Mr S., Mr A.B.’s uncle, advised her neighbour, Mr M.M., “to remove their kids”, because somebody would “collect them”. Mr A.B.’s father told her and the complainant to go and look for their son in Rožaje, Montenegro.
13. A translation of a newspaper article, with a handwritten date 7 November 2003 on top, contains an interview with Mrs Pejčinović, where she repeats in detail her account about abduction and disappearance of her son, naming the same three suspects. She also says that despite numerous assurances, KFOR and UNMIK authorities did not appear to do anything.
14. An entry in an undated list of murder and disappearance cases apparently reported to UNMIK by CCKM, related to Mr Slobodan Pejčinović’s abduction and disappearance, the case no. 2003-00011, contains the names of the three above-mentioned suspects. A handwritten note in the “comments” part reads: “all indications are victim left home freely”.
15. An MPU Ante-Mortem Investigation Report in relation to the complainant’s son bears a number 1126/INV/04 and is also cross-referenced to MPU file no. 2001-001041. This case was apparently opened on 1 December 2004 and completed on 5 February 2005. The field “Witness” has names of the three above-mentioned persons (see § 29), and a note “all are possible suspects”.
16. The field “Background of the Case” also reflects that, after they were stopped by the KLA, Mr Slobodan Pejčinović, together with Mr A.B., Mr B.H. and Mr B.K., were brought to the “local KLA headquarters.” According to their statements, “all of them were kept down at the KLA building cellar.” The field “Further Investigation” reads: “The mother of the MP … reported the abduction to the Italian KFOR but she never was informed on the results of their investigation”.
17. The field “Witness Interviewed” reads: “No witnesses were possible to get in touch with since according to the information at hand they reside out of the Kosovo or the information on their whereabouts is currently unavailable. … Those three Albanians who were with the MP prior to his disappearance were summoned for questioning and supposedly they were cleared of all charges since they were released.”
18. This report ends with a conclusion: “No information leading to a possible grave was obtained. The information in our possession clearly indicates the criminal nature of mr. Pejcinovic disappearance. This case should remain open with the WCU.” The final disposition of this MPU investigation is “inactive”.
19. The file contains a one-page printout from the MPU database in relation to the case no. 1126/INV/04, generated on 18 April 2005, briefly reflecting the circumstances of the abduction and disappearance of the complainant’s son, including a reference to the three alleged suspects, Mr A.B., Mr B.H. and Mr B.K. The filed “results” reads “pending”.
20. A Case Initiation Report (CIR) of the UNMIK DOJ Criminal Division, no. 2007/700/PE/AC, cross-referenced to the cases nos WCIU 2003-00011 and MPU 2001-001041, puts forward the known details of Mr Slobodan Pejčinović’s abduction and disappearance, making reference to the three potential suspects. It states that Mrs Pejčinović recognised her son and another disappeared Kosovo Serb among armed members of the UÇPMB, which he could have joined to save his life. The CIR concludes that, despite the long time that had passed, an investigation against the three persons could still be initiated, for suspected aiding and abetting in the commission of war crimes.
21. By a Request to Undertake Investigative Actions, dated 31 January 2008, the international prosecutor (IP) in charge of the case requested the WCIU to conduct a number of actions in relation to the case no 2003-00011, against Mr A.B., Mr B.H. and Mr B.K, on suspicion of aiding the commission of war crimes, contrary to Article 142 of the Yugoslav Criminal Code. The police was ordered to interview the suspects with regard to the circumstances of Mr Slobodan Pejčinović’s abduction and disappearance, obtain photographs of him, and to organise for an expert to determine whether he in fact was on that photograph in the newspaper (see § 50 above). The police report on these actions was to be presented to the IP by 15 March 2008.
22. The file further contains a series of weekly reports of the UNMIK Police WCIU “Team 1”, for the period from 7 February until 23 October 2008. Each of them has a section related to the investigative activities on the case no. 2003-00011 and the CIR no 2007/700/PE/AC.
23. The following is a summary of the relevant activities included in those weekly reports:

|  |  |
| --- | --- |
| *Date of report:* | *Action / development reflected:* |
| 7 February 2008 | Case assigned to a new investigator, deadline for report set on 15 March 2008. |
| 1 March 2008 | The investigator met with the responsible IP, obtained original photograph of the victim, as well as the pictures submitted by the Mrs Pejčinović, checked possibilities for a forensic examination of photographs but was told that there was no capacity for that; IP’s legal officer promised to help arrange it. |
| 7 March 2008 | IP mentioned to the investigator that this case was investigated by Serbian police. |
| 13 March 2008 | An UNMIK Police expert, who could make the forensic examination of the photographs, was identified. |
| 21 March 2008 | The investigator consulted with the identified UNMIK Police forensic expert and received an opinion; he also met with two witnesses and had them sign their statements, he received information that Mr. B.K. might be outside of Kosovo. |
| 7 April 2008 | Report submitted to the IP, investigator is awaiting IP’s decision on the further steps. |
| 14 July 2008 | Investigator met with the IP, who recommended to temporary suspend the investigation; a written IP’s decision on the issue would follow by the end of the month. |
| 4 August 2008 | IP left UNMIK, the case to be reassigned to another IP. |
| 14 August 2008 | The case is still not reassigned. |
| 12 September 2008 | A new IP assigned; case under review; investigator awaits further advice of the IP. |

1. A printout of the WCIU database in reference to the case no. 2003-00011, apparently generated on 8 February 2008, informs that the case was registered in the CCIU database on 22 January 2003, it has a reference to the CIR no. 2007/700/PE/AC, and has Mr A.B., Mr B.H. and Mr B.K. listed as suspects. Next to it are the results of a search for the names of the suspects in the Kosovo Police Information System, which returned one minor offence case involving one of them, Mr B.K., in September 2004.
2. On 11 February 2008, a WCIU investigator requested the UNMIK Central Processing Centre to provide them with all information in relation to Mr A.B., Mr B.H. and Mr B.K., including photographs and family relationships.
3. An undated document, which appears like a printout from a database, shows that two of the three potential suspects, Mr B.H. and Mr B.K., were registered there as KLA “soldiers/combatants”.
4. An e-mail dated 23 September 2008, from the UNMIK Police Director of Crime, to UNMIK DOJ Criminal Division, with regard to the investigation into Mr Slobodan Pejčinović’s abduction and disappearance and a number of other criminal cases, reads:

“While we understand the problems facing DOJ currently as a result of premature downsizing we also have a responsibility to close these cases as EULEX has indicated they do not want these cases handed over. In the future I will direct the people from EULEX to DOJ concerning these stale cases. We have been trying to dispose of these cases since April 08.”

1. A signed chain of custody confirms that on 3 March 2008 the WCIU investigator handed over to the IP the photographs of Mr Slobodan Pejčinović.
2. A document named “Review of UNMIK WCIU Case Files”, dated 20 November 2008, presents brief facts on the case, after it was reviewed by an EULEX Police officer, in the presence of the responsible WCIU investigator. Among other things, it states that the matter was reported to prosecutors in 2001 and shows “none” in the fields related to suspects. The field “Additional Remarks or Comments” states: “The original version of the file was lost during the handover from one UNMIK prosecutor to another and there is no information available if the original version has been found. The case consists one binder approx. 150 pages of copied documents.”

*Documents obtained from the SPRK*

1. The file contains a number of older CCIU investigative documents related to the case of Mr Slobodan Pejčinović. The first document is a copy of the original UNMIK Police Initial Incident Report on this case, dated 22 January 2003. A CCIU investigator’s report, dated 8 April 2003, informs that the investigator had requested the CCIU Investigation Support Office to check the personal data of the missing person and the alleged suspects, as well as the photographs, including those of him in UÇPMB uniform (see § 50 above); it also states that the “contact with parents of the deceased [would] be made through the Serbian Liaison Office to update them on the progress of the investigation.”
2. The file further contains the CCIU investigator’s comments, dated 8 May 2003, with regard to the statement of Mrs Desanka Pejčinović, which was recorded by the same investigator on that day.
3. In the Case Summary, dated 21 May 2003, the same CCIU investigator recommends the following action to be carried out: re-interview Mrs Pejčinović, contact the ICTY, contact the Head of the OMPF, interview the three suspects, check Italian KFOR database in Pejё/Peć, undertake the “technical” examination of the photographs, and check the data on the UÇPMB members.
4. On 19 July 2003, another CCIU investigator had completed an Investigation Case Summary. In addition to the above, he recommended the following actions:
* obtaining a complete police statement of Mr Milorad Pejčinović, dated 12 February 2001;
* checking all available databases with regard to the case and the three suspects;
* locating additional witnesses and interviewing them (the photographer, who took the pictures of the UÇPMB members, Mr M.M. and Mr S.).
1. However, a CCIU File Update, dated 22 July 2003, shows that the case was categorised as “priority 4” and closed. A handwritten note on this form, dated 27 August 2003, reads:

“Missing person went willingly with his friends to work in Montenegro. He never arrived, and was pictures in a newspaper 2 years later in a KLA uniform. Victim’s parents insist that he was deceived and forced to join KLA. No evidence of war crime here. No info exists re: witnesses or suspects. MPU case.”

1. More than four years later, on 15 October 2007, the Director of DOJ received a letter from the Investigative Judge of the Serbian War Crimes Court, asking for an update on the investigative actions undertaken by UNMIK authorities with regard to the case of the abduction of the complainant’s son, against the three suspects. A few days later, responding to the DOJ Director, the Criminal Division confirmed that there was no information on this case in their Registry.
2. According to an undated “Criminal Divisions Case ID Card” on the case of Mr Slobodan Pejčinović, the case was received and registered by the Criminal Division on 16 October 2007.
3. A WCIU Case Analysis Report, dated 22 October 2007, reads in the field “Summary of the Crime”, as follows: “It was alleged that, on 14th August 1999, the suspects were arrested by International Police stationed in Pec, but so far there are no results of any further investigations. All investigations indicate that the victim left home of his own will, there is no evidence of an Abduction, or War Crime.” The report further states that there are no physical evidence or eye witnesses to an abduction in this case. The investigator’s recommendation is that because of lack of evidence, “the case should remain closed”.
4. In a report dated 9 February 2008, the WCIU investigator in charge of the case informed the IP that on that day he telephoned Mrs Desanka Pejčinović and informed her that he was starting an investigation into her son’s abduction, and asked her to provide his photographs. She promised to provide those as soon as possible.
5. On 7 March 2008, the same WCIU investigator reported to the IP that on 23 February 2008 he had received the above-mentioned photographs. At his request, on 27 February 2008, the OMPF confirmed that they could not identify the persons on those photographs. On 28 February 2008, the same was confirmed by the Chief of Kosovo Police Forensic Laboratory. On the same day, the head of the Border Police Forensic Laboratory also stated that his laboratory did not possess the necessary expertise, but that they could enlarge the photographs, for possible further examination. The enlarged photographs were received on 7 March 2008.
6. On 9 March 2008, the investigator informed the IP that he made an arrangement to interview Mr A.B. and Mr B.H., but had been informed that Mr B.K. had left Kosovo a long time ago and now resides somewhere in the USA.
7. The file contains a statement of Mr B.H. recorded on 10 March 2008. He stated that neither he, nor the other two suspects, were KLA members during the war. With regard to what had happened to them on 26 March 1999, he clarified that after five or six hours of walk in the “Rugova” valley, as all four of them left Pejё/Peć, they were stopped by armed KLA members and taken to a small barn in the mountains, where they all were separately interrogated. Afterwards, all four were taken to another house, also in the mountains; it took six to seven hours to get there on foot. In that house they were again interrogated and beaten by KLA members. In the morning, the three of them were, again, taken into a “storehouse”, approximately one-hour walking distance away. Mr Slobodan Pejčinović, however, was kept behind by the KLA members, because they realised that he was Serbian. It was the last time Mr B.H. saw him or heard of him.
8. According to the same statement, Mr B.H., Mr A.B. and Mr B.K. were kept in that “storehouse” for about two weeks, together with other “civilians” taken and used for petty house work. When a Serbian anti-KLA offensive had started in the area, they all went to Albania, for safety reasons. Shortly thereafter, he split from his two friends and went to visit his family, and later went to the KLA training camp in Mullet village, near Tirana. After completing his 2-week training, he remained there; he stated that he had never participated in KLA operations in Kosovo. He likewise stated that he was not aware if either of his two friends was in the KLA.
9. During the interview, which took place on 11 March 2008, Mr A.B. mostly confirmed the statement of Mr B.H. However, he stated that the KLA members almost immediately “found [out] that [Slobodan] was Serb and situation got worst”. According to him, the complainant’s son was taken away by another group of KLA members from that “wooden barn” in the mountains; after that all four had been interrogated and beaten. Shortly thereafter, the remaining three of them were moved to a “storehouse”. After they got to Albania, Mr A.B. went to the KLA training centre in Mullet village, near Tirana, where he was “trained for KLA soldier several days”. After completion of the training, he joined a KLA unit, which operated in “Pashtrik” zone of Kosovo.
10. Both Mr B.H. and Mr A.B. maintained that they could not remember any of the locations where they were stopped, interrogated or detained, as they had walked in the dark and the area was later destroyed later by Serbian forces. Likewise, they stated that they did not know any of the KLA members, and they could not remember any names or nicknames of the KLA members or others, who were involved in their arrest and detention. Both also stated that they had heard that Mr B.K. had left Kosovo to go to the USA.
11. On 12 March 2008, the WCIU investigator asked an UNMIK Police officer, a forensic expert, if he could examine the photographs which had been obtained from the complainant’s wife and Mrs D.M. (see §§ 77-78 above). In an e-mail response of 14 March 2008, the UNMIK Police forensic expert informed the WCIU investigator that “it was not his area of expertise”.
12. In an e-mail dated 14 March 2008, the WCIU investigator informed the IP that, after he had recorded the statements of Mr B.H. and Mr A.B., he “found additional information that they joined KLA some days before the taking way to Montenegro through the mountains. I need [some] time to try to [obtain] some information from TMK archive [on this].”
13. On 15 March 2008, the WCIU investigator again wrote to the same UNMIK Police forensic expert and informed him that the latter was authorised to undertake the expert examination of the photographs. No order of the IP to that regard is found in the file.
14. By an e-mail of 17 March 2008, the UNMIK Police forensic expert informed the WCIU investigator that he had “made measurements and markings […] and came to the conclusion that the mentioned males on the two submitted pictures are, probably, different persons. It is impossible to make a flat conclusion due to the different foreshortening and big distance of shooting. KPS Forensic Laboratory specialists don`t provide this kind of examinations.” The attached photograph shows that the comparison was made only with regard to Mr Slobodan Pejčinović’s photograph provided by his mother, and his alleged photo in UÇPMB uniform.
15. Also, in a number of reports and e-mails dated February and March 2008, the WCIU investigator indicated that he was in parallel assigned to work in shifts in an anti-riot operation in Mitrovica North, which was taking a lot of his time.
16. In a report dated 20 March 2008, the WCIU investigator stated that he had met with relatives of Mr B.K., who informed him that the latter had left Kosovo with his family and that no one knew of his whereabouts.
17. On 10 May 2008, the WCIU investigator submitted his final report to the IP in charge of the case no. 2003-00011, where he recommended this case to be “temporary closed”, until new relevant evidence was obtained or witnesses were found. In the overview of the action, the investigator mentioned that:

“… the [two interviewed] witnesses didn`t know where the place that they were arrested is and where the location of forest house in which they were detained. The witnesses cannot recognize anybody of KLA members ...

Expert made expertise of picture … According to the expert the people in these two pictures are different persons.

Investigator made conversation with Chief of investigation of OMPF who leaded investigation of this case some years ago. According to him the people in these two pictures are different persons and Slobodan was killed during the war but OMPF still can not find his body.”

1. A WCIU investigator’s “Overview report”, dated 10 May 2008, simply repeats the facts and the conclusions of the above report of 5 May 2008.
2. According to the above-mentioned DOJ Criminal Division’s “Case ID Card” (see § 75), on 11 October 2008, the WCIU filed a criminal report in relation to this case. However, this report is not found among investigative documents available to the Panel.
3. On 20 September 2013, an EULEX Prosecutor assigned to the SPRK issued a Ruling dismissing the criminal report of UNMIK police on the case no. 2003-00011 (see §§ 90 and 92 above), and decided to close this investigation. The EULEX WCIU was entrusted with informing Mrs Desanka Pejčinović of the decision.
4. **EULEX clarification**
5. As mentioned above (§ 3), on 18 December 2009 the Panel requested EULEX to provide additional information in relation to 43 complaints before the Panel. In their response (see § 4 above), dated 23 March 2010, EULEX officers explained that they had searched the available sources, including the list of cases “found in July 2009 in the PTC building Archive room (not officially handed over from UNMIK to EULEX because no more “active” but dismissed, terminated or closed).”
6. In the same response, EULEX added that the search was not exhaustive, as the available sources did not provide information on the following:
* cases, criminal reports or information that UNMIK Police never transferred to UNMIK prosecutors, or otherwise never reached UNMIK prosecutors;
* cases which were handled by UNMIK Police and were then transferred to local police or prosecutors, without reporting to UNMIK or EULEX prosecutors;
* many cases which were handled by UNMIK prosecutors prior to creation of a centralised case registry by UNMIK DOJ, in 2003.
1. However, the search in the EULEX files provided information on only two cases listed in the Panel’s request of 18 December 2009, one of the two being the case related to the abduction and disappearance of Mr Slobodan Pejčinović. No files or other information in relation to the other 41 cases, was found. EULEX were not able to confirm if the cases for which the files were not found “were ever investigated by UNMIK Police and/or Prosecutors.”
2. With regard to this particular case, EULEX confirmed that, according to the database of the DOJ Criminal Division, an UNMIK IP “… submitted a request to judicial police to conduct investigation on 08 November 2007. … Case assigned to […] in order to draft dismissal. Case handed over to EULEX, on 29 December 2008.” Since that time, the case was under responsibility of the EULEX SPRK the WCIU.
3. **THE COMPLAINT**
4. The complainant complains about UNMIK’s alleged failure to properly investigate the abduction and disappearance of his son. 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).
5. The complainant also complains about the mental pain and suffering allegedly caused to him and his family by this situation. In this regard, the Panel deems that the complainant relies on Article 3 of the ECHR.
6. **THE LAW**
7. **Alleged violation of the procedural obligation under Article 2 of the ECHR**
	1. **The scope of the Panel’s review**
8. 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.
9. Before turning to the examination of the merits of the complaint, the Panel needs to clarify the scope of its review.
10. 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.
11. The Panel also notes that Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel provides that the Panel “shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of (their) human rights”. It follows that only acts or omissions attributable to UNMIK fall within the jurisdiction *ratione personae* of the Panel. In this respect, it should be noted, as stated above, that as of 9 December 2008, UNMIK no longer exercises executive authority over the Kosovo judiciary and law enforcement machinery. Therefore UNMIK bears no responsibility for any violation of human rights allegedly committed by those bodies. Insofar as the complainant complains about acts that occurred after that date, they fall outside the jurisdiction *ratione personae* of the Panel.
12. 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 § 102). 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.
13. 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**
14. The complainant in substance alleges violations concerning the lack of an adequate criminal investigation into the abduction and disappearance of his son. The complainant also states that he was not updated about any progress in the investigation and about its outcome.
15. In his comments on the merits of the complaint under Article 2, the SRSG accepts that Mr Slobodan Pejčinović disappeared in life threatening circumstances. He notes that “in March 1999, the security situation in Kosovo was extremely tense, and there was a high level of violence all over Kosovo. Soon after the establishment of UNMIK in June 1999, the security situation in post-conflict Kosovo remained tense. KFOR was still in the process of reaching sufficient strength to maintain public safety and law and order and there were a number of serious criminal incidents targeting Kosovo-Serbs, including abductions and killings.”
16. The SRSG accepts UNMIK’s responsibility to conduct an investigation in the case of Mr Slobodan Pejčinović under Article 2 of the ECHR, procedural part. In the words of the SRSG, “the essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life, as defined by UNMIK Regulation No. 1999/1 On the Authority of the Interim Administration in Kosovo of 25 July 1999 and subsequently, by UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo of 12 December 1999, as amended.”
17. The SRSG notes that “in this context the procedural element of Article 2 is essentially two-folded: (i) an obligation to determine through investigation the fate and/or whereabouts of the missing person; and (ii) an obligation to conduct an investigation capable of determining whether the death was caused unlawfully and leading to the identification and punishment of those responsible for the disappearance and/or death of the missing person.”
18. The SRSG further observes that when determining applications under Article 2, procedural part, consideration must be given to not imposing an impossible or disproportionate burden on UNMIK. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court of Human Rights in the case *Palić v. Bosnia and Herzegovina*, stating at paragraph 70:

“The Court takes into account the complex situation in Bosnia and Herzegovina, notably in the first ten years following the war. In such a post-conflict situation, what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and context. In this connection, the Court notes that more than 100,000 people were killed, almost 30,000 people went missing and more than two million people were displaced during the war in Bosnia and Herzegovina. Inevitably choices had to be made in terms of post-war priorities and resources.”

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

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

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

1. The SRSG states that UNMIK international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and country, with limited support from the still developing Kosovo Police. He further states that these investigators were often faced with situations where individuals holding relevant knowledge on the whereabouts and fate of missing persons did not want to disclose this information. According to the SRSG, all these constraints inhibited the ability of the UNMIK Police to conduct investigations according to the standards that may be expected from States with more established institutions and which are not faced with the high number of cases of this nature associated with a post-conflict situation.
2. With regard to the part of the investigation aimed at establishing the fate of Mr Slobodan Pejčinović, the SRSG considers that the matter came to UNMIK’s attention in 2001, as the case was registered by the UNMIK Police MPU in 2001 (case no. 2001-001041). The SRSG continues that “UNMIK OMPF and MPU contacted the family members of Mr Pejčinović in order to get more information about his disappearance and any possible indications that could lead to his whereabouts. Unfortunately, there was no information that that could shed some light as to [his] whereabouts. It should be noted also that, based on the available documents, it may not be concluded beyond any reasonable doubt whether Mr. [Slobodan] Pejčinović is still alive or not.”
3. In relation to the identification and bringing to justice of the possible perpetrators responsible for the disappearance of the complainant’s son, the SRSG considers that the WCIU opened their investigation in 2003 (case no. 2003-00011), and that it was extensive. The SRSG, again, stresses that “UNMIK Police contacted the family members of Mr. [Slobodan] Pejčinović in many occasions in order to get more information regarding the whereabouts of those allegedly responsible for [his] fate”, to which the complainant and his wife duly responded.
4. The SRSG cites the WCIU Case Analysis Report, dated 22 October 2007 (see § 76 above), which concludes that “[A]ll investigations indicate that the victim left home of his own will, there is no evidence of an Abduction, or War Crime.” The SRSG further refers to an order from an international prosecutor, requesting the police to undertake additional investigative actions in order to establish “… the circumstances of the trip on 26 March 1999, and of their detention by UCK[[6]](#footnote-6); the identities of UCK members who allegedly held them; the conditions of Mr [Slobodan] Pejčinović when released; as well as any other information which could help with establishing [his] fate and whereabouts…”
5. The SRSG concludes that “… it is evident that UNMIK Police did open and pursue investigation into the whereabouts of Mr. [Slobodan] Pejčinović”. However, he reiterates that “… without witnesses coming forward or physical evidence being discovered, police investigations inevitably stall because of a lack of evidence.” Likewise, it is the SRSG’s opinion that in this case “… UNMIK Police did conduct investigative efforts in accordance with the procedural requirements of Article 2, aiming at bringing the perpetrators to justice”. Thus, according to the SRSG, there has been no violation of Article 2 of the ECHR.
6. In conclusion, the SRSG informed the Panel that he might make further comments on this matter, “[a]s there is a possibility that additional and conclusive information exists”, beyond the documents presented to the Panel.”
7. After the additional files obtained by the Panel from the SPRK (see §§ 12, 38, and 69-92 above) were forwarded to the SRSG, he responded, on 18 February 2014, submitting additional comments on this case.
8. In this submission, the SRSG argued that the additional documents only further support his previously expressed position. In particular, they show that the Criminal Division of the UNMIK DOJ was informed of this case on 16 October 2007, and that from that time until late 2008, when the file was handed over to EULEX, the DOJ has taken the necessary investigative actions and has made considerable efforts aiming at identifying and bringing to justice the perpetrators responsible for the disappearance of the complainant’s son. Detailing his position, the SRSG provided an overview of the investigative steps undertaken by UNMIK Police and Criminal Division, and the evidence collected through those steps, which appeared to be inconclusive. The SRSG reiterated that “… without strong or enough physical evidence being discovered, police investigations inevitably stall because of a lack of evidence.”
9. The SRSG also mentioned that the investigation into the alleged abduction and disappearance of Mr Slobodan Pejčinović was effectively closed by the ruling of an EULEX prosecutor, dated 20 September 2013 (see § 93 above). Commenting on that document, the SRSG notes that “… EULEX did not … take any additional investigative actions to those already taken by UNMIK.”
	1. **The Panel’s assessment**
10. The Panel considers that the complainant invokes a violation of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the ECHR in that UNMIK Police did not conduct an effective investigation into Mr Slobodan Pejčinović’s abduction and disappearance.
11. *Submission of relevant files*
12. As mentioned above (§§ 3 and 94 above), on 18 December 2009, the Panel requested from EULEX information regarding a number of complaints before it, including the present complaint. In its response of 23 March 2010 (see §§ 94-93), EULEX confirmed to the Panel that it was in possession of an investigative file in relation to the case of Mr Slobodan Pejčinović.

1. At the Panel’s request, on 21 February 2011, the SRSG provided copies of the documents related to this investigation, which UNMIK was able to recover. As mentioned above (see § 120), the SRSG also noted that more information, not contained in the presented documents, may exist in relation to this case. Nevertheless, on 4 November UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 11 above).
2. The Panel notes that the file presented to it by UNMIK on 21 February 2011 did not include the documents which were obtained by the Panel from the SPRK, on 27 January 2014, and subsequently presented to UNMIK, for review and possible additional comments.
3. The Panel also 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 to their handing over, is crucial to the continuation of such investigations and failure to do so could thus raise *per se* issues under Article 2.
5. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative documents. However, UNMIK has not provided any explanation as to why the documentation may be incomplete, nor with respect to which parts. Likewise, the Panel received no explanation as to why the SPRK file has not been presented to UNMIK by EULEX, in response to UNMIK’s search for files.
6. The Panel itself is not in the position to verify the completeness of the investigative files received. The Panel will therefore assess the merits of the complaint on the basis of documents made available (in this sense, see ECtHR, *Tsechoyev v. Russia*, no. 39358/05, judgment of15 March 2011, § 146).
7. *General principles concerning the obligation to conduct an effective investigation under Article 2*
8. 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.
9. 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).
10. 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 § 105 above, at § 136).
11. 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).
12. 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 § 105 above, at § 191; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited above, § 312; and *Isayeva v. Russia*, cited above, § 212).
13. 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 § 133 above, at § 201). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation’s effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigation work (see ECtHR, *Velcea and Mazărev. Romania*, no. 64301/01, judgment of 1 December 2009, § 105).
14. Even with regard to persons disappeared and later found dead, which is not the situation in the present case, the Court has stated that the procedures of exhuming and identifying mortal remains do not exhaust the obligation under Article 2 of the ECHR. The Court holds that “the procedural obligation arising from a disappearance will generally remain as long as the whereabouts and fate of the person are unaccounted for, and it is thus of a continuing nature” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 136 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 105 above, at § 148, *Aslakhanova and Others v. Russia*, nos. 2944/06 and others, judgment of 18 December 2012, § 122). However, the Court also stresses that this procedural obligation “does not come to an end even on discovery of the body .... This only casts light on one aspect of the fate of the missing person and the obligation to account for the disappearance and death, as well as to identify and prosecute any perpetrator of unlawful acts in that connection, will generally remain” (ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited above, § 145). While the location and the subsequent identification of the mortal remains of the victim may in themselves be significant achievements, the procedural obligation under Article 2 continues to exist (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, § 64).
15. 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 § 135 above, at §§ 311‑314; ECtHR, *Isayeva v. Russia*, cited in § 135 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).
16. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired, not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri v. The Former Yugoslav Republic of Macedonia*, no. 39630/09, judgment of 13 December 2012, § 191). The United Nations also recognises the importance of the right to truth. In the words of the United Nations Secretary-General, “the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons … it also implies the right to know the fate and whereabouts of the victim” (see Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5; see also UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; see also the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Framework Principles for securing the accountability of public officials for gross and systematic human rights violations committed in the context of State counter-terrorist initiatives; UN Document A/HRC/22/52, 1 March 2013).
17. *Applicability of Article 2 to the Kosovo context*
18. The Panel is conscious that Mr Slobodan Pejčinović disappeared more than two months before the deployment of UNMIK in Kosovo, during the armed conflict, when crime, violence and insecurity were rife.
19. 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.
20. 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.
21. 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).
22. 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 § 136 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 § 139 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 § 135 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 135 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
23. The Court has acknowledged that “where the death [and disappearances] to be investigated under Article 2 occurs in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and […] concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed” (see, ECtHR [GC], *Al-Skeini and Others v. the United Kingdom,* cited above, § 164;ECtHR, *Bazorkina v. Russia*, no. 69481/01, judgment of 27 July 2006, § 121). Nonetheless, the Court has held that “the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (see, amongst many other examples, ECtHR, *Kaya v. Turkey*, cited in § 133 above, at §§ 86 ‑ 92; ECtHR, *Ergi v Turkey,* cited above, §§ 82 - 85; ECtHR [GC], *Tanrıkulu v. Turkey*, no. 23763/94, judgment of 8 July 1999, §§ 101-110, ECHR 1999-IV; ECtHR, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, judgment of 24 February 2005, §§ 156-166; ECtHR, *Isayeva v. Russia*, cited above, §§ 215 ‑ 224; ECtHR, *Musayev and Others v. Russia*, nos. 57941/00 and others, judgment of 26 July 2007, §§ 158 - 165).
24. 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 § 132 above, at § 1; HRC, *Abubakar Amirov and Aïzan Amirova v. Russi*a*n Federation*, communication no. 1447/2006, views of 22 April 2009, § 11.2, CCPR/C/95/D/1447/2006). Further, the HRC has stated the applicability of Article 2 (3), 6 and 7 of the ICCPR with specific reference to UNMIK’s obligation to conduct proper investigations on disappearances and abductions in Kosovo (see HRC, Concluding Observations of the Human Rights Committee: Kosovo (Serbia), 14 August 2006, §§ 12-13, CCPR/C/UNK/CO/1).
25. 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 § 23 above).
26. 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.
27. Lastly, in response to the SRSG’s objection that Article 2 must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, either in the context of policing activities or that of priorities and resources, the Panel takes into account that the European Court has established that what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and contexts (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 136 above, at § 70; *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
28. *Compliance with Article 2 in the present case*
29. Turning to the particulars of this case, the Panel notes the complainant’s statement that the abduction and disappearance of Mr Slobodan Pejčinović was reported promptly to KFOR, and later to UNMIK Police, the ICTY, the ICRC and other organisations.
30. In this regard, the SRSG asserts that UNMIK became aware of this case some time in 2001 (see § 116 above). From the documents available in the investigative file, the Panel considers that certainly in June 2001, UNMIK was made aware about Mr Slobodan Pejčinović’s abduction and disappearance by the Serbian authorities and that by the end of 2001 UNMIK Police MPU had registered a case in this regard (see §§ 40 and 42 above). On 23 June 2001, the UNMIK Police CCIU was asked by the MPU to undertake the investigation, but the CCIU refused (see 42-43 above). The CCIU had eventually opened their investigation into this matter by February 2003 (see § 48 above). Another case was registered by the MPU in December 2004 (see § 54 above).
31. The purpose of this investigation was to discover the truth about the events leading to the abduction and disappearance of Mr Slobodan Pejčinović, to establish his fate and to identify the perpetrators. To fulfil these purposes, those conducting the investigation were required to seek, collect and preserve evidentiary material; to identify possible witnesses and to obtain their statements; to identify the perpetrator(s) and bring them before a competent court established by law.
32. The Panel recalls that in order to be effective, the investigative actions must be conducted promptly and expeditiously, with the authorities taking all reasonable steps and following obvious lines of enquiry to secure the evidence concerning the incident, including, *inter alia* eye-witness testimony, forensic evidence etc. The investigation must also ensure a sufficient element of public scrutiny and be reasonably accessible to the victim’s family. The investigation’s conclusion must be based on thorough, objective and impartial analysis of all relevant elements. In addition, the investigation should be periodically reviewed, in order to ensure that all available information is considered. As the obligation to investigate is not an obligation of results but of means, in assessing the investigation’s effectiveness, the circumstances of the particular case and the practical realities of the investigative work must be taken into consideration (see §§ 136-137 above).
33. The Panel notes that there were obvious shortcomings in the conduct of the investigation from its inception. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 105 above), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the case at that date (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 136 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 § 26 above).
34. The Panel notes in this regard that according to the 2000 Annual Report of UNMIK Police, the complete executive policing powers in the Pejё/Peć region, including criminal investigations, were under the full control of UNMIK Police by June 2000. Therefore, it was UNMIK’s responsibility to ensure, *first*, that the investigation is conducted expeditiously and efficiently; *second*, that all relevant investigative material is properly handed over to the authority taking over responsibility for the investigation (EULEX); and *third*, that the investigative files could be traced and retrieved, should a need for that arise at any later stage.
35. Having noted the SRSG’s assertion that the file submitted to the Panel may be incomplete, and the lack of further explanation in relation to this (see § 120 above), the Panel assumes that UNMIK cannot guarantee whether the file presented to the Panel is complete or not. In case it is not complete, it would indicate that one of the following situations may have occurred: no proper investigation was carried out; the file was not accurately and fully handed over to EULEX; or UNMIK failed to retrieve the complete file from the current custodian. The Panel has already noted above that it has no reason to doubt UNMIK’s good faith in seeking to provide the complete investigative file for its review (see § 130 above). However, the Panel considers that whichever of these potential explanations is applicable, it would indicate a failure directly attributable to UNMIK, either when it was exercising its executive functions, or in its current capacity.
36. In this regard, the Panel notes three especially important facts related to this particular case, which, in its view, are particularly indicative of a possible general failure of UNMIK to comply with the obligation to ensure the proper handover of the investigative material. However, the SRSG has not commented on any of those.
37. First, in the response to the Panel’s request for information (see §§ 94-96 above) EULEX made it clear that the SPRK was in possession of an investigative file in relation to Mr Slobodan Pejčinović’s abduction and disappearance, which was at that time being worked upon by an EULEX IP and the WCIU. In the same letter, EULEX informed the Panel that in July 2009 a number of cases not officially handed over from UNMIK to EULEX for various reasons were “found” in the former UNMIK DOJ building. Second, as mentioned above, additional investigative documents were obtained by the Panel directly from the SPRK, in January 2014 (see §§ 38), despite UNMIK’s confirmation of the disclosure of the complete file. Most of those documents have not been in the file presented to the Panel by UNMIK (see §§ 69-93 above). And, third, an indication in the investigative file that the original version of the investigative file was lost (see § 68 above).
38. The Panel now turns to the assessment of this investigation against the first part of the procedural obligation under Article 2 of the ECHR, that is establishing the fate of Mr Slobodan Pejčinović. The Panel notes that his whereabouts remain unknown. The Panel also notes that ante-mortem information concerning the complainant’s missing son had been gathered by the ICRC prior to 22 December 2001 (see § 45 above).
39. In this respect, the Panel considers that the collection of the DNA samples is of itself an essential action that secures the necessary material for any future comparative examination and possible identification of located mortal remains. However, as in this case no such identification has yet occurred, the Panel will turn to the investigation carried out by UNMIK Police with the aim of identification of perpetrators and bringing them to justice, that is the second element of the procedural obligation under Article 2 of the ECHR.
40. As regards the requirements of promptness and expedition, the Panel is mindful that in any investigation, and particularly in an investigation of a disappearance in life-threatening circumstances, the initial stage is of the utmost importance, and it serves two main purposes: to identify the direction of the investigation and ensure preservation and collection of evidence for future possible court proceedings (see the Panel’s position on a similar matter expressed in the case *X*., nos. 326/09 and others, opinion of 6 June 2013, § 81).
41. In this respect the Panel recalls that Mr Slobodan Pejčinović’s abduction and disappearance was immediately reported to KFOR (see § 30 above). As established above, UNMIK became aware of the abduction and disappearance of the complainant’s son in June 2001 and the first investigation into the matter was opened by the UNMIK Police MPU by the end of 2001 (see § 152 above). The Panel also notes that the file has no record showing that KFOR had passed to UNMIK Police the necessary information immediately after they became involved in this matter, in June 1999, or at least shortly after June 2000, when the police functions in the region were fully assumed by UNMIK Police (see § 156 above).
42. However, the immediate reaction of UNMIK Police was limited to an initial assessment of the information by the MPU, registration of the case and entering the information into the MPU’s database (see § 42 above). The MPU concluded that that this case had room for investigative actions against the persons who could be suspected of the commission of a war crime and subsequently requested the CCIU, which has the primary role in investigation of war crimes in UNMIK Police, to take over the investigation (ibid.).
43. In response, the CCIU requested additional information in relation to this case. Although the names of the suspects provided to the CCIU by the MPU would normally be enough to trace the persons and interview them, the Chief of CCIU decided that they would “hold off on investigation”, until the CCIU obtained additional information from the MPU (see § 43 above). No response to this request is in the file.
44. The Panel understands that in June 2001 the MPU simply did not have the information, which was requested by the CCIU. However, instead of explaining this fact to the CCIU and asking them to go ahead with the substantive investigative action, the MPU apparently concluded that the CCIU did not want to investigate the matter and expected the MPU to “do it for them” (see § 44 above). The MPU put the CCIU’s response on record, “to show [the] difficulties to work and await cooperation from CCIU”. Except for a case review in 2004 (see § 54 above), the MPU appears to have never undertaken any further action on this case.
45. The Panel notes with concern that due to this lack of effective communication and cooperation between these two UNMIK Police units, no further action was carried out until 2003, when the CCIU eventually opened a substantive investigation into this case (see § 48 above), after the case was finally handed over to them by KFOR. This is despite the fact that the information contained in the file was apparently the same as in 2001. This delay of one and a half years (from June 2001 until February 2003), in the Panel’s view, is not justified.
46. The Panel stresses that it has to limit its conclusions to the documents officially presented to it by UNMIK. On the basis of those documents, the Panel has to conclude that no meaningful investigations were conducted by UNMIK Police in the most critical period, in 1999, or at least in 2001, when the information on Mr Slobodan Pejčinović’s abduction and disappearance clearly reached UNMIK. In the Panel’s opinion, this delay did create additional problems for the investigators, who started working on this case at later stages. Indicative of this is the situation faced by WCIU investigators in 2008 when they were not able to interview the suspect, Mr B.K., as they were unable to locate him (see § 89 above). Thus, in the Panel’s view, this investigation obviously failed to fulfill the requirements of promptness and expeditiousness.
47. Assessing this investigation against the need to take reasonable investigative steps and to follow the obvious lines of enquiry to obtain evidence, the Panel takes into account that a properly maintained investigative file should have included records of all investigative actions and particularly of the interviews with the complainant, suspects and all potential witnesses to the disappearance. In all cases, such interviews should take place as soon as possible and should be recorded and retained in the case file[[7]](#footnote-7).
48. As mentioned before, the substantive investigation into the abduction and disappearance of Mr Slobodan Pejčinović was initiated by the CCIU only in February 2003 (see § 167). The Panel notes in this context that from the very beginning the police was in possession of Mr and Mrs Pejčinović’s statement given in 2001. Moreover, a number of newspaper articles which are in the file, present the facts known to them with even a greater level of detail. It should also be noted that the CCIU was able to relatively quickly organise the first official interview with Mr and Mrs Pejčinović, in May 2003, with the assistance of the Serbian authorities. Although the complainant himself was never formally interviewed, he was present at that interview and thus the police legitimately considered that there was no need to record his separate statement.
49. The Panel notes with concern that the names of the three persons accused by Mr and Mrs Pejčinović of deliberately misleading their son in order to “deliver” him to KLA, were known to the police from their written statement, which was forwarded to UNMIK by the Serbian MUP in June 2001 (see §§ 40-41 above), as well as from Mrs Pejčinović’s statement recorded by UNMIK Police in May 2003 (see §§ 49-50 above). However, two of them, Mr B.A. and Mr B.H., were interviewed only in 2008, while the third one, Mr B.K., had left Kosovo a few years before that, and thus was not interviewed. No police action to track him outside of Kosovo is recorded in the file.
50. The parents also gave names of four more potential witnesses, M.B., M.V. and V.V. and Mr R.B.; a photograph of Mr R.B. was provided (see § 41 above.). However, none of them were ever interviewed.
51. In this regard, the Panel notes that the MPU Ante-Mortem Investigation Report (see §§ 54-57 above) states that at the time of that report (2004 – 2005), “no witnesses were possible to get in touch with since according to the information at hand they reside out of the Kosovo or the information on their whereabouts is currently unavailable”. The Panel is not clear which information the investigation was referring to, as by 2005 the file certainly contained the names of the potential suspects, while the other witnesses could relatively easily have been located with the assistance of the complainant and his wife. The same report further reads that “Those three Albanians who were with the MP prior to his disappearance were summoned for questioning and supposedly they were cleared of all charges since they were released.”
52. The Panel reiterates that even now the file does not have any documents reflecting the KFOR actions in relation to Mr A.B., Mr B.H. and Mr B.K., which may reportedly have been undertaken by Italian KFOR in 1999, upon Mrs Pejčinović’s insistence. Thus, it is unclear which information the MPU investigator operated with and how he came to such conclusions. Also, no action in order to obtain that information, or to contact the suspects or the witnesses, before deciding to keep the MPU investigation inactive in February 2005, is recorded.
53. The police likewise never tried to identify the places that would enable them to better understand the circumstances of the possible crime under investigation, which would be one of the basic steps in cases with so little evidence. This would include the route which Mr Slobodan Pejčinović and Mr A.B., Mr B.H. and Mr B.K. took on that day, as well as the places where they were stopped and detained. The Panel also takes into account that in order to be adequate, the investigation into such grave crimes should also have included, besides the records of the interviews of the complainant, suspects and witness, identifying and interviewing individuals residing at or located in the area of the alleged crime, especially those who were present there at the time of the abduction and who thus may have witnessed something (“canvassing” the area), as well as persons who knew the victim and the suspects, as they might have knowledge of possible motives.
54. Another obvious line of inquiry would be to or to follow up with the former KLA commanders or KLA members who had operated in the area of Pejё/Peć at that time, which at least could lead to the identification of the places where the victim and the other men had been questioned and detained. Likewise, it was possible to request Italian KFOR to provide their records in relation to Carabinieri’s action with respect to this incident, undertaken in June 1999. In addition, in a Case Summary, dated 21 May 2003 (see § 71 above), the CCIU investigator in charge of the case also recommended contacting the ICTY and the Head of the OMPF, probably with regard to their possible action in relation to this case. On 19 July 2003, another CCIU investigator also recommended checking all available databases with regard to the case and the three suspects and locating additional witnesses and interviewing them (see § 72 above). However, none of these actions appear to have been undertaken.
55. The Panel notes that the CCIU suspended the investigation into the abduction and disappearance of Mr Slobodan Pejčinović (see § 73 above) to some extent because of the information provided by Mrs Pejčinović, when, while trying to provide the investigators with as many leads as possible, she stated that her son was depicted on a photograph in 2001, wearing a UÇPMB uniform (see § 50 above). If true, this information would indicate that the complainant’s son was alive, and thus prompted the CCIU to suspend their investigation, as it was to focus only on war crimes.
56. However, the Panel recalls its position in relation to the categorisation of cases into “active” and “inactive” expressed in similar cases before (see e.g. HRAP, *B.A*., no. 52/09, opinion of 14 February 2013, § 82). In its view, any “categorisation of an investigation should take place only after the minimum possible investigative actions have been undertaken and obtainable information has been collected and analysed.” In this case, first, such prioritisation should not have been made at the early stages, at least before the known suspects and witnesses had been interviewed about the circumstances of the abduction and disappearance, especially as it had occurred in obviously life-threatening circumstances.
57. The Panel also notes that, in order to rule out the possibility that Mr Slobodan Pejčinović was in fact in the photographs which his mother saw in the newspapers, shortly after the interview with the complainant the first CCIU investigator on the case planned to “undertake the technical examination of the photographs”, and check the data on the UÇPMB members” (see § 71 above). Another CCIU investigator, on 19 July 2003, confirmed that those verifications had to be done (see § 72 above). However, despite two previous assessments and recommendations of two CCIU investigators, only 3 days later the case was categorised as “priority 4”, which is apparently the lowest, was suspended by the CCIU and returned to the MPU. Subsequently, the investigation remained untouched by the CCIU (later - WCIU) until the end of 2007, when the DOJ got involved (see §§ 73-76 above).
58. In this respect, the Panel recalls that in 2001 the CCIU had already refused to investigate this case, despite the MPU request and the available leads to possible suspects. This second decision does not seem to be justified as well. Moreover, it appears to the Panel that the CCIU was looking for reasons not to investigate the matter.
59. Coming to the period within its jurisdiction, starting from 23 April 2005, the Panel notes that after that critical date the failure to conduct the necessary investigative actions persisted for the next two years, thus, in accordance with the continuing obligation to investigate (see § 138 above), bringing the assessment of the whole investigation within the period of the Panel’s jurisdiction.
60. The Panel notes that the activity on this case starts only after the DOJ received a letter from Serbian War Crimes Court in relation to this case, on 15 October 2007, asking for an update on its status (see § 74 above). As it transpires from the file, it was the first time that UNMIK judicial authorities have been informed about this matter, contrary to the legal obligation on the police to inform public prosecutor about any criminal report they receive under the applicable Yugoslav Law on Criminal Procedure, or later the Provisional Criminal Procedure Code of Kosovo (see § 75 above).
61. The WCIU located the case file, reviewed it, and on 22 October 2007 reported that the investigation indicates that there was no evidence of an abduction or war crime, that there was no physical evidence or eye witnesses to an abduction, and recommended that because of lack of evidence, “the case should remain closed”. Nevertheless, the IP who reviewed the file disagreed, and, on 31 January 2008, issued a request to conduct an investigation against Mr A.B., Mr B.H. and Mr B.K, on suspicion of aiding the commission of war crimes; the police was ordered to interview the suspects, obtain photographs, organise an expert examination of the photographs and report back to the IP by 15 March 2008. The Panel notes, that these were practically the same actions that were recommended by the CCIU investigators in 2003 (see § 179-180 above). Although they have eventually been carried out, they did not compensate for the failures of the investigation that had occurred previously.
62. In March 2008, the WCIU investigator interviewed only two suspects, as the third was not located. However, the suspects did not admit any responsibility in relation to Mr Slobodan Pejčinović’s abduction by the KLA and further disappearance, and opened no further leads (see §§ 80-83 above).
63. The investigator also contacted the complainant’s wife and obtained the photographs needed to make the comparison. However, he faced the situation that no forensic institution in Kosovo had the required expertise (see § 78 above). With the IP’s assistance, a preliminary examination of the photographs was carried out by an UNMIK Police officer possessing the necessary forensic expert knowledge (see §§ 84-87 above). However, because of deficiencies in the presented material, the expert gave only a probable conclusion, not ruling out the possibility that Mr Slobodan Pejčinović was photographed in 2001, in Serbia proper.
64. The WCIU investigator also discussed the matter with an OMPF officer, who apparently stated that it was not Mr Slobodan Pejčinović in that photograph, as he “was killed during the war but OMPF still can not find his body” (see § 90 above). It is not clear whether or not additional information was available to the OMPF, to enable a such conclusion. In any event, no formal statement or report in this regard is on file.
65. The investigator also obtained information in relation to the suspects from various databases. One of them apparently mentioned that Mr B.H. and Mr B.K., were KLA “soldiers/combatants” at the relevant time (see § 65 above). Although the investigator was to verify this information (see § 85 above), no relevant results are on file.
66. Despite these shortcomings, on 10 May 2008, the WCIU investigator concluded that there were no further leads to work with and recommended this case to be “temporary closed” (see § 90 above). However, when the case was handed over to EULEX, on 29 December 2008, it was still open (see § 97 above). It was eventually dismissed by a ruling of an EULEX prosecutor, on 30 September 2013 (see § 93 above).
67. The Panel likewise recalls the SRSG’s argument that “without witnesses coming forward or physical evidence being discovered, police investigations inevitably stall because of lack of evidence” (see § 119 above). In this regard, the Panel must note that almost any investigation at its initial stage lacks a significant amount of information. Finding the necessary information to fill those gaps is the main goal of any investigative activity. Therefore, a lack of information should not be used as an argument to defend inaction by the investigative authorities. The file, as made available to the Panel, does not show any 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).
68. The Panel notes in this context that if not worked upon, developed, corroborated by other evidence and put in a proper form, any information by itself, however good it might be in relation to a crime under investigation, does not solve it. In order to be accepted in court, information must become evidence, which can only happen through investigative actions undertaken in compliance with the applicable rules of criminal procedure. In this case, the Police appear to have never undertaken any action in this direction (see e.g. HRAP, *Todorovski*, case no. 81/09, opinion of 31 October 2013, § 116).
69. In addition, the Panel considers that, as the mortal remains of Mr Slobodan Pejčinović had not been located and those responsible for the crime had not been identified, UNMIK Police was obliged to use the means at their disposal to regularly review the progress of the investigation to ensure that nothing had been overlooked and any new evidence had been considered, as well as to inform their relatives regarding the progress of this investigation.
70. As described above, this investigation was reviewed by UNMIK Police a number of times (see §§ 42-44, 54-57, 68, 71-73, 76, 90-91 above). However, the Panel notes that most of the substantive actions that were for the first time recommended by the investigators in 2003, have not been undertaken until 2008, when prosecutor reviewed the file and made clear orders to the police. Therefore, in the Panel’s opinion, the review of this case by UNMIK Police was not adequate, as the police either failed to identify gaps in the investigative process or failed to undertake the actions which were suggested.
71. According to the file, UNMIK DOJ was only made aware of this case at the end of 2007, which is more than eight years from the time of abduction and disappearance of Mr Slobodan Pejčinović, and around six years after the case was first reported to UNMIK (see §§ 74-75 above). In the Panel’s opinion, a proper prosecutorial review of this investigation at an earlier stage could have prompted UNMIK Police to undertake additional actions, so the case would not have been left without proper action for years to come (compare with HRAP, *Stojković*, case no. 87/09, opinion of 14 December 2013, § 160).
72. The Panel also notes that there seems to have been no further review or decision by a prosecutor on the findings and conclusions of UNMIK Police, presented following IP’s request, in 2008. The investigative file shows that at the end of 2008, when the case was handed over to EULEX, it was still open. This may suggest that, despite an indication that EULEX did not want to inherit this case (see § 66 above), UNMIK DOJ considered that some action still had to be undertaken.
73. Although the handover of the file to EULEX effectively ends the Panel’s jurisdiction *ratione temporis* in relation to this case, the Panel can not disregard the fact that the above mentioned ruling of an EULEX prosecutor, by which the investigation was closed (see § 188), relies only on the conclusions presented by UNMIK Police to the UNMIK IP in 2008, which, as described above, were at least not well substantiated. The same was noted by the SRSG (see § 123 above).
74. 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.
75. As was shown above, the investigative file suggests that Mr and Mrs Pejčinović were for the first time contacted by UNMIK Police with an update on the investigation, in April 2003 (see § 48 above), although it is not clear whether that memorandum had ever reached them. They were probably updated on the status of the case during the interview in May 2003. The next, and the last, recorded contact between UNMIK Police and the victim’s parents was the telephone conversation between the WCIU investigator and Mrs Pejčinović, in February 2008 (see § 77 above). This should particularly be assessed in light of the fact that, at least from June 2001, UNMIK was informed about the alleged abduction and disappearance of the complainant’s son in life-threatening circumstances and that the investigation was lacking information. Moreover, in February 2008 Mrs Pejčinović was surprisingly informed that the investigator was only mow starting an investigation into her son’s abduction, and asked to provide the photographs, of which had she had informed UNMIK Police five years earlier and had already provided to the police. It has to also be noted that to date the parents of Mr Slobodan Pejčinović have not been informed about the closure of their case by EULEX. The Panel therefore considers that the investigation was not open to any public scrutiny, as required by Article 2 of the ECHR.
76. In the Panel’s view, the apparent lack of any **immediate** reaction, or sufficient action at later stages, by UNMIK Police and the DOJ may have suggested to perpetrators that the authorities were either not able, or not willing to investigate such criminal acts. Such an attitude of the authorities towards the gravest crimes in any society, and especially in post-conflict circumstances, inevitably creates a culture of impunity among the criminals and can only lead to a worsening of the situation. The problems which UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently. Certainly, in the Panel’s view, such inaction did not help UNMIK to defuse the “[t]empers and tensions … running high amongst all ethnic groups, exacerbated by reports of missing and dead persons”, mentioned by the SRSG (see § 114 above).
77. In light of the deficiencies and shortcomings described above, the Panel concludes that UNMIK failed to carry out an effective investigation into the abduction and disappearance of Mr Slobodan Pejčinović. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.
78. **Alleged violation of Article 3 of the ECHR**
79. 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.
80. **The scope of the Panel’s review**
81. The Panel will consider the allegations under Article 3 of the ECHR, applying the same scope of review as was set out with regard to Article 2 (see §§ 100 - 105 above).
82. The Panel recalls that the European Court of Human Rights has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 in respect of close relatives of the victim. It emphasises that, concerning Article 3, “the essence of such a violation does not so much lie in the fact of the ‘disappearance’ of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention” (see, e.g., ECtHR [GC], *Çakici v. Turkey*, no. 23657/94, judgment of 8 July 1999, § 98, *ECHR*, 1999-IV; ECtHR [GC], *Cyprus v. Turkey*, no. 25781/94, judgment of 10 May 2001, § 156, *ECHR*, 2001-IV; ECtHR, *Orhan v. Turkey*, no. 25656/94, judgment of 18 June 2002, § 358; ECtHR, *Bazorkina v. Russia*, cited in § 146 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 136 above, at § 74; ECtHR, *Alpatu Israilova v. Russia*, no. 15438/05, judgment of 14 March 2013, § 69; see also HRAP, *Zdravković*, no. 46/08, decision of 17 April 2009, § 41). “It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct” (see, among others, ECtHR, *Er and Others v. Turkey*, no. 23016/04, judgment of 31 July 2012, § 94).
83. Lastly, where mental suffering caused by the authorities’ reactions to the disappearance is at stake, the alleged violation is contrary to the substantive element of Article 3 of the ECHR, not its procedural element, as is the case with regard to Article 2 (ECtHR, *Gelayevy v. Russia*, no. 20216/07, judgment of 15 July 2010, §§ 147-148).
84. **The Parties’ submissions**
85. The complainant alleges that the lack of information and certainty surrounding the abduction and disappearance of Mr Slobodan Pejčinović, particularly because of UNMIK’s failure to properly investigate his abduction and disappearance, caused mental suffering to him and his family.
86. Commenting on this part of the complaint, the SRSG accepts that the situation of the relatives of missing persons may raise issues of inhumane and degrading treatment contrary to Article 3 of the ECHR, where “… the alleged violation lies in the authorities’ reactions and attitudes to the situation when it has been brought to their attention.” The SRSG also recognises that the complainant has the most proximate family tie to his missing son.
87. Nevertheless, the SRSG rejects the allegations, stressing, first, that the complainant did not witness the disappearance, neither was he in close proximity to the location at the time it occurred, and, second, that there were neither assertions made by him of any bad faith on the part of UNMIK personnel involved with the matter, nor evidence of any disregard for the seriousness of the matter or the emotions of the complainant and his family emanating from the disappearance of Mr Slobodan Pejčinović.
88. The SRSG concludes that the understandable and apparent mental anguish and suffering of the complainant cannot be attributed to UNMIK, but it is “rather a result of inherent suffering caused by the disappearance of a close family member.” Thus, according to the SRSG, the complainant’s suffering lacks a character distinct from the emotional distress which may be regarded as inevitably caused to the relatives of a victim of a serious human rights violation.
89. Therefore, the SRSG requests the Panel to reject this part of the complaint, as there has not been a violation of Article 3 of the ECHR.
90. No additional comments were provided by the SRSG in his submission, dated 18 February 2014 (see § 120 above).
91. **The Panel’s assessment**
92. *General principles concerning the obligation under Article 3*
93. Like Article 2, Article 3 of the ECHR enshrines one of the most fundamental values in democratic societies (ECtHR, *Talat Tepe v. Turkey*, no. 31247/96, 21 December 2004, § 47; ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 424). As confirmed by the absolute nature conferred on it by Article 15 § 2 of the ECHR, the prohibition of torture and inhuman and degrading treatment still applies even in most difficult circumstances.
94. Setting out the general principles applicable to situations where violations of the obligation under Article 3 of the ECHR are alleged, the Panel notes that the phenomenon of disappearance constitutes a complex form of human rights violation that must be understood and confronted in an integral fashion (see IACtHR, *Velásquez-Rodríguez v. Honduras*, cited in § 132 above, at § 150)
95. The Panel observes that the obligation under Article 3 of the ECHR differs from the procedural obligation on the authorities under Article 2. Whereas the latter requires the authorities to take specific legal action capable of leading to identification and punishment of those responsible, the former is more general and humanitarian and relates to their reaction to the plight of the relatives of those who have disappeared or died.
96. The HRC has also recognised disappearances as a serious violation of human rights. In its decision of 21 July 1983, in the case *Quinteros v. Urugay*, it stated that disappearances constitute serious violations of the rights of the disappeared person’s relatives, who suffer from deep anguish which persists for as long as the uncertainty concerning the fate of their loved one continues, often for many years (see HRC, Communication No. 107/1981, U.N. Doc. CCPR/C/OP/2 at 138 (1990), § 14). Moreover, in its decision of 15 July 1994 in the case *Mojica v. Dominican Republic*, the HRC has deemed that “the disappearance of persons is inseparably linked to treatment that amounts to a violation of article 7 [of the Covenant]”, also prohibiting torture, inhumane or degrading treatment and punishment (see HRC, Communication No. 449/1991, U.N. Doc. CCPR/C/51/D/449/1991 (1994), § 5.7).
97. With respect to the question whether a member of the family of a disappeared person can be considered the victim of a treatment contrary to Article 3 of the ECHR, the Panel refers to the case law of the European Court of Human Rights and to its own case law. The European Court accepts that this may be the case, depending on the existence of “special factors which give the suffering of the [family member] a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation”. The Court further holds that “relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries” (see ECtHR, *Basayeva and Others v. Russia*, nos. 15441/05 and 20731/04, judgment of 28 May 2009, § 159; ECtHR, *Er and Others v. Turkey*, cited in § 202 above, at § 94).
98. The Panel takes note that, when assessing the emotional suffering of the victims, the European Court also considers the following circumstances: the length of the disappearance itself and of the period with no information on the fate of the missing person and on the investigation undertaken by the authorities; the delay in initiation of criminal investigation into the disappearance; the absence of any “meaningful” action by the authorities, despite the fact that the complainants approached them to report the disappearance of their relative and to share with them the information they had; lack of any plausible explanation or information as to the fate of their missing relatives despite personal or written inquiries with official bodies (see, among others, ECtHR, *Er and Others v. Turkey,* cited above, § 96; ECtHR, *Osmanoğlu v. Turkey,* no. 48804/99, judgment of 24 January 2008, § 97). Another factor leading to a finding of violation of Article 3 of the ECHR is the continuous nature of the psychological suffering of relatives of a victim of a disappearance (ECtHR, *Salakhov and Islyamova v. Ukraine,* no. 28005/08, judgment of 14 March 2013, § 201).
99. The HRC has also considered the issue and recognised family members of disappeared or missing persons as victims of a violation of Article 7 of the Covenant: parents (*Boucherf v. Algeria*, Communication No. 1196/2003, views of 30 March 2006, § 9.7, CCPR/C/86/D/1196/2003), children (*Zarzi v. Algeria*, Communication No. 1780/2008, views of 22 March 2011, § 7.6, CCPR/C/101/D/1780/2008), siblings (*El Abani v. Libyan Arab Jamahiriya,* Communication No. 1640/2007, views of 26 July 2010, § 7.5, CCPR/C/99/D/1640/2007), spouses (*Bousroual v. Algeria*, Communication No. 992/2001, views of 30 March 2006, § 9.8, CCPR/C/86/D/992/2001), aunts and uncles (*Benaniza v Algeria,* views of 26 July 2010, § 9.4, CCPR/C/99/D/1588/2007; *Bashasha v. Libyan Arab Jamahiriya*, views of 20 October 2010, § 7.2, CCPR/C/100/D/1776/2008). It justifies this broad understanding of victim status by the suffering and distress that is caused to family members by the disappearance of an individual, which is often exacerbated by the authorities’ insufficient efforts to investigate the disappearance in order to establish the fate of the victim and to bring perpetrators to justice (*Aboussedra v. Libyan Arab Jamahiriya*, Communication No. 1751/2008, views of 25 October 2010, § 7.5, CCPR/C/100/D/1751/2008). In the case *Amirov v. Russian Federation* the Committee observed that “[w]ithout wishing to spell out all the circumstances of indirect victimisation, the Committee considers that the failure of a State party responsibly to discharge its obligations to investigate and clarify the circumstances of the harm suffered by the direct victim will be usually be a factor. Additional factors may be necessary. In the present case, the Committee notes the horrific conditions in which the author came to find his wife's mutilated remains (…), followed by the dilatory, sporadic measures undertaken to investigate the circumstances that have lead to the above findings of violations of articles 6 and 7, read together with article 2, paragraph 3. The Committee considers that, taken together, the circumstances require the Committee to conclude that the author's own rights under article 7 have also been violated” (HRC, *Amirov v. Russian Federation*, cited in § 147 above, at § 11.7).
100. The Panel also takes into account that according to the European Court, the analysis of the authorities’ reaction should not be confined to any specific manifestation of the authorities’ attitudes, isolated incidents or procedural acts; on the contrary, in the Court’s view, an assessment of the way in which the authorities of the respondent State reacted to the applicants’ enquiries should be global and continuous (see ECtHR, *Açiș v.Turkey*, no. 7050/05, judgment of 1 February 2011, § 45).
101. In this respect, it is the position of the European Court that findings under the procedural limb of Article 2 would also be of direct relevance in considering the existence of a violation of Article 3 (see ECtHR, *Basayeva and Others v. Russia*, cited in § 214 above, at § 109; ECtHR, *Gelayevy v. Russia*, cited in § 203 above, at § 147; ECtHR, *Bazorkina v. Russia*, cited in § 146 above, at § 140).
102. The Panel observes that the European Court has already found violations of Article 3 of the ECHR in relation to disappearances in which the State itself was found to be responsible for the abduction (see ECtHR, *Luluyev and Others v. Russia*, no. 69480/01, judgment of 9 November 2006, §§ 117-118; ECtHR, *Kukayev v. Russia*, no. 29361/02, judgment of 15 November 2007, §§ 107-110). However, in contrast, in the case under the Panel’s consideration, in no way is UNMIK implicated in the actual disappearance and UNMIK cannot be held responsible for the applicant’s mental distress caused by the commission of the crime itself.
103. The Panel is mindful that in the absence of a finding of State responsibility for the disappearance, the European Court has ruled that it is not persuaded that the authorities’ conduct, albeit negligent to the extent that it has breached Article 2 in its procedural aspect, could have in itself caused the applicant mental distress in excess of the minimum level of severity, which is necessary in order to consider treatment as falling within the scope of Article 3 (see, among others, ECtHR, *Tovsultanova v. Russia*, no. 26974/06, judgment of 17 June 2010, § 104; ECtHR, *Shafiyeva v. Russia*, no. 49379/09, judgment of 3 May 2012, § 103).
104. *Applicability of Article 3 to the Kosovo context*
105. With regard to the applicability of the above standards to the Kosovo context, the Panel first refers to its view on the same issue with regard to Article 2, developed above (see §§ 141 - 150 above).
106. The Panel reiterates that a normally functioning law enforcement system should take into account the protection needs of victims and witnesses, as well as to consider the special vulnerability of displaced persons in post-conflict situations. The Panel has already considered the fact that by 2003 the police and justice system in Kosovo was described by the UN Secretary-General as being “well-functioning” and “sustainable” (see § 24 above).
107. The Panel again notes that it will not review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the complaint before it, considering the particular circumstances of the case.
108. For these reasons, the Panel considers that it has to establish with regard to each case whether the attitude and reactions of UNMIK authorities to the disappearance itself and to the complainants’ quest for information with regard to the fate of their relatives and the criminal investigation, would amount to a violation of the obligation under Article 3, having regard to the realities in Kosovo at the relevant time.
109. *Compliance with Article 3 in the present case*
110. Against this background, the Panel discerns a number of factors in the present case which, taken together, raise the question of violation of Article 3 of the ECHR.
111. The Panel notes the proximity of the family ties between the complainant and Mr Slobodan Pejčinović, as the complainant is his father.
112. The Panel recalls the established above failure in relation to the procedural obligation under Article 2, despite the fact that UNMIK Police had the minimum necessary information to pursue investigation from the outset. The Panel notes that the complainant and his wife were contacted by UNMIK authorities twice, first time for the interview, in 2003, and second time in 2008, with a request to provide photographs. The Panel notes the cooperation of the complainant wife’s in providing the photographs, in order to assist the Police. As the Panel noted above (see § 177), it appears that these actions instead contributed to the decision of the UNMIK Police to close the case.
113. In this respect, the Panel reiterates that from the standpoint of Article 3 it may examine UNMIK’s reactions and attitudes to the complainant in their entirety. Drawing inferences from UNMIK’s failure to provide a plausible explanation for the absence of regular contact with the Mr Slobodan Pejčinović’s parents, the Panel considers that this situation, which continued into the period of the Panel’s temporal jurisdiction, caused grave uncertainty to the complainant and his family about Mr Slobodan Pejčinović’s fate and the status of the investigation.
114. As was shown above with regard to Article 2, no proper investigation was conducted in this case. The complainant and his wife were contacted by UNMIK Police only twice, and until now, for almost 15 years after their son’s abduction and disappearance, they have received no information on his fate or on the status of the investigation (see § 93 above).
115. In view of the above, the Panel concludes that the complainant has suffered severe distress and anguish for a prolonged and continuing period of time on account of the way the authorities of UNMIK have dealt with the case and as a result of his inability to find out what happened to his son. In this respect, it is obvious that, in any situation, the pain of a father who has to live in uncertainty about the fate of his son must be unbearable.
116. For the aforementioned reasons, the Panel concludes that, by its behaviour, UNMIK contributed to the complainant’s distress and mental suffering in violation of Article 3 of the ECHR.
117. **CONCLUDING COMMENTS AND RECOMMENDATIONS**
118. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
119. The Panel notes that enforced disappearances constitute serious violations of human rights which shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate and prosecute those responsible for the abduction and disappearance of Mr Slobodan Pejčinović, and that its failure to do so constitutes a further serious violation of the rights of the victim and his next-of-kin, in particular the right to have the truth of the matter determined.
120. 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.
121. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted above (see § 18), UNMIK’s responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008, with EULEX assuming full operational control in the area of rule of law. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.
122. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.

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

* + - In line with the case law of the European Court of Human Rights on situations of limited State jurisdiction (see ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 333; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC]), *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109), must endeavour, with all the diplomatic means available to it *vis-à-vis* EULEX and the Kosovo authorities, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the abduction and disappearance of Mr Slobodan Pejčinović 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 disappearance of Mr Slobodan Pejčinović, as well as the distress and mental suffering subsequently incurred, and makes a public apology to the complainant and his family in this regard;
		- Takes appropriate steps towards payment of adequate compensation to the complainant for the moral damage suffered due to UNMIK’s failure to conduct an effective investigation as well as for distress and mental suffering incurred by the complainant as a consequence of UNMIK’s behaviour.

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

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

**FOR THESE REASONS,**

The Panel, unanimously,

1. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE PROCEDURAL OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
2. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE SUBSTANTIVE OBLIGATION UNDER ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**
3. **RECOMMENDS THAT UNMIK:**

**a. URGES EULEX TO CONSIDER RE-OPENING AND CONTINUING THE CRIMINAL INVESTIGATION INTO THE ABDUCTION AND DISAPPEARANCE OF MR SLOBODAN PEJČINOVIĆ;**

**b. PUBLICLY ACKNOWLEDGES RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE ABDUCTION AND DISAPPEARANCE OF THE COMPLAINANT’S SON, AS WELL AS FOR DISTRESS AND MENTAL SUFFERING INCURRED, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANT AND HIS FAMILY;**

**c. TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION OF THE COMPLAINANT FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2 AND ARTICLE 3 OF THE ECHR;**

**d. TAKES APPROPRIATE STEPS TOWARDS THE REALISATION OF A FULL AND COMPREHENSIVE REPARATION PROGRAMME;**

**e. TAKES APPROPRIATE STEPS AT THE UNITED NATIONS AS A GUARANTEE OF NON REPETITION;**

**f. 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

Acting Executive Officer Presiding Member

*Annex*

**ABBREVIATIONS AND ACRONYMS**

**CCIU** - Central Criminal Investigation Unit

**CCKM** - Coordination Centre for Kosovo and Metohija of the Serbian Government

**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

**IP -** International Prosecutor

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

**KLA** - Kosovo Liberation Army (Albanian: *Ushtria Çlirimtare e Kosovёs [UÇK])*

**MPU** - Missing Persons Unit

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

**NATO** - North Atlantic Treaty Organization

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

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

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

**SPRK** - Kosovo Special Prosecution Office

**UÇPMB** – Army for Liberation of Preševo, Medveđa and Bujanovac (Albanian: *Ushtria Çlirimtare e Preshevës, Medvegjës dhe Bujanocit*)

**UN** - United Nations

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

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

**VRIC** - Victim Recovery and Identification Commission

**WCIU** - War Crimes Investigation Unit

1. A list of abbreviations and acronyms contained in the text can be found in the attached Annex. [↑](#footnote-ref-1)
2. The references drawn upon by the Panel in setting out this general background include: OSCE, “As Seen, as Told”, Vol. 1 (October 1998 – June 1999) and Vol. II (14 June – 31 October 1999); quarterly reports of the UN Secretary-General on the United Nations Interim Administration in Kosovo; UNMIK Police Annual Reports (2000, 2001); Humanitarian Law Centre, “Abductions and Disappearances of non-Albanians in Kosovo” (2001); Humanitarian Law Centre, “Kosovo Memory Book” (htpp://www.kosovomemorybook.org); UNMIK Office on Missing Persons and Forensics, Activity Report 2002-2004; European Court of Human Rights, *Behrami and Behrami v. France* and *Saramati v. France, Germany and Norway*, nos. 71412/01 and78166/01, decision of 2 May 2007; International Commission on Missing Persons, “The Situation in Kosovo: a Stock Taking” (2010); data issued by the United Nations High Commissioner for Refugees, (available at [www.unhchr.org](http://www.unhchr.org)) and by the International Committee of the Red Cross (available at <http://familylinks.icrc.org/kosovo/en>). [↑](#footnote-ref-2)
3. The ICRC database is available at: <http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx> (accessed on 10 March 2014). [↑](#footnote-ref-3)
4. The OMPF database is not open to public. The Panel accessed it with regard to this case on 10 March 2014. [↑](#footnote-ref-4)
5. The ICMP database is available at: <http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en> (accessed on 10 March 2014). [↑](#footnote-ref-5)
6. “UCK” is an English version of the abbreviation of Albanian: *Ushtria Çlirimtare e Kosovёs (UÇK),* which stands for the Kosovo Liberation Army*.* [↑](#footnote-ref-6)
7. See: United Nations Manual On The Effective Prevention And Investigation Of Extra-Legal, Arbitrary And Summary Executions, adopted on 24 May 1989 by the Economic and Social Council, Resolution 1989/65. [↑](#footnote-ref-7)