

**OPINION**

**Date of adoption: 26 June 2014**

**Case No. 99/09**

**Milica MLADENOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 26 June 2014,

with the following members taking part:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Andrey Antonov, Executive Officer

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

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

1. **PROCEEDINGS BEFORE THE PANEL**
2. The complaint was introduced on 30 April 2009 and registered on the same day.
3. On 9 December 2009, the Panel requested additional information from the complainant.
4. On 18 December 2009, the Panel requested from the European Union Rule of Law Mission in Kosovo (EULEX) information with regard to forty-three complaints in relation to missing persons filed before the Panel, including the complaint of Mrs Mladenović.
5. On 28 January 2010, the Panel received a response to its request of 9 December 2009, submitted on behalf of the complainant by her daughter, Mrs Milena Parlić. On 20 January 2011, Mrs Milena Parlić provided additional information to the Panel.
6. On 23 March 2010, EULEX provided a response to the Panel’s request of 18 December 2009.
7. On 29 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 9 June 2011, the SRSG provided UNMIK’s response.
9. On 11 August 2011, the Panel declared the complaint admissible.
10. On 17 August 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 27 February 2013, the SRSG provided UNMIK’s comments on the merits of the complaint, together with the relevant documentation.
12. On 18 December 2013, the Panel requested UNMIK to confirm whether the disclosure of files concerning the case could be considered final. On 23 December 2013, UNMIK provided its response.
13. On 20 December 2013, the Panel requested UNMIK to provide additional information in relation to the original investigative case file. A response was provided on 23 December 2013.
14. On 27 January 2014, the Basic Court (BC) of Mitrovicё/Mitrovica provided the Panel with additional investigative material in relation to this matter.
15. On 29 January 2014, the Panel forwarded the additional investigative documents to the SRSG, with a request for possible further comments on the merits of this complaint.
16. On 7 March 2014, the SRSG provided UNMIK’s response.
17. On 28 March 2014, the Panel requested UNMIK to provide additional information in relation to the criminal investigation in the complainant’s case.
18. On 10 April 2014, the Panel requested the complainant’s daughter to provide additional clarification on behalf of the complainant. On 12 April 2014, Mrs Milena Parlić responded on behalf of the complainant.
19. On 15 April 2014, the Panel received additional information from UNMIK, in relation to the status of the criminal proceedings before the BC of Mitrovicё/Mitrovica and the whereabouts of the complete investigative file.
20. On 16 April 2014, the Panel put additional questions to the complainant.
21. On 22 April 2014, the UNMIK Rule of Law Liaison Office and the Basic Public Prosecutor’s Office (BPPO) for Mitrovicё/Mitrovica provided the Panel with further information in relation to the criminal investigation in the complainant’s case.
22. On 25 and 30 April 2014, Mrs Milena Parlić, on behalf of the complainant, responded to the Panel’s questions.
23. On 25 April 2014, the Panel requested the SRSG to provide additional comments in relation to the criminal investigation in the complainant’s case.
24. On 28 May 2014, the SRSG provided UNMIK’s response.
25. **THE FACTS**
26. **General background[[2]](#footnote-2)**
27. The events at issue took place in the territory of Kosovo shortly after the establishment in June 1999 of the United Nations Interim Administration Mission in Kosovo (UNMIK).
28. 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.
29. 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.
30. 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.
31. 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.
32. 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.
33. 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.
34. 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.
35. 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”.
36. 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.
37. 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.
38. On the same date, UNMIK and EULEX signed an agreement on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK International Prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were supposed to be handed over to EULEX.
39. **Circumstances surrounding the abduction and disappearance of Mr Vladan Mladenović**
40. Mrs Milica Mladenović is the mother of Mr Vladan Mladenović. According to the complainant, he was abducted in the village of Gojbulë/Gojbulja, Vushtri/Vučitrn Municipality, on 25 June 1999.
41. The complainant and her daughter explain that on 23 June 1999, Mr Vladan Mladenović went to stay with his friend, Mr Branimir Mihajlović, in Gojbulë/Gojbulja village. On 25 June 1999, a group of armed Kosovo Albanians entered the Mihajlović’s family house and with force took the complainant’s son and four other Kosovo Serbian males: Mr Branimir Mihajlović, his father, Mr N.M., and two brothers, Mr A.M. and Mr Vladimir Mihajlović. Sometime later, Mr N.M. managed to escape, although he was shot at. The perpetrators also released Mr A.M., as he was not able to walk. The complainant’s son, Mr Branimir Mihajlović and Mr Vladimir Mihajlović were taken in the direction of the Studimla e Epërme/ Gornja Sudimlja village, Vushtri/Vučitrn municipality.
42. The complainant and her daughter indicate that the abduction was immediately reported to KFOR and UNMIK, and in the following few days to the ICRC, the Serbian Ministry of Internal Affairs (MUP), as well as to the embassies of all the countries which had their military contingents deployed in Kosovo. According to the complainant, after receiving the report, KFOR and UNMIK Police went to the crime scene (location not specified), where some spent shell casings had been found. The information on Mr Vladan Mladenović’s abduction was also sent to the ICTY and other organisations. The complainant and her daughter state that despite all their efforts, the authorities have never conducted an investigation into his abduction and disappearance.
43. The complainant adds that some time her family was informed that Mr Vladan Mladenović, together with his abducted friends, was kept in the basement of a warehouse in Vushtri/Vučitrn, where they all were tortured. On the complainant’s behalf, her daughter further states that this information was received in October 1999 and that at that time the warehouse was allegedly used as an illegal detention centre for Serbian captives. According to her, the complainant’s husband immediately passed that information to the French KFOR, but they undertook no action. The whereabouts of Mr Vladan Mladenović, Mr Branimir Mihajlović and Mr Vladimir Mihajlović have remained unknown since that time.
44. The complainant’s daughter further states that the family suspects that a group of former KLA members under the command of Mr G.I., who operated in the Vushtri/Vučitrn area during the conflict, was responsible for the abduction and disappearance of her brother and the other two victims. She adds that Mr G.I. was arrested by KFOR in 2001, but was released shortly afterwards for alleged lack of evidence, even though he reportedly admitted the abduction and the detention of Mr Vladan Mladenović and his friends, whom he apparently handed over “to the Protection Corps”.
45. On 18 August 1999, the ICRC opened a tracing request with regard to Mr Vladan Mladenović; it remains open until now. The ICRC tracing requests for Mr Branimir Mihajlović and Mr Vladimir Mihajlović, reflecting the same details in relation to the abduction, also remain open[[3]](#footnote-3).
46. The name of the complainant’s son is also present in the list of missing persons that was forwarded by the ICRC to UNMIK on 12 October 2001, for whom the ICRC had collected ante-mortem data in Serbia proper between 1 July and 20 September 2001, as well as in the database compiled by the UNMIK OMPF[[4]](#footnote-4). The entry in relation to Mr Vladan Mladenović in the online database maintained by the ICMP[[5]](#footnote-5) reads, in relevant fields: “Sufficient Reference Samples Collected” and “DNA match not found”. The OMPF and ICMP databases likewise have entries with similar information in relation to Mr Branimir Mihajlović and Mr Vladimir Mihajlović.
47. The complainant’s daughter also provided to the Panel a certificate issued by the Serbian MUP on 13 October 2003, confirming that the criminal report in relation to the abduction of Mr Vladan Mladenović and his two friends had been registered by Serbian police under the no. KU-66/00. She also provided a copy of her mother’s undated criminal report on the same matter to the international prosecutor in the Mitrovicё/Mitrovica District Public Prosecutor’s Office (DPPO).
48. On 20 January 2011, the complainant’s daughter provided the Panel with an article from BBC, published in May 2010, which contains a photograph reportedly taken in 1999 in a refugee camp near Kukёs, Albania. She believes that her brother and Mr Branimir Mihajlović are among the alleged Kosovo Albanian refugees in that photo.
49. On 12 April 2014, Mrs Milena Parlić provided the Panel with additional documents, related to the proceedings before the Investigating Judge of the Mitrovicё/Mitrovica District Court. All those documents were also in the file presented to the Panel by that Court’s Registry, in January 2014 (see § 13 above and §§ 70 – 106 below).
50. Later, Mrs Milena Parlić clarified that her family was represented during pre-trial proceedings against Mr G.I. by Mrs S.Ð., a lawyer from Belgrade, who was appointed to provide free legal assistance by the Serbian Coordination Centre for Kosovo and Metohija. Unfortunately, Mrs S.Ð. had passed away in the autumn of 2002 and until now the family has not received any decision suspending or terminating the proceedings against Mr G.I. Mrs Parlić added that the family had requested the reopening of the criminal proceedings, but provided no further details as to how they had done that, nor whether they had received any response.
51. **The investigation**
52. In the present case, the Panel received from UNMIK the investigative documents previously held by the UNMIK Police WCIU and the UNMIK OMPF. When presenting the file to the Panel, in February 2013, UNMIK noted that more information in relation to this case, not contained in the presented documents, may exist. Nevertheless, on 6 December 2013, it confirmed to the Panel that no more relevant documents have been obtained.
53. Following the Panel’s efforts, on 27 January 2014, the BC of Mitrovicё/Mitrovica provided additional investigative documents in relation to this case, which were stored in its archive.
54. 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 regime to the documents received from the BC of Mitrovicё/Mitrovica.

*Documents in the file presented by UNMIK*

1. The file contains a memorandum dated 16 June 2000, bearing a reference no. MPU 2000-00285, in which the MPU requested the Vushtri/Vučitrn UNMIK Police station to investigate the abduction of Mr Vladan Mladenović and the two Mihajlović brothers. The MPU asked to be informed of the results by 15 July 2000.
2. Attached to the above memorandum is an MPU Case Continuation Report with one entry, dated 12 June 2000. This entry provides information of a contact by an MPU investigator with Mr N.M., the father of Branimir and Vladimir Mihajlović. In addition to what has been described above in relation to the abduction, Mr N.M. stated to the CCIU that three abductors, armed with an AK-47, came to his house at around 19:30 on 25 June 1999; he provided their description. In September 1999, Ms R.R. told Mr N.M. that one of the abductors was Mr G.I., and that the same person “also was keeping Serbs in a village called Strovce”. According to the report, Mr N.M. identified one of the photographs in the line-up presented to him as that of Mr G.I. It is not explained whether this identification was correct or not. This entry ends with a statement that ante-mortem data has been collected for the Mihajlović brothers, but not for the complainant’s son, “as his relatives have moved to Serbia [proper].”
3. By a memorandum dated 15 December 2000, the same MPU officer requested an update from the Vushtri/Vučitrn UNMIK Police station on the above-mentioned request of 16 June 2000.
4. By a memorandum dated 21 December 2000, the Mitrovicё/Mitrovica Regional Investigation Unit of UNMIK Police informed the MPU that the information in relation to the missing persons, which MPU had provided with their request of 16 June 2000, was confusing and asked for clarifications.
5. Neither any further correspondence in this regard, related to the MPU case no. 2000-00285, nor the above-referred (§ 51) statement of Mr N.M. and the photo line-up, are found in the file.
6. By the memorandum dated 12 January 2001, with a reference to the CCIU file no. 2000-00257, the CCIU requested the Serbian MUP to locate Ms R.R. and secure her agreement to be interviewed as a witness in relation to the abduction of Mr Vladan Mladenović, Mr Branimir Mihajlović and Mr Vladimir Mihajlović.
7. Responding to the CCIU request, by a memorandum of 24 February 2001, reference no. “12a No. 47-1/2001”, the Serbian MUP confirmed that they had located Ms R.R., that she had confirmed her availability for an interview on 26 February 2001 and had provided her address in Mitrovicё/Mitrovica and a contact telephone number. They requested to be informed of the outcome of the meeting with this witness. This part of the file does not contain a statement from this witness.
8. Attached to that memorandum was a copy of a memorandum from the Serbian MUP to KFOR Military Police on 1 February 2001, reference no. “12a Nr. 57/5-2001”, stating that on 30 December 2000 the MUP had received a criminal report in relation to the abduction of Mr Vladan Mladenović, Mr Branimir Mihajlović and Mr Vladimir Mihajlović, filed by Mr N.M. against unknown perpetrators. This criminal report was registered by the MUP under no. KU 531/2000. The report itself is not found in the file presented to the Panel.
9. The above response from the Serbian MUP was forwarded to the CCIU by the MPU on 8 March 2001; the cover memorandum bears two case nos: CCIU 2000-00257 and MPU 1999-000051.
10. The file also contains a request for the expansion of a judicial investigation, addressed to Mitrovicё/Mitrovica District Court (DC) on 18 December 2001 by a legal representative of family members of a number of persons allegedly abducted by the KLA unit under the command of Mr G.I., in Mitrovicё/Mitrovica region in 1998 and 1999. Mr Vladan Mladenović, Mr Branimir Mihajlović and Mr Vladimir Mihajlović are named among the victims. It bears case nos from the Mitrovicё/Mitrovica DC and the DPPO.
11. The file further contains two undated ICRC Victim Identification Forms for Mr Vladan Mladenović, apparently completed by the ICRC between 1 July and 20 September 2001 (see § 42 above). Besides reflecting his personal details and ante-mortem description, these forms provide names and contact details of the complainant, her husband and their other son, in Serbia proper. It is also stated there that Mr Vladan Mladenović was abducted together with Mr Branimir Mihajlović and Mr Vladimir Mihajlović. Attached is a copy of a Health Book of a Cadet of a Military Academy in the name of Mr Vladan Mladenović and two photographs of him.
12. In an e-mail dated 21 April 2004, an MPU investigator asked an UNMIK international prosecutor for additional information in relation to this case, as the MPU was reviewing it. As it appeared to the MPU, the judicial investigation against Mr G.I. was initiated in November 2001 and discontinued in October 2002. In particular, the MPU wanted to know why the case was closed, as they were also considering closing it. No response to this e-mail is in the file.
13. The file further contains an MPU Ante-Mortem Investigation Report, dated 26 April 2004, on the MPU case no. 1999-00051, in relation to the abduction of Mr Vladan Mladenović and his two friends, also bearing a number 0315/INV/04. The field “Witness” on the front page has the names of three witnesses to the event: those of the father and the brother of Mr Branimir Mihajlović (Mr N.M. and Mr A.M.) and of Ms R.R. The field “Suspect” has the name of the above-mentioned Mr G.I.
14. The field “Summary of Information” of this report has a brief statement of the known circumstances of the abduction, generally matching its description provided to the Panel by the complainant. In addition, the report states that the witness Ms R.R. was the one who named Mr G.I. as a suspect to Mr Vladan Mladenović’s parents; her statement was reportedly recorded by the CCIU. The report further states that the “judicial investigation” started on 22 November 2001. The suspect, Mr G.I., “was positively identified by three witnesses from a photo line-up, as one of the abductors and also as the person who shot at [Mr N.M.].” The report continues that the suspect was arrested on 24 November 2001 on the charges of “kidnapping … and attempted murder” and detained until 23 May 2002. On 28 October 2002, “the investigating judge decided to suspend further proceedings on the proposal of the Public prosecutor.”
15. The report also states that “[t]he relatives of the abducted persons gave evidence, but in the hearings, their evidence greatly departed from the firm assertions and descriptions they had given to the police.” Those discrepancies led to doubts as to the identification of Mr G.I., who was then released from custody. According to the report, the international prosecutor was of the opinion that, “unless cogent fresh evidence comes to light, the case against [Mr G.I.] cannot proceed.” At the conclusion of the report, the investigator stated that “all avenues of investigation have been exhausted” and recommended this investigation to be closed. However, the status “closed” is crossed out and “pending” written over it.
16. An undated CCIU Case Report printed from their database in relation to this case has references to the CCIU case no. 2000-00257 and another police case no. 2000/BI/122. It has a description of the case disposition, similar to that in the above Ante-Mortem Investigation Report. It mentions Mr Vladan Mladenović, Mr Branimir Mihajlović and Mr Vladimir Mihajlović as victims, Mr G.I. as a suspect, Mr N.M. as a reporting party, and Mrs M.M., Mr A.M. and Ms R.R. as witnesses.
17. By an e-mail also dated 26 April 2004, the MPU investigator in charge of the case review informed the MPU liaison officer in Belgrade of the closure of this MPU investigation. He also requested the relatives of Mr N.M. and Mr Vladan Mladenović to be contacted and explained that the case “has been re-investigated, albeit with a negative result.” There is no response to this e-mail in the file.
18. A printout from the MPU database, generated on 27 April 2004, provides very brief details of the case no. 0315/INV/04, cross-linked to the case no. 1999-000051. Its field “Request Summary” reads: “There is lack of information” and the field “Results” reads “Pending.”
19. The file also contains a translation of a covering letter from the “Association of Families of Kidnapped and Missing Persons in Kosovo and Metohija”, dated 1 December 2004, by which 13 criminal reports in relation to the missing persons were sent to the UNMIK DOJ through the UNMIK Court Liaison Office. Attached is a translation of the complainant’s criminal report addressed to the international prosecutor at the Mitrovicё/Mitrovica DPPO (see § 43 above). This translation has a handwritten mark “2005-00118” on top of the front page; the translator’s note at the “footer” part indicates that the translation was created on 21 February 2005.
20. The last relevant document in the file is a one-page printout from the CCIU database in relation to the case no. 2005-00118, generated on 19 October 2007, in relation to a crime qualified as “missing person – kidnapping”, committed against Mr Vladan Mladenović, Mr Branimir Mihajlović and Mr Vladimir Mihajlović. The complainant is mentioned as the reporting party in this case. The document shows that this case was entered in the CCIU database on 18 August 2005.

*Documents provided by the Basic Court of Mitrovicё/Mitrovica*

1. The first part of the file is related to the investigative actions undertaken by UNMIK Police Mitrovicё/Mitrovica Regional Investigation Unit (RIU), the Mitrovicё/Mitrovica District Public Prosecutor’s Office (DPPO) and the District Court (DC). According to an undated Initial Incident Report, the abduction of Mr Vladan Mladenović, Mr Branimir Mihajlović and Mr Vladimir Mihajlović was reported to UNMIK Police Mitrovicё/Mitrovica Regional Investigation Unit by Mr N.M., some time during the year of 2000; the case was registered under the no. 2000/BI/122.
2. On 10 October 2000, the RIU interviewed Mr N.M. He described how on 25 June 1999 he and his sons: Mr A.M., Mr Branimir Mihajlović and Mr Vladimir Mihajlović, along with Mr Vladan Mladenović, were abducted from his house in Gojbulë/Gojbulja village by three armed Kosovo Albanians, who presented themselves as KLA policemen. The KLA members also searched the house for weapons but could not find any. He provided a brief description of them. He also explained that he was able to escape while they were walking under escort of the KLA members towards Studimla e Epërme/Gornja Sudimlja village and that his younger son, Mr A.M., was released a few minutes later. He mentioned Ms R.R., who had told him that the abduction was carried out by Mr G.I., who at that time occupied the residence where the Commander of the Vushtri/Vučitrn Police Station, Mr V.J., used to live. Mr G.I. reportedly admitted to her in a telephone conversation that he was one of the three abductors and that he had done it because “he had got an order from someone to kidnap the Serbians”. He confirmed that he would be able to recognise Mr G.I. on a photograph.
3. On 15 October 2000, the same RIU investigator interviewed Mr A.M. He provided a similar description of the abduction on 25 June 1999. He added that during their abduction, his mother (Mrs M.M.) and grandmother (Mrs O.M.) were locked in a barn in the courtyard of their house. He clarified that he was released by the KLA members shortly after his father, Mr N.M., escaped. He also provided a brief description of the “KLA policemen”.
4. The file further reflects the investigative actions undertaken by the UNMIK Police CCIU. It contains a number of very detailed Officer’s Reports by the CCIU investigator in charge of the case, which was registered under the no. 2000-00275. The earliest of those reports indicates that the investigator was assigned this case on 1 August 2001. This report already has full identification details with regard to Mr G.I., named as “suspect # 1”, while the other two abductors are “not yet identified”. On 2 August 2001, the investigator had planned to locate and interview Mrs M.M., Mrs O.M. and Ms R.R., to try to locate the place where the KLA member had allegedly shot at Mr N.M. and to collect possible physical evidence, as well as to conduct searches in the civil registry, courts, police and intelligence databases in relation to the identified suspect, Mr G.I.
5. On 2 and 3 August 2001 the investigator travelled to the village of Gojbulë/Gojbulja and to Mitrovicё/Mitrovica, attempting to locate and interview Ms R.R. As he was not able to do so, on 5 August 2001 he submitted a request to “Serbian Police”, asking for their assistance in locating this witness.
6. On 14 August 2001, the CCIU investigators went to Gojbulë/Gojbulja village, where they had located Mrs M.M., the wife of Mr N.M., and recorded her statement. She provided her version of what had happened on 25 June 1999 and described the “Albanian man” who locked her and Mrs O.M. in the barn at their house. With regard to the witness Mrs O.M., the investigator noted that she was not able to give any statement due to her old age and forgetfulness.
7. On the same day, the CCIU investigators met with Mr N.M. and Mr A.M. Mr N.M. was asked to show the direction in which they all had been taken from the village by the KLA on 25 June 1999, and the spot at which he was able to escape. Mr A.M. was asked to indicate the location where he was let go by the abductors. Both agreed to participate.
8. On 16 August 2001, the CCIU investigators recorded additional testimony from Mr N.M. and Mr A.M., outside of the village Gojbulë/Gojbulja. Both witnesses pointed at the location where the KLA shot at Mr N.M., while he was escaping. The location was searched using metal detectors; eight 7.62 spent shell casings were found and seized. Mr A.N. also showed the further location where he was released by the KLA members. The complete process of this investigative action was properly described in the report and photographed. The investigator noted that the shell casings should be examined for their possible connection to other cases.
9. On 17 August 2001, the investigator received photographs of Mr G.I. and prepared a line-up for photo identification.
10. On 19 August 2001, Mr N.M. and Mr A.M. were separately shown the photo line-up (which included a photograph of Mr G.I., available in the file) and asked if they could recognise anyone in those pictures. Both positively identified Mr G.I. as one of the KLA members responsible for their abduction on 25 June 1999.
11. On 9 September 2001, the investigator received information from the CCIU database, indicating that on 2 November 1999 Mr G.I. had given a witness statement to UNMIK Police in another CCIU case, regarding the circumstances of the action of Serbian forces in the Mitrovicё/Mitrovica region in May of 1999, known as the “Studime Massacre”. From the “Studime Massacre” investigative file, the CCIU investigator further learned that one witness in that case had named the victim’s son as one of the suspects in the killings and another witness generally referred to “those [Serbian men] of Gojbule”, who committed crimes.
12. On 14 September 2001, the investigator had received a complete intelligence report on Mr G.I., which included his KLA record and associates, analysis of his current activities, as well as the most recent photographs.
13. On 1 October 2001, the CCIU investigator presented the case and his findings to an International Public Prosecutor (IPP) at the Mitrovicё/Mitrovica District Public Prosecutor’s Office (DPPO), for review and advice on further action. On 25 October 2001, the investigator was informed of the IPP’s decision to initiate the judicial investigation against Mr G.I. and was instructed to start preparations for his arrest and searches in the relevant locations.
14. On 4 November 2001, the investigator additionally received a copy of the statement of Mr G.I., given on 4 October 2001 to UNMIK Police investigators at the Vushtri/Vučitrn police station. This interview was prompted by an anonymous letter received by UNMIK Police, accusing Mr G.I. and a number of other former KLA members of the abduction and killing of Mr X.Q. A record of this interview is in the file.
15. In the meantime, between 5 and 19 November 2001, the investigator continued with the collection of intelligence information on the suspect, including his residence address, and planned the coordinated operation to arrest Mr G.I. and simultaneously search his property.
16. On 19 November 2001, an IPP of the Mitrovicё/Mitrovica DPPO requested the Mitrovicё/Mitrovica DC to initiate an investigation against Mr G.I., suspected of kidnapping and attempted murder. In this request, the IPP requested the investigating judge to interview Mr G.I., the injured parties, Mr N.M. and Mr A.M., and the witnesses Mrs M.M. and Ms. R.R. On the same date, the IPP requested Mr G.I. to be detained and searches to be ordered of his house and apartment, his office and his vehicle.
17. On 21 November 2001, the CCIU investigator contacted Mr G.I. and invited him to appear at the CCIU premises for an interview on 24 November 2001, to which Mr G.I. agreed.
18. On 22 November 2001, the investigation against Mr G.I. was opened by the Mitrovicё/Mitrovica DC, and an International Investigating Judge (IIJ) was assigned. On 23 November 2001, an order to search Mr G.I’s property was issued.
19. On 24 November 2001, Mr G.I. came to the CCIU, as agreed, and was arrested by the CCIU. He was immediately interviewed by the CCIU with regard to his alleged participation in the abduction of Mr Vladan Mladenović, Mr Branimir Mihajlović and Mr Vladimir Mihajlović, Mr N.M. and Mr A.M., as well as the attempted murder of Mr N.M. He denied any connection to, or a knowledge of those crimes.
20. According to a report of the CCIU investigator, also dated 24 November 2001, immediately after the interview, Mr G.I. “off the record” told him that he knew the three persons who abducted the victims in this case. Reportedly, he did not give that information during the interview out of fear “that he would be killed or his family killed.” He agreed to write a separate confidential statement, which would only be shown to the international judge and the prosecutor, “and no Albanians”. A copy of that handwritten statement is in the file. The CCIU investigator noted that the full translation of the statement would be done by an international interpreter.
21. At the same time, two residences, the office and the vehicle of Mr G.I. were searched. In all four locations, a significant number of documents (in Albanian), photo and video material, computer equipment, weapon and ammunition, were seized. The file contains detailed lists of the seized property. There is a note of the CCIU investigator that all evidence should be examined. Also, the file reflects his attempts to utilise KFOR international interpreters to translate the documents from Albanian. However, although the file reflects certain activity with respect to examination of all the items, there is no information as to the results of such examination. Likewise, it is not clear from the file what had happened to those seized items.
22. On 26 November 2001, Mr G.I. was interviewed by the IIJ. On the same day, an order for his detention until 24 December 2001 was issued. On 27 November 2001, the defence lawyer of Mr G.I. appealed this decision, but the appeal was rejected on 30 November 2001 by a panel of three international judges.
23. On 10 December 2001, the IIJ interviewed Mr A.M. He confirmed that he had identified Mr G.I. on a photo line-up and added that it was Mr G.I. who had locked his mother, Mrs M.M., in the barn, and who had shot at his father, Mr N.M.
24. On 12 December 2001, the CCIU investigator received a translation of the “confidential statement” of Mr G.I. In that statement, he identified three persons, former KLA members, who according to him had abducted the victims in this case. On the same date, the investigator requested the photographs of the three suspects to be presented to him.
25. On 18 December 2001, upon a motion of an IPP, a panel of three international judges extended the detention of Mr G.I. for an additional period of two months, until 24 February 2002. On 21 December 2001, this decision was appealed by the defence lawyer of Mr G.I., but the appeal was rejected.
26. On 18 December 2001, the legal representative of Mr N.M. and A.M. submitted to the Mitrovicё/Mitrovica DC a request to expand the investigation, to include seven more suspects, who, along with Mr G.I. were allegedly involved in 15 more abductions and killings of non-Albanian residents of Vushtri/Vučitrn and the surrounding villages. None of the three suspects named by Mr G.I. in his above-mentioned “confidential statement”, were listed there.
27. On 9 January 2002, the IIJ interviewed Mr N.M. During the questioning, Mr N.M. confirmed his identification of Mr G.I. in a photo line-up. On the next day, the IIJ interviewed Mrs M.M. She confirmed that she saw only one of the abductors and that she did not clearly remember him. Nevertheless, she was able to provide some description.
28. On 11 January 2002, the CCIU investigator requested two of those suspects, Mr Ag.M. and Mr E.S., to come to CCIU, for interviews, on 14 January 2002. Both suspects appeared as scheduled and were interviewed. Both denied any involvement in the abduction.
29. On 15 January 2002, in Gojbulë/Gojbulja village, the CCIU investigator presented the photo line-ups with the photographs of Mr Ag.M. and Mr E.S., to Mr N.M. and Mr A.M. Neither of them was able to positively identify anyone on those photo line-ups.
30. On 19 February2002, the IPP requested anonymity to be granted for a witness, who was able to testify as to the involvement of Mr G.I. in the abduction in question. This request was apparently granted and the hearing of this witness was set to take place on the next day, 20 February 2002. However, when in the morning the CCIU investigators came to collect and escort the witness to the court house, the witness refused because of a phone call that the witness had received on the mobile late in the previous evening, when the caller had threatened to kill the witness and the witness’s family, in case any testimony against Mr G.I. was given to the court. Subsequently, the IPP moved to abandon interviewing this witness, and instead to have two CCIU investigators give testimony regarding the previous statement this witness had given to them. As the defence objected to the proposal the hearing was adjourned to 8 March 2002.
31. During the hearing on 8 March 2002, the IIJ granted the prosecutor’s motion not to interview the witness, for security reasons, and to interview the two CCIU investigators. The defence objected and filed a motion to disqualify the IPP and IIJ from the case, because of their illegal actions and biased approach to this case.
32. The next document in the file is the record of the “live” identification of the accused, Mr G.I., which took place on 14 May 2002, in the court room of the Mitrovicё/Mitrovica DC. The prosecution side was presented by a new IPP, while the IIJ was the same. Before the action took place, the defence filed a written protest against it, which is also on file. Only Mr A.M. was able to recognise Mr G.I. in the line-up, while his parents, Mr N.M. and Mrs M.M., did not recognise anyone.
33. On 20 May 2002, the IPP requested the Court to extend the detention of Mr G.I. for another month, this request was granted and the detention extended until 24 June 2002. Nevertheless, on 24 May 2002, the new IIJ appointed to the case decided “in agreement with the Public Prosecutor [who] found it justified to release the accused after 5 months in detention”, to abrogate the detention. On the same day, Mr G.I. was apparently released.
34. On 1 July 2002, in Belgrade, the new IIJ interviewed the complainant, Mrs Milica Mladenović, as a witness in this case. Among other things, she stated that she had no idea why her son would be abducted as he did not do anything bad to anyone, and he did not hide from anybody. She added that Mr Vladimir Mihajlović, who was abducted together with her son, was a police officer. On the same day, the same judge re-interviewed Mr N.M., as a witness. Among other things, he was asked to describe the appearance of the three abductors. He also stated that he described the event to the complainant’s husband shortly after the abduction, when the latter visited him in the village.
35. On 2 July 2002, also in Belgrade, the IIJ interviewed additional witnesses, Ms O.B., Mr D.J. and Mr M.M. These interviews were apparently conducted in relation to the additional allegations put forward against Mr G.I. in the above-mentioned request for expansion of the investigation, of 18 December 2001 (see § 59 above). None of the witnesses provided any information to substantiate the allegations; they were also unable to add anything in relation to the abduction of the complainant’s son and the other victims on 25 June 1999.
36. No further documents are in the file in the Panel’s possession.
37. On 23 December 2013, UNMIK confirmed to the Panel that the records of the DPPO Mitrovicё/Mitrovica show that the case was terminated on 17 October 2002, while the Registry books of the Mitrovicё/Mitrovica BC (the successor of the Mitrovicё/Mitrovica DC) indicate that the same happened on 28 October 2002. In response to the Panel’s additional inquiry, the Registrar of the Mitrovicё/Mitrovica BC confirmed that, according to their records, the case had been “suspended”. However, no written decision to that effect was provided.
38. In addition, in a letter dated 22 April 2014, the Head of the Secretariat of the BPPO for Mitrovicё/Mitrovica informed the Panel that the original prosecutor’s investigative file in this case was taken by an UNMIK international prosecutor in charge of the investigation, and upon its completion was not filed at this Prosecutor Office’s archive.
39. Due to the lack of information regarding the action undertaken by prosecutors and the court in relation to this investigation, on 29 April 2014 the Panel requested the SRSG to:
* confirm the status of the investigation nos PP 203/01 (in Mitrovicё/Mitrovica BPPO) and HEP 178/2001 (Mitrovicё/Mitrovica BC);
* in case it was closed/suspended, to inform the Panel who had made that decision and provide a copy;
* clarify when and how that decision, if any, had been served on the complainant’s family;
* clarify where the UNMIK Prosecutor’s original file is located.
1. In response, on 28 May 2014, the SRSG advised that UNMIK does not have any information in relation to those issues.
2. **EULEX response**
3. As mentioned above (§ 3), on 18 December 2009 the Panel requested EULEX to provide additional information in relation to forty three complaints before the Panel. In their response, dated 23 March 2011, EULEX officers explained that they had searched the available sources, including the list of cases “found in July 2009 in the [DOJ] building Archive room (not officially handed over from UNMIK to EULEX because no more “active” but dismissed, terminated or closed).”
4. 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 the creation of a centralised case registry by UNMIK DOJ, in 2003.
5. However, the search in the EULEX files provided information on only two cases listed in the Panel’s request of 18 December 2009. No files or other information in relation to the other forty one cases, including the one in relation to the abduction and disappearance of the complainant’s son and his friends, were 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.”
6. **THE COMPLAINT**
7. The complainant complains about UNMIK’s alleged failure to properly investigate the abduction and disappearance of her 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).
8. The complainant also complains about the mental pain and suffering allegedly caused to her by this situation. In this regard, the Panel deems that the complainant relies on Article 3 of the ECHR.
9. **THE LAW**
10. **Alleged violation of the procedural obligation under Article 2 of the ECHR**
	1. **The scope of the Panel’s review**
11. In determining whether it considers that there has been a violation of Article 2 (procedural limb) of the ECHR, the Panel is mindful of the existing case-law, notably that of the European Court of Human Rights. However, the Panel is also aware that the complaints before it differ in some significant ways from those brought before that Court. First, the respondent is not a State but an interim international territorial administration mandated to exercise temporary responsibilities in Kosovo. No suspicion attaches to UNMIK with respect to the substantive obligations under Article 2 of the ECHR. Second, as in a limited number of cases before the European Court, those suspected of being responsible for the alleged killings and/or abductions are in all cases before the Panel non-state actors, mostly but not exclusively connected to the conflict. These are factors for the Panel to take into consideration as it assesses the procedural positive obligations of an intergovernmental organisation with respect to acts committed by third parties in a territory over which it has temporary legislative, executive and judicial control.
12. Before turning to the examination of the merits of the complaint, the Panel needs to clarify the scope of its review.
13. The Panel notes that with the adoption of the UNMIK Regulation No. 1999/1 on 25 July 1999 UNMIK undertook an obligation to observe internationally recognised human rights standards in exercising its functions. This undertaking was detailed in UNMIK Regulation No. 1999/24 of 12 December 1999, by which UNMIK assumed obligations under the following human rights instruments: the Universal Declaration of Human Rights, the European Convention on Human Rights and Protocols thereto, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, [the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](http://untreaty.un.org/English/TreatyEvent2001/pdf/07e.pdf), the Convention on the Rights of the Child.
14. The Panel also notes that Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel provides that the Panel “shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of (their) human rights”. It follows that only acts or omissions attributable to UNMIK fall within the jurisdiction *ratione personae* of the Panel. In this respect, it should be noted, as stated above, that as of 9 December 2008, UNMIK no longer exercises executive authority over the Kosovo judiciary and law enforcement machinery. Therefore UNMIK bears no responsibility for any violation of human rights allegedly committed by those bodies. Insofar as the complainant complains about acts that occurred after that date, they fall outside the jurisdiction *ratione personae* of the Panel.
15. Likewise, the Panel emphasises that, as far as its jurisdiction *ratione materiae* is concerned, as follows from Section 1.2 of UNMIK Regulation No. 2006/12, it can only examine complaints relating to an alleged violation of human rights. This means that it can only review acts or omissions complained of for their compatibility with the international human rights instruments referred to above (see § 117). In the particular case of killings and disappearances in life-threatening circumstances, it is not the Panel’s role to replace the competent authorities in the investigation of the case. Its task is limited to examining the effectiveness of the criminal investigation into such killings and disappearances, in the light of the procedural obligations flowing from Article 2 of the ECHR.
16. The Panel further notes that Section 2 of UNMIK Regulation No. 2006/12 provides that the Panel shall have jurisdiction over complaints relating to alleged violations of human rights “that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights”. It follows that events that took place before 23 April 2005 generally fall outside the jurisdiction *ratione temporis* of the Panel. However, to the extent that such events gave rise to a continuing situation, the Panel has jurisdiction to examine complaints relating to that situation (see European Court of Human Rights (ECtHR), Grand Chamber [GC], *Varnava and Others v. Turkey*, nos. 16064/90 and others, judgment of 18 September 2009, §§ 147-149; ECtHR, *Cyprus v. Turkey* [GC] no. 25781/94, judgment of 10 May 2001, § 136, ECHR 2001-IV).
	1. **The Parties’ submissions**
17. The complainant in substance alleges violations concerning the lack of an adequate criminal investigation into the abduction and disappearance of her son. The complainant also states that she was not informed as to whether an investigation was conducted at all, and what the outcome was.
18. In his comments on the merits of the complaint under Article 2, the SRSG accepts that Mr Vladan Mladenović disappeared in life threatening circumstances. He notes that “[s]oon after the establishment of UNMIK in June 1999, the security situation in post-conflict Kosovo remained tense. KFOR was still in the process of reaching sufficient strength to maintain public safety and law and order and there were a number of serious criminal incidents targeting Kosovo-Serbs, including abductions and killings.”
19. The SRSG accepts UNMIK’s responsibility to conduct an investigation in the case of Mr Vladan Mladenović under Article 2 of the ECHR, procedural part. In the words of the SRSG, “the essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life, as defined by UNMIK Regulation No. 1999/1 On the Authority of the Interim Administration in Kosovo of 25 July 1999 and subsequently, by UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo of 12 December 1999, as amended.”
20. The SRSG considers that such an obligation is two-fold, including “an obligation to determine through investigation the fate and/or whereabouts of the missing person”; and “an obligation to conduct an investigation capable of determining whether the death was caused unlawfully and leading to the identification and punishment of those responsible for the disappearance and/or death of the missing person”.
21. The SRSG further observes that when determining applications under Article 2, procedural part, consideration must be given to not imposing an impossible or disproportionate burden on UNMIK. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court of Human Rights in the case *Palić v. Bosnia and Herzegovina*, stating at paragraph 70:

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

1. In the view of the SRSG, in the aftermath of the Kosovo conflict, UNMIK was faced with a similar situation as the one in Bosnia. Many of those persons who were unaccounted for were abducted, killed and buried in unmarked graves inside or outside Kosovo, which made very difficult locating and recovering their mortal remains.
2. 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 “more bodies continued to be located in burial sites and more identifications and returns to family members are taking place, often based on information contained in UNMIK-OMPF files”. The SRSG continues that therefore “it is apparent that the process for establishing a system capable of dealing effectively with disappearances and other serious violations of international humanitarian law has been an understandably incremental one” in Kosovo as reflected in the *Palić* case referred to above. The SRSG further notes that this process was “reliant on a number of actors rather than just UNMIK, for example the International Commission on Missing Persons, the International Committee of the Red Cross and local missing persons organisations.”
4. The SRSG further argues that fundamental to conducting effective investigations “is a professional, well trained and well resourced police force” and that “[s]uch a force did not exist in Kosovo in 1999 and had to be established from scratch and progressively developed.” In the policing vacuum following the end of the conflict, UNMIK had to build a new Kosovo Police Service, a long and challenging task, which, according to the SRSG, is still in progress. The SRSG also states that UNMIK Police faced numerous challenges in exercising law enforcement functions gradually transferred to it by KFOR in 1999 - 2000. In this regard, he refers to the UNMIK Police Annual Report of 2000 describing the situation as follows:

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

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

1. The SRSG states that UNMIK international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and country, with limited support from the still developing Kosovo Police. He further states that these investigators were often faced with situations where individuals holding relevant knowledge on the whereabouts and fate of missing persons did not want to disclose this information. According to the SRSG, all these constraints inhibited the ability of the UNMIK Police to conduct investigations according to the standards that may be expected from States with more established institutions and which are not faced with the high number of cases of this nature associated with a post-conflict situation.
2. With regard to the part of the investigations aimed at establishing the fate of Mr Vladan Mladenović, the SRSG considers that a case in this respect was opened by UNMIK Police some time in 1999 (judging by the case number 1999-000051, see § 58 above). However, the SRSG notes that UNMIK police tried to get in touch with his family members in order to get the ante-mortem details and additional information as to his possible whereabouts, but was not able to do so, as his relatives had moved to Serbia proper. According to the SRSG, the police also tried to get information from possible witnesses, but the information provided could not shed light on a possible location of Mr Vladan Mladenović.
3. With regard to the investigation aimed at identifying the perpetrators and bringing them to justice, the SRSG further asserts that an investigation was carried out by UNMIK Police. In particular, evidence was gathered from the relatives of the other persons abducted with Mr Vladan Mladenović, a suspect was identified, a “judicial process” against him was initiated on 22 November 2001, during which the relatives of the abducted persons gave evidence. However, that evidence “[g]reatly departed from the firm assertions and descriptions they had given to the police”, so “there was too much doubt as to correct identification” of the suspect. According to the SRSG, as a result of these shortcomings the suspect was released from custody. Following that, as “all avenues of investigation have been exhausted”, the case was closed.
4. The SRSG concludes that “it is evident that UNMIK Police did open and pursue an investigation into whereabouts of Mr Vladan Mladenović.” However, “as UNMIK has noted in other missing persons cases […] without witnesses coming forward or physical evidence being discovered, police investigations inevitably stall because of a lack of evidence.”
5. In the SRSG’s opinion, in this case UNMIK Police “did conduct investigative efforts in accordance with the procedural requirements of Article 2, aiming at bringing the perpetrators to justice.” Thus, according to the SRSG, there has been no violation of Article 2 of the ECHR.
6. The SRSG also informed the Panel that he might make further comments on this matter, “[a]s there is a possibility that additional and conclusive information exists”, beyond the documents presented to the Panel. Indeed, as mentioned above (see §§ 13 - 15), the SRSG provided additional comments, based on the additional investigative documents received by the Panel from the Mitrovicё/Mitrovica BC.
7. In these comments, the SRSG reiterated his previous comments on the merits. He added that the additional documents further prove that UNMIK Police conducted all reasonable investigative steps in order to secure the evidence concerning the incident, including eye-witness testimony, acting promptly and expeditiously. According to the SRSG, all possible witnesses were identified and their statements obtained; in August 2001, additional attempts to track a witness who had moved to Serbia were undertaken by UNMIK Police with the assistance of the Serbian authorities; in November 2001, a possible perpetrator was identified and detained on a court order.
8. The SRSG continues that on 24 May 2002, the detention of the suspect was discontinued by an investigating judge, who took into account “the state of facts established during the investigation […] after 5 months in detention”; the investigation was discontinued some time after that. The SRSG reiterated that this was greatly due to the above-mentioned serious discrepancies in the witnesses’ testimony before the police and during the judicial proceedings, which led to irremovable doubts as to the identification of the accused.
9. Therefore, the SRSG maintains his position that the investigation conducted by UNMIK authorities had fulfilled all procedural requirements under the Article 2 of the ECHR.
10. Finally, in his last communication to the Panel dated 28 May 2014, with regard to the Panel’s questions related to the status of the investigation and the whereabouts of the original investigative file (see § above), the SRSG stated that “[u]pon UNMIK’s transfer of all police files to EULEX, UNMIK ceased to be the custodian of police records in Kosovo and could not, as a matter of principle, retain copies of classified and on-going police investigation files.” The SRSG further reiterated that “a failure to transmit a complete investigation file to the HRAP cannot lead the HRAP to the irrefutable presumption that UNMIK failed to carry out a proper investigation or that files were not fully and accurately handed over by UNMIK to EULEX.”
11. Although in its last submission UNMIK reserved its right to make additional comments on this case “at any further stage, should additional pertinent files be made available to it”, no such comments were received to date.
	1. **The Panel’s assessment**
12. The Panel considers that the complainant invokes a violation of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the European Convention on Human Rights (ECHR) in that UNMIK Police did not conduct an effective investigation into Mr Mr Vladan Mladenović’s abduction and disappearance.
13. *Submission of relevant files*
14. At Panel’s request, on 16 August 2013, the SRSG provided copies of documents related to this investigation, which UNMIK was able to recover. As mentioned above (see § 135), the SRSG also noted that more information, not contained in the presented documents, may exist in relation to this case. On 23 December 2013, UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 11 above). However, the Panel was able to obtain additional documents from the BC of Mitrovicё/Mitrovica (see §§ 13 - 15 above).
15. The Panel notes that Section 15 of UNMIK Regulation No. 2006/12 states that the Panel may request the submission from UNMIK of any documents and that the SRSG shall cooperate with the Panel and provide the necessary assistance including, in particular, in the release of documents and information relevant to the complaint. The Panel in this regard refers to the case-law of the European Court of Human Rights that inferences shall be drawn from the conduct of the respondent party during the proceedings, including from its failure “to submit information in their hands without a satisfactory explanation” (see ECtHR, *Çelikbilek v. Turkey*, no. 27693/95, judgment of 31 May 2005*,* § 56).
16. The Panel also notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigations until their completion, including the proper record of all handovers, which may have taken place, is crucial to the continuation of such investigations and failure to do so could thus raise *per se* issues under Article 2. In this respect, the Panel notes that the proper handover of criminal files should include at least an inventory and receipt forms of all transferred files, including for the purpose of maintaining the chain of custody, a basic principle in criminal investigations.
17. Concerning the issue of access to the investigative files now in the custody of EULEX, the Panel notes, as is shown by the SRSG’s comments, that UNMIK investigative files were not, entirely or partially, archived before their handover to EULEX and that a number of subsequent agreements (see § 35 above) were signed by EULEX and UNMIK in order to enable UNMIK to fulfil its archiving requirements. The Agreement of 12 December 2008 between UNMIK and EULEX *On the Transfer of Police Files, Archives and Other related Documents and Material*, at Article 7.6 and 8.6, concerning the transfer of criminal cases and case files and war crimes cases and case files respectively, states that “upon request by UNMIK, EULEX “shall grant access” to the abovementioned files “for the purpose of enabling UNMIK to fulfil its archiving requirements in relation to *all documents* *and materials* [emphasis added] contained within such files and which are related to the investigations undertaken by UNMIK Police. The Parties shall determine modalities of such access … taking into account their respective operational requirements.” The same clauses are included in the agreements signed with respect to the handover of the judicial and prosecutorial files.
18. As the SRSG does not clarify which parts of the files in this case could be missing and why, the Panel considers that UNMIK is not in a position to verify the completeness of the former UNMIK Police files as transmitted to UNMIK by EULEX, the present custodian of the files. In particular, the Panel notes that no inventory of files as they were handed over to EULEX was provided to it. The Panel deems it appropriate to draw inferences from this situation.
19. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative files. Drawing inferences from the fact that the above-mentioned agreements entitle UNMIK to have full access to all the investigative files previously held by the UNMIK Police, prosecutors and judges, the Panel assumes that the documents provided to it have been selected so as to demonstrate to the maximum extent possible the effectiveness of the investigation in question.
20. In this respect the Panel also recalls SRSG’s statement as to UNMIK’s inability to locate the original prosecutor’s investigative file, or to indicate its whereabouts. The Panel also recalls the SRSG’s position that since all police files had been transferred to EULEX and UNMIK ceased to be their custodian, it could no longer retain copies of classified and on-going police investigation files (see § 139 above).
21. In this respect, the Panel, first, notes that, in case a proper handover did take place, UNMIK should have been in the position to track down this file relatively easily and at least obtain from it copies of relevant documents, for the Panel’s review. Second, in the Panel’s view the SRSG should have indicated to the Panel which legal provisions prohibited UNMIK from retaining the copies of the investigative documents created by UN staff members, under the authority vested in them by the UN Security Council. Moreover, contrary to the above assertion from the SRSG, in a number of other cases UNMIK presented to the Panel investigative material which was retrieved from the archives of the UN Headquarters in New York (see e.g. HRAP, *Ð.L.*, no. 88/09, opinion of 21 November 2013, §§ 14-15, 39).
22. Therefore, since the Panel itself is not in the position to verify the completeness of the investigative files received, it will 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).
23. *General principles concerning the obligation to conduct an effective investigation under Article 2*
24. 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.
25. 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).
26. 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 § 120 above, at § 136).
27. 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).
28. 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 § 120 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).
29. 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 § 152 above, at § 201). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation’s effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigation work (see ECtHR, *Velcea and Mazăre v. Romania*, no. 64301/01, judgment of 1 December 2009, § 105).
30. A requirement of promptness and reasonable expedition is implicit in this context. Even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see ECtHR, *Paul and Audrey Edwards* *v. the United Kingdom*, no. 46477/99, judgment of 14 March 2002, § 72, ECHR 2002‑II). Furthermore, in the Court’s view, the State's obligation under Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice and that requires a prompt examination of the case without unnecessary delays (see ECtHR [GC], *Šilih v. Slovenia*, no. 71463/01, judgment of 9 April 2009, § 195; ECtHR, *Byrzykowski v. Poland*, no. 11562/05, judgment of 27 June 2006, §§ 86 and 94-118).
31. 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 § 155 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 120 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).
32. 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 § 154 above, at §§ 311‑314; ECtHR, *Isayeva v. Russia*, cited in § 154 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).
33. 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).
34. *Applicability of Article 2 to the Kosovo context*
35. The Panel is conscious that the abduction and disappearance of Mr Vladan Mladenović and his friends took place shortly after the deployment of UNMIK in Kosovo, in the immediate aftermath of the armed conflict, when crime, violence and insecurity were rife.
36. 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.
37. 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.
38. 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).
39. 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 § 155 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 § 159 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 § 154 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 154 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
40. 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 § 152 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).
41. 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 § 151 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).
42. 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 § 31 above).
43. 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.
44. 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 § 155 above, at § 70; *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
45. *Compliance with Article 2 in the present case*
46. Turning to the particulars of this case, the Panel notes the complainant’s statement that the abduction and disappearance of Mr Vladan Mladenović was reported promptly to KFOR and later to the ICRC and other authorities and organisations.
47. In this regard, the SRSG, judging by the case number, considers that the investigation in this case was opened by UNMIK Police some time in 1999 (see § 131 above). The earliest action documented in the file available to the Panel was undertaken by the UNMIK Police MPU on 12 June 2000 (see §§ 50 - 51 above). Being unable to verify when the information about this abduction had in fact reached UNMIK Authorities, the Panel accepts the SRSG’s proposition and considers that by the end of 1999 UNMIK was made aware about Mr Vladan Mladenović’s abduction.
48. The purpose of this investigation was to discover the truth about the events leading to the abduction and disappearance of Mr Vladan Mladenović, 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.
49. 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 §§ 155 - 156 above).
50. The Panel notes that there were some shortcomings in the conduct of this investigation from its inception. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 120 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 § 155 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 § 34 above).

1. The Panel also notes in this regard that according to the 2000 Annual Report of UNMIK Police, by the end of 2000 UNMIK Police had “full investigative authority” in Mitrovicë/Mitrovica region, with KFOR retaining some “technical primacy”. 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.
2. Having noted the SRSG’s assertion that the file submitted to the Panel may be incomplete, and the lack of any satisfactory explanation in relation to this, 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 competent local authorities; 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 § 147 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.
3. The Panel notes in relation to this case a response from EULEX to the Panel’s request for information (see §§ 110 - 112 above). There 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. In the Panel’s view, this is indicative of a possible general failure to comply with the obligation to ensure the proper handover of the investigative material.
4. With regard to the first part of the procedural obligation, that is establishing the fate of Mr Vladan Mladenović, the Panel notes that his whereabouts, as well as the whereabouts of the two persons abducted and disappeared during the same event, remain unknown. The Panel notes that ante-mortem information concerning the complainant’s missing son had been gathered by the ICRC, between 1 July and 20 September 2001 (see § 42 above). According to the relevant entry in the ICMP database, the DNA samples were collected (*ibid*.).
5. 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.
6. 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).
7. In this respect the Panel recalls the complainant’s statement that her son’s abduction and disappearance was immediately reported to the authorities (see § 38 above). As discussed above, UNMIK clearly became aware of the disappearance of Mr Vladan Mladenović by the end of 1999, when the first investigative file into the matter was opened by UNMIK Police (see § 172 above). However, no immediate action by UNMIK Police whatsoever, except for probably making an initial assessment of the information and registering the case, is reflected in the investigative file. The first attempt, although unsuccessful, to collect information in relation to this abduction was undertaken by UNMIK Police MPU around a year later, in June 2000 (see §§ 50 - 51 above), and repeated in December 2000 (see §§ 52 - 53 above). The file further shows that the first meaningful investigative actions were undertaken by the Mitrovicё/Mirtrovica RIU in October 2000 (see §§ 71 - 72 above). As seen from the file, the rest of the police investigation was pursued very actively, from August 2001 (see § 73 above) until January 2002 (see § 98 above), and the judicial investigation lasted from 22 November 2001 until at least 2 July 2002 (see §§ 87 and 104 above).
8. The Panel needs to stress that, unlike many other reports of disappearances that took place during the summer of 1999, in this case there was little doubt that an abduction took place. Nevertheless, the Panel notes with concern the fact that it took UNMIK Police more than one year to collect statements from the surviving eye-witnesses, in October 2000 (see §§ 71 - 72 above).
9. The Panel further notes that the next round of active investigations in this case, when the crime scene search and other necessary actions were carried out by the CCIU, took place only from August to November of 2001. However, even more than two years after the abduction, through their thoroughly conducted action the Police were able to locate and collect valuable physical evidence.
10. The Panel notes that the CCIU were able to secure most of the evidence which could reasonably be expected to be collected two years after the alleged abduction in the given the circumstances existing on the ground. For example, the CCIU contacted the survivor eye-witnesses, who had already been interviewed by the RIU and collected additional information from them, sent requests for assistance to the police authorities in Serbia proper, went to the place of the shooting and collected physical and photo evidence, identified the suspect, collected his photo and complete background information (including his profile by UNMIK Police intelligence), searched for any additional information in UNMIK Police sources, analysed another case involving the suspect and one of the victims, conducted a successful photo-identification etc. The collected information was properly put in a report to an International Prosecutor, who, based on it, requested the opening of a judicial investigation in November 2001 (see §§ 82 and 87 above).
11. The Panel notes that, unlike in many other similar cases before the Panel, in this one the police actively searched for information and leads, although with a delay, and actually found them (see, *a contrario*, HRAP, *P.S.*, case no. 48/09, opinion of 31 October 2013, § 107). Nevertheless, the mentioned delay in conducting the meaningful investigation may have led to the loss of potential evidence. Further, the Panel notes the file has no information whatsoever as to the outcome of the forensic examination, if any was undertaken, on the evidence collected by the CCIU at the place of the shooting, as well as during the searches of the suspect’s property, even though it was recommended by the investigator (see §§ 77 and 90 above).
12. Most importantly, the Panel notes with concern that the file contains neither a decision of a responsible prosecutor to discontinue the investigation following the failure to indict Mr G.I. (see §§ 63, 106-109), as required under Article 174 of the Yugoslav Law on Criminal Proceedings (LCP), or an indication that the complainant, her family, or the family of the other two missing persons, were made aware of that decision (see § 46 above). In accordance with Article 60 of the LCP, such a notification would have enabled them to continue with a subsidiary prosecution, should they have wished to do so.
13. It is generally accepted in the law, that a “subsidiary” prosecutor has, in principle, the same procedural rights as the public prosecutor, except those that are vested in the public prosecutor as an official authority. On a number of occasions, the European Court of Human Rights has given its opinions in cases where aggrieved parties had undertaken and conducted proceedings as subsidiary prosecutors, thus recognising this practice as an important element in the system of administration of justice (see e.g. ECtHR, *Mladenovic v Serbia,* no. 1099/08, decision of 22 May 2012; ECtHR [GC], *Šilih v. Slovenia*, cited in § 157 above). In the situation of this particular case, such an important tool for safeguarding the interests of the injured parties in the criminal proceedings was not made available to the complainant
14. The Panel is conscious of the fact that not all crimes can be solved and not all investigations lead to identification and successful prosecution of the perpetrator[s]. In this respect, the Panel has already referred above to the position of the European Court with regard to the nature of the procedural obligation under Article 2, which is “not an obligation of results but of means.” The Court clearly states that no violation of Article 2 exists if the authorities take all reasonable steps they can to secure the evidence concerning an incident and the investigation’s conclusion is based on thorough, objective and impartial analysis of all relevant elements (see §§ 155 - 156 above), even when no perpetrators are convicted (see e.g. ECtHR case *Palić*, cited in § 155 above, at § 65 or ECtHR [GC], *Giuliani and Gaggio v. Italy* , no 23458/02, judgment of 24 March 2011, §§ 301 and 326).
15. In order to satisfy this requirement, after a decision was made not to indict Mr G.I., in 2002, the investigation should have sought to either strengthen the evidence against him, or to find the real perpetrators. However, the file has no indication whatsoever as to any subsequent substantive investigative action taken by the police. Likewise, no action seem to have been taken by international prosecutors with regard to the complainant’s criminal report, which was received and translated by UNMIK in February 2005 (see § 68 above).
16. Coming to the period within its jurisdiction, starting from 23 April 2005, the Panel notes that after that critical date there was only a single review of the file by UNMIK Police, but no more substantive action was taken. As no new relevant information, apart from that already collected in 2000 – 2002, was received, the case was kept inactive and the failure to conduct the necessary investigative actions persisted. Thus in accordance with the continuing obligation to investigate (see § 158 above) the assessment of the whole investigation is brought within the period of the Panel’s jurisdiction.
17. As the mortal remains of Mr Vladan Mladenović 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.
18. As the file shows, this investigation was reviewed by UNMIK Police at least five times: in December 2000 (see § 52 above), August 2001 (see § 73 above), April 2004, February 2005 (see § 68 above) and in October 2007 (see § 69 above). During some of the reviews gaps were identified and the necessary actions recommended. At later reviews, the Police had looked at the available evidence, confirmed that nothing new had become known, and kept the file inactive.
19. The Panel is also aware that the duty to investigate is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, such an investigation must be undertaken in a serious manner and not be a mere formality. The Panel considers that, having regard to all the circumstances of the particular case, not all reasonable steps were taken by UNMIK towards locating the missing persons, in continuing the investigation to identify the perpetrators and to bring them to justice. In this sense the Panel considers that the overall investigation was not adequate, contrary to the procedural requirements of Article 2 of the ECHR.
20. The apparent lack of an **immediate and** cohesive reaction from UNMIK Police, especially in the period after the discontinuation of the judicial proceedings, 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 § 129 above).
21. In relation to the procedural requirement of public scrutiny, the Panel recalls that Article 2 also entails that the victim’s next-of-kin to be involved in the investigation to the extent necessary to safeguard his or her legitimate interests. It transpires from the documents available to the Panel that the complainant was interviewed by the IIJ, on 1 July 2002 (see § 103 above). Also, during the judicial proceedings, in 2002, the interests of the injured parties (the Mladenović and Mihajlović families) were represented by lawyers, who should have kept them informed of the proceedings.
22. However, in the period after the discontinuation of the judicial proceedings, when the complainant was no longer represented, the file in the Panel’s possession does not reflect any such contact, although there were instructions to have such contacts (see § 66 above). Thus, the Panel considers that in this period the investigation was not open to any public scrutiny, as required by Article 2 of the ECHR. Therefore, the Panel concludes that UNMIK failed to ensure that the complainant was involved in the investigation into the abduction and disappearance of her son to the extent necessary to safeguard her legitimate interests.
23. Finally, although aware that this occurred in 2002, the Panel feels compelled to remark upon the fact that the two survivors, Mr N.M. and Mr A.M., who had previously given their statements to the police and the Investigative Judge and had positively identified Mr G.I. on photo line-ups as one of the perpetrators (see §§ 79, 92 and 96 above), were during the court proceedings obliged to participate in an identification parade, facing Mr G.I.in person. During the latter action, only one of the survivors identified him, at the second attempt (see § 101 above).
24. The Panel is concerned that such a practice, when the survivors have to face the person who had tried forcibly to abduct them, is highly likely to add to the psychological trauma they had already sustained. Although such action might be justified in order uphold the principle of fairness of the proceedings, it must be conducted with extreme caution. This is especially the case in situations where the witnesses or victims might be under pressure to change their statements.
25. The Panel is also aware of a frequently reported problem in Kosovo related to the lack of protection of witnesses from threats or intimidation, “which has been, and remains, one of the greatest challenges for justice authorities”[[6]](#footnote-6). Some observers note that the “[w]itnesses, who in many cases are crucial to linking defendants to the crimes for which they are accused, are becoming more reluctant to testify before institutions, be it police, prosecutors and/or judges in courts”[[7]](#footnote-7). In this particular case, an anonymous witness had been threatened on the phone the night before the scheduled court appearance, and subsequently refused to testify (see § 99 above).
26. 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 Vladan Mladenović. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.
27. **Alleged violation of Article 3 of the ECHR**
28. 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.
29. **The scope of the Panel’s review**
30. 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 §§ 115 - 120 above).
31. 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 § 166 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 155 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).
32. 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).
33. **The Parties’ submissions**
34. The complainant alleges that the lack of information and certainty surrounding the abduction and disappearance of Mr Vladan Mladenović, particularly because of UNMIK’s failure to properly investigate their disappearance, caused mental suffering to her and her family.
35. Commenting on this part of the complaint, the SRSG rejects the allegations. He stresses, first, that the complainant did not witness the disappearance, neither was she in close proximity to the location at the time it occurred, and, second, that there were neither assertions made by her of any bad faith on the part of UNMIK personnel involved with the matter, nor evidence of any disregard for the seriousness of the matter or the emotions of the complainant and her family emanating from the disappearance of Mr Vladan Mladenović.
36. 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.
37. 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.
38. **The Panel’s assessment**
39. *General principles concerning the obligation under Article 3*
40. 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.
41. 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 § 151 above, at § 150)
42. 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.
43. 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).
44. 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 § 204 above, at § 94).
45. 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).
46. 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 § 167 above, at § 11.7).
47. 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).
48. 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 § 205 above, at § 147; ECtHR, *Bazorkina v. Russia*, cited in § 166 above, at § 140).
49. 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.
50. 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).
51. *Applicability of Article 3 to the Kosovo context*
52. 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 §§ 161 - 170 above).
53. 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 § 32 above).
54. 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.
55. 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.
56. *Compliance with Article 3 in the present case*
57. 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.
58. The Panel notes the proximity of the family ties between the complainant and Mr Vladan Mladenović, as he is her son.
59. The Panel recalls the failure established above in relation to the procedural obligation under Article 2, despite the fact that UNMIK Police had the minimum necessary information to pursue investigation from the outset. In this respect, the Panel reiterates that from the standpoint of Article 3 it may examine UNMIK’s reactions and attitudes to the complainant in their entirety.
60. The Panel further notes that the complainant was contacted by the authorities on a number of occasions, including for the purpose of provision of DNA samples, and for giving testimony in court. As was shown above with regard to Article 2, the substantive investigation was conducted in this case, although there was a procedural failure to keep the complainant sufficiently informed, so as to protect her legitimate interests.
61. Drawing inferences from UNMIK’s failure to provide a plausible explanation for the failure to keep the complainants properly informed, in particular regarding the closure of the case, which prevented her from exercising her rights as an injured party in the investigation and left her hoping that the investigation was ongoing, the Panel considers that this situation, which continued into the period of the Panel’s temporal jurisdiction, caused grave uncertainty to the complainant and her family about Mr Vladan Mladenović’s fate and the status of the investigation. Additional weight must also be attached to the fact that the mortal remains of Mr Vladan Mladenović were never located.
62. In view of the above, the Panel concludes that the complainant has suffered severe distress and anguish for a prolonged and continuing period of time on account of the way the authorities of UNMIK have dealt with the case and as a result of her inability to find out what happened to her son. In this respect, it is obvious that, in any situation, the pain of a mother who has to live in uncertainty about the fate of a close member of the family must be unbearable.
63. 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.
64. **CONCLUDING COMMENTS AND RECOMMENDATIONS**
65. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
66. 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 Vladan Mladenović, 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.
67. 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.
68. 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. 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.
69. The Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.

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

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

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

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

**FOR THESE REASONS,**

The Panel, unanimously,

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

 Andrey Antonov Marek Nowicki

 Executive Officer Presiding Member

*Annex*

**ABBREVIATIONS AND ACRONYMS**

**BC** - Basic Court

**CCIU** - Central Criminal Investigation Unit

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

**DOJ** - Department of Justice

**DC** - District Court

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

**ECHR** - European Convention on Human Rights

**ECtHR**- European Court of Human Rights

**EU** – European Union

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

**FRY** - Federal Republic of Yugoslavia

**HRAP** - Human Rights Advisory Panel

**HRC** – United Nation Human Rights Committee

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

**ICMP** - International Commission of Missing Persons

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

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

**IIJ -** International Investigating Judge

**IPP** - International Public Prosecutor

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

**KLA** - Kosovo Liberation Army

**LCP** - Yugoslav Law on Criminal Proceedings of 1976

**MPU** - Missing Persons Unit

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

**NATO** - North Atlantic Treaty Organization

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

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

**RIU** - Regional Investigation Unit

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

**UN** - United Nations

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

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

**VRIC** - Victim Recovery and Identification Commission

**WCIU** - War Crimes Investigation Unit

1. A list of abbreviations and acronyms contained in the text can be found in the attached Annex. [↑](#footnote-ref-1)
2. The references drawn upon by the Panel in setting out this general background include: OSCE, “As Seen, as Told”, Vol. 1 (October 1998 – June 1999) and Vol. II (14 June – 31 October 1999); quarterly reports of the UN Secretary-General on the United Nations Interim Administration in Kosovo; UNMIK Police Annual Reports (2000, 2001); Humanitarian Law Centre, “Abductions and Disappearances of non-Albanians in Kosovo” (2001); Humanitarian Law Centre, “Kosovo Memory Book” (htpp://www.kosovomemorybook.org); UNMIK Office on Missing Persons and Forensics, Activity Report 2002-2004; European Court of Human Rights, *Behrami and Behrami v. France* and *Saramati v. France, Germany and Norway*, nos. 71412/01 and78166/01, decision of 2 May 2007; International Commission on Missing Persons, “The Situation in Kosovo: a Stock Taking” (2010); data issued by the United Nations High Commissioner for Refugees, (available at [www.unhchr.org](http://www.unhchr.org)) and by the International Committee of the Red Cross (available at <http://familylinks.icrc.org/kosovo/en>). [↑](#footnote-ref-2)
3. The ICRC database is available at: <http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx> (accessed on 23 June 2014). [↑](#footnote-ref-3)
4. The OMPF database is not open to public. The Panel accessed it with regard to this case on 18 June 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 22 June 2014). [↑](#footnote-ref-5)
6. See: *Witness Security and Protection in Kosovo: Assessment and Recommendations,* a report by the OSCE Mission in Kosovo and the US State Department, November 2007, p. 5 // EULEX official website [electronic source]: http://www.eulex-kosovo.eu/training/justice/docs/OSCE-USoffice\_witness-Security\_and\_Protection.pdf - accessed on 24 June 2014. [↑](#footnote-ref-6)
7. See: Kosovo *War Crimes Trials: An Assessment Ten Years On 1999 – 2009*, a report by the OSCE Mission in Kosovo, May 2010, p. 5 // OSCE official website [electronic source]: http://www.osce.org/kosovo/68569 - accessed on 24 June 2014. [↑](#footnote-ref-7)