



## **DECISION ON ADMISSIBILITY**

**Date of adoption: 27 March 2019**

**Case nos. 2017-02**

**Zufe Miladinović**

**Against**

**EULEX**

The Human Rights Review Panel, sitting on 27 March 2019 with the following members present:

Mr Guénaël METTRAUX, Presiding Member  
Ms Anna BEDNAREK, Member

Assisted by:  
Mr Ronald Hooghiemstra, Legal Officer

Having considered the aforementioned complaint, introduced pursuant to Council Joint Action 2008/124/CFSP of 4 February 2008, the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel and the Rules of Procedure of the Panel as last amended on 15 January 2019,

Having deliberated, decides as follows:

### **I. PROCEEDINGS BEFORE THE PANEL**

1. The complaint in this case was registered on 19 April 2017.
2. By letter of 20 April 2017, the Panel informed the Mission that this case had been registered with the Panel.
3. On 12 April 2018, the Panel transmitted a Statement of Facts and Questions to the Head of Mission (HoM), EULEX Kosovo.
4. On 22 May 2018, the HoM submitted her responses to the Panel.
5. On 10 January 2019, the HoM's submissions were forward to the complainant for comments. The complainant was invited to make further submissions, if any, no later than 4 February 2019. The complainant requested more time to respond and to provide

additional information to the Panel. She did so on 6 March 2019. In her letter, the complainant indicated that she stood by her complaint, points to what she sees as contradictions in the submissions of the HoM and demands that the complaint be declared admissible.

6. Following the recent resignation of one of its permanent member, the Panel will sit in this matter with only two members in accordance with Rules 11 and 14 of the Panel's Rules of Procedure.

## **II. FACTS**

7. The facts as submitted by the complainant may be summarised as follows.
8. The complainant is the wife of Mr Srboljub Miladinović.
9. The complainant stated that on 25 June 1998, Mr Srboljub Miladinović left their home in Reçan/Rečane in the Prizren municipality to travel by bus to Pristina. The bus was stopped near Carralevë/Crnoljevo village by armed persons. Mr Miladinović was removed from the bus under threat of force. The armed persons attempted to take another person, V.I., with them but a woman on the bus intervened and stopped them from taking V.I.
10. The complainant learned later from V.I. that those who took her husband away were thought to be KLA members and that her husband had been blindfolded and bound before being led away in the direction of Malishevë/Mališevo.
11. In an UNMIK Police War Crimes Investigation Unit (WCIU) report dated 9 December 2004, provided by the Special Representative of the Secretary General (SRSG), it emerged that the complainant's husband may have been shot during the abduction, whilst attempting to escape, but that he had survived the shooting.
12. After her husband's abduction, the complainant searched throughout Kosovo for him without success. At some point in December 1998, she attempted to visit a place where Serbian prisoners had allegedly been held hostage, but claims that she was prevented from entering the location by the head of the OSCE, Kosovo Verification Mission and his staff. Sometime later, the complainant heard from an unknown person that her husband had been tied to a tree in a village near Lipjan/Lipljan and then killed.
13. The complainant reported the abduction and disappearance of her husband to the Serbian Ministry of Internal Affairs, the OSCE, the International Criminal Tribunal for the former Yugoslavia (ICTY) Office in Belgrade and to the Yugoslav Red Cross. In addition, the complainant attached to her complaint a criminal report addressed to the International Prosecutor of the District Public Prosecutor's Office, Prizren.
14. On 9 September 1998, the International Committee of the Red Cross (ICRC) opened a tracing request for Mr Miladinović. His name also appeared in a list of missing persons, communicated by the ICRC to UNMIK Police on 12 October 2001, and in a database compiled by the UNMIK Office for Missing Persons and Forensics (OMPF). The entry in the online list of missing persons maintained by the International Commission on Missing Persons 3 (ICMP3) with regard to Mr Miladinović reads in relevant parts as follows: "sufficient reference samples collected" and "DNA match not found".
15. The complainant alleges that nothing effective was done by the authorities to find her husband for more than ten years after he disappeared.

16. The complainant filed a complaint with the UNMIK Human Rights Advisory Panel (HRAP) on 7 April 2009. The HRAP rendered its Opinion on 1 September 2013 and said the following in its decision:

“The Panel (HRAP) notes that enforced disappearances and arbitrary executions constitute serious violations of human rights which shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate and prosecute those responsible for killings, abductions or disappearances in life-threatening circumstances. Its failure to do so constitutes further serious violations of the rights of the victims and their next-of-kin, in particular the right to have the truth of the matter determined.

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. 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 that UNMIK’s responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008, with EULEX assuming full operational control in the area of rule of law. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities.

Likewise, following the declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law. 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.”

17. The HRAP concluded, *inter alia*, as follows:

“Finds that there has been a violation of the procedural obligation under Article 2 of the European Convention on Human Rights;

Finds that there has been a violation of the substantive obligation under Article 3 of the European Convention on Human Rights;

Recommends that UNMIK urges EULEX and other competent authorities in Kosovo to take all possible steps in order to ensure that the criminal investigation into the disappearance of Mr Srboljub Miladinović is continued in compliance with Article 2 of the ECHR and that the perpetrators be brought to justice”.

18. At a later date, the complainant received a communication from the Special Representative of the Secretary General of the United Nations (SRSG) to the following effect:

“After reviewing the opinion and recommendations of [the] Human Rights Advisory Panel (Advisory Panel) on the complaint of Ms Zufe Miladinović (Matter No. 86/09), I informed my Advisory Panel, on 13 November 2013, as follows:

I wish at the outset to express my appreciation for the work of the Panel and for the recommendations it has made in relation to the present complaint.

With respect to the first recommendation, UNMIK will, as recommended by the Panel, continue to urge EULEX and other competent authorities to continue to take all possible steps in order to ensure that the criminal investigation into the disappearance of the complainant's husband is continued and that the perpetrators are brought to justice.

In relation to Panel's second recommendation, I regret that there was a lack of an effective investigation into the disappearance of the complainant's husband, which also caused distress and mental suffering.

The Panel has also recommended that I take appropriate steps towards the payment of adequate compensation to the complainant for moral damage and to take appropriate steps towards the realization of a full and comprehensive reparation program. In this regard, I wish to recall that the acts in question relate to activities carried out by the institutions established under the interim administration of Kosovo. As such, had UNMIK continued to have control over these institutions today, UNMIK would have been in a position to refer the Panel's recommendation to those institutions for appropriate action. I am prepared to discuss the possibility of setting up a mechanism to deal with such matters with the relevant authorities at the appropriate juncture.

Lastly, in relation to the fifth recommendation concerning guarantees of non-repetition, I wish to note that UNMIK no longer performs police functions, including police investigations. In this regard, I wish to recall that the Panel was set up by UNMIK with the mandate to examine complaints from any persons or groups of individuals claiming to be the victim of a violation by UNMIK of their human rights. I also wish to recall that the mandate of UNMIK, and thus also the mandate of the SRSG, is limited to what is set out in Security Council Resolution 1244 (1999) as it has evolved over time under the auspices of the Security Council.

As a general matter, the Panel may also wish to be informed that the principal organs of the United Nations have adopted numerous resolutions and decisions which reflect the importance of promoting and protecting human rights, including by the United Nations. The Organization also continues to make changes in order to strengthen its work for the future and within the areas of the United Nations where it can make a difference. In this regard it will continue striving to meet its core mission of protecting people from harm."

19. At an unspecified date thereafter, the complainant addressed the matter to EULEX. She was informed by EULEX that the criminal charge registered with the Office of Special Prosecution of Kosovo had been rejected due to a lack of evidence in relation to the perpetrators. She was further informed by EULEX that the case will remain active until the fate of her husband is determined.

### **III. COMPLAINT**

20. The complainant refers to two particular fundamental rights reflected in the following provisions: Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) under its procedural head, which guarantees a person's fundamental right to life and provides for an obligation to investigate cases of

suspicious deaths; Article 3 of the Convention which guarantees a person's right not to be subject to torture or inhuman or degrading treatment or punishment. Article 8 and 13 of the Convention and the rights guaranteed thereunder also appear to be of potential relevance to this case. The same fundamental human rights are guaranteed by a number of other international treaties, including the International Covenant on Civil and Political Rights. These rights form part of a core set of fundamental human rights that are guaranteed to all as a matter of customary international law.

21. Considering the close family relationship between the primary victim and the complainant, the Panel is satisfied that the complainant may be regarded as a secondary victim of the alleged violations and that, as such, a potential victim in accordance with Rule 25(1) of the Panel's Rules of Procedure.

#### **IV. SUBMISSIONS OF THE PARTIES REGARDING ADMISSIBILITY**

##### **The complainant**

22. As summarised above, the complainant alleges that, in the exercise of its executive mandate, EULEX Kosovo should have investigated the disappearance of her husband and culpably failed to do so in violation of her own and her husband's fundamental rights.

##### **Head of Mission ("HoM")**

23. The HoM's response was sent to the Panel on 22 May 2018. From the response, the following is apparent.
24. The HoM submits that the file pertaining to the disappearance of the victim was provided by UNMIK to EULEX at some point between the end of 2008 and early 2009.
25. UNMIK, which had initially conducted an investigation of this case, had opened a missing person file on 4 April 2002. An 'Ante-Mortem Investigation Report' was subsequently filed by the complainant in this case on 19 December 2004, indicating that UNMIK had at some point talked to her.
26. On an unspecified date, a 'Report on a criminal charge against unknown perpetrators of criminal acts' was filed by the complainant with the International Prosecutor of the District Prosecutor's Office in Prizren.
27. On 14 September 2008, the case was reviewed by UNMIK and a 'Case Analysis Review Report' was produced, indicating that the case should be kept pending 'waiting for further information'.
28. The initial assessment of the case by a EULEX Prosecutor occurred on 6 March 2009.
29. On 20 July 2009, the EULEX Prosecutor issued a 'Request to conduct investigation'.
30. On 11 January 2011, the War Crimes Investigation Unit of EULEX (WCIU) reviewed the case once again.
31. On 3 December 2013, a EULEX Prosecutor in the SPRK reviewed the case file once again and issued a 'Dismissal of the Criminal Report' based on the view that there was 'nothing in the case file, that could suggest any possible investigative actions'.

32. On 1 December 2015, the Mission received a letter from the complainant dated 1 November 2015.
33. On 22 December 2015, the Mission responded to the complainant's letter and provided her with a copy of the 'Dismissal of the Criminal Report'. The document was not successfully delivered. It was resent through EULEX's office in Belgrade and eventually delivered on 31 December 2015.
34. On 14 May 2018, the case-file pertaining to the disappearance of Mr Miladinović was transferred to the Kosovo institutions.
35. The case-file held by EULEX does not contain any indication that EULEX further contacted UNMIK after receiving this file. The HoM also indicated that the Mission did not seek to contact any other entities involved in this matter (e.g., ICRC; UNMIK; etc) with a view to obtaining information they may have in relation to this case.
36. There is no indication in the record that the Mission sought to contact the complainant or other relatives of the victims during the investigation of this case or kept them informed of the matter. The Mission explains that the 'Dismissal of the Criminal Report' was not delivered to the complainant due to the 'political situation' at the time and that the serving of documents with "Republic of Kosovo" was *de facto* impossible at the time.
37. The record does not suggest that EULEX interviewed or sought to interview any (potential) witness in relation to that case.
38. The HoM does not contest the admissibility of the complaint *ratione personae* and *ratione materiae*. However, the HoM submits that the complainant has failed to comply with the 6-month time limit within which she could file a complaint with the Panel. Relying upon the *Varnava* Judgment of the European Court of Human Rights (ECHR), the Mission suggests that whilst the time taken by the complainant to file its complaint with the Panel might not be 'excessive' under the test advanced by the ECHR it may still appear 'unexplained' under that test. *Varnava and others vs. Turkey*, Case Nos. 16064/09 et al, Judgment, 18 September 2009.
39. Finally, the HoM requests that should the complaint be declared admissible, she be given an opportunity to address the merit of the case.

## V. THE PANEL'S ASSESSMENT REGARDING ADMISSIBILITY

*Mandate of the Panel (Rule 25, paragraph 1, of the Rules of Procedure) and inherent limitations placed on the Mission regarding the protection of human rights*

40. As a matter of substantive law, the Panel is empowered to apply human rights instruments as reflected in the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel. Of particular importance to the work of the Panel are the European Convention on the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights, which set out minimum standards for the protection of human rights to be guaranteed by public authorities in all democratic legal systems.
41. Before considering the complaint on its merits, the Panel has to decide whether to proceed with the complaints, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.

42. According to Rule 25, paragraph 1, the Panel can only examine complaints relating to the human rights violations by EULEX Kosovo in the conduct of its executive mandate.
43. The Panel has already established that the actions of the EULEX prosecutors and police form part of the executive mandate of EULEX Kosovo and therefore fall within the ambit of the mandate of the Panel (see, for instance, *K to T against EULEX*, 2013-05 to 2013-14, 21 April 2015, para. 43; *Krlić against EULEX*, 2012-21, 26 August 2014, para. 23; *Y against EULEX*, 2011-28, 15 November 2012, para. 35). This is the case of positive acts or culpable failures.
44. It should also be emphasised for present purposes that the rights subject to the present complaint are among the most important of all fundamental rights. They touch upon core interests of the alleged victims and must be guaranteed in all circumstances. The practice of enforced disappearance constitutes an egregious violation of these rights. This is reflected, *inter alia*, in the fact that the practice of 'enforced disappearance' is now regarded and characterised as a crime against humanity, in particular, in the Statute of the International Criminal Court (Rome Statute, Article 7(1)(i)) and in the Law on Specialist Chambers and Specialist Prosecutor's Office (Law No.05/L-053) (Article 13(1)(i)).
45. All the considerations outlined above have been taken into consideration when deciding the admissibility of the present case.
46. The implications of the changes in the mandate of the Mission following the closure of the Mission in June 2018 for the purpose of this case will be addressed, where necessary, in the Panel's decision on the merit. Parties are invited to address that issue if they wish to make further submissions in relation to the merit of this matter.

*The Panel's competence ratione temporis*

47. As noted above, the HoM submits that the Panel lacks jurisdiction *ratione temporis* over this case. In particular, the HoM submits that the complainant failed to comply with the 6-month deadline set under Article 25(3) of the Panel's Rules of Procedure. This provision specifies that '[c]omplaints must be submitted to the Panel within six months from the date of the alleged violation'. See, e.g., *Gashi v EULEX*, 2013-22, 7 April 2014, para. 10; *Thaqi v EULEX*, 2010-02, 14 September 2009, para. 51.
48. The Panel must decide whether the case was admissible at the time when the complaint was filed. For reasons outlined below, the Panel is satisfied that this is the case.
49. As a preliminary matter, the Panel notes that the violations complained of are regarded as ongoing or continuing violations of the victim's fundamental rights. See D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX, 2014-11 to 2014-17, Decision on Admissibility, 30 September 2015, para. 78; Sadiku-Syla against EULEX, 2014-34, Decision on Admissibility, 29 September 2015, paras. 35 and 42. See also, in the context of Article 3, ECtHR, *Kurt v. Turkey*, judgment of 25 May 1998, Reports of Judgments and Decisions 1998- III, paras. 130-34; *Khadzhaliyev and Others v. Russia*, Application no. 3013/04, judgment of 6 November 2008, paras. 120-121; *Timurtas v Turkey*, Application no. 23531/94, Judgment of 13 June 2000, para. 95; and Resolution No. 828 of 1984, paragraph 3 (Parliamentary Assembly of the Council of Europe).
50. Secondly, the Panel wishes to say the following regarding the Mission's reliance upon the *Varnava* case (ECHR). First, the Panel is strictly speaking not bound by the views of the Court regarding the interpretation of the admissibility of a case before the Court. The admissibility of a complaint before Panel is regulated by its own rules and principles,

which differ in some respects from those applicable before the Court. Second, despite such differences, the views of the Court might be relevant where admissibility requirements applicable before the Court are comparable to those applicable before the Panel. In that respect, the jurisprudential authority of the Court warrants that the Panel should give due consideration to the Court's views despite the fact that it is not *bound* to do so. Third, time-limits set for the filing of a complaint before the Court and before the Panel seek to achieve the same ultimate purpose: to guarantee that the Court/Panel is able to preserve the effectiveness of the rights of a complainant whilst at the same time avoiding undue delays which might affect that goal and create a state of permanent legal uncertainty. Time-limits are, therefore, not set to punish an applicant, nor are they to be interpreted as placing unreasonable expectations upon victims of serious rights violations.

51. Turning to the case cited by the HoM (*Varnava and Others vs Turkey*), the Panel notes the following. First, the Court suggests (par 162) that a distinction must be drawn on that point between situations of unlawful or violent deaths and cases of enforced disappearance as, in the latter case, there is an element of uncertainty and ignorance about the fate of the victim. The Court says, therefore, that '[a]llowances must be made for the uncertainty and confusion which frequently mark the aftermath of a disappearance'. The Panel agrees. The Court then holds that 'the serious nature of disappearances is such that the standard of expedition expected of the relatives cannot be rendered too rigorous in the context of Convention protection' (par 163). The Panel agrees.

52. The Court then proceeded to say the following (par 165):

"165. Nonetheless, the Court considers that applications can be rejected as out of time in disappearance cases where there has been excessive or unexplained delay on the part of applicants once they have, or should have, become aware that no investigation has been instigated or that the investigation has lapsed into inaction or become ineffective and, in any of those eventualities, there is no immediate, realistic prospect of an effective investigation being provided in the future. Where there are initiatives being pursued in regard to a disappearance situation, applicants may reasonably await developments which could resolve crucial factual or legal issues. Indeed, as long as there is some meaningful contact between families and authorities concerning complaints and requests for information, or some indication, or realistic possibility, of progress in investigative measures, considerations of undue delay will not generally arise. However, where there has been a considerable lapse of time, and there have been significant delays and lulls in investigative activity, there will come a moment when the relatives must realise that no effective investigation has been, or will be provided. When this stage is reached will depend, unavoidably, on the circumstances of the particular case."

The Court therefore sets three conditions and a qualification: (i) an excessive or unexplained delay; (ii) an awareness on the part of the victim that there was no investigation or that it had lapsed into inaction/ineffectiveness; (iii) there was no immediate, realistic prospect of an effective investigation being provided in the future; (iv) where there are initiatives being pursued in regard to a disappearance situation, applicants may reasonably await developments which could resolve crucial factual or legal issues.

53. In consideration of this matter, the Mission omits to cite the last paragraph of that section of the Court's decision (par 166), which is also relevant and says the following:

“166. In a complex disappearance situation such as the present, arising in a situation of international conflict, where it is alleged that there is a complete absence of any investigation or meaningful contact with the authorities, it may be expected that the relatives bring the case within, at most, several years of the incident. If there is an investigation of sorts, even if sporadic and plagued by problems, the relatives may reasonably wait some years longer until hope of progress being made has effectively evaporated. Where more than ten years have elapsed, the applicants would generally have to show convincingly that there was some ongoing, and concrete, advance being achieved to justify further delay in coming to Strasbourg. Stricter expectations would apply in cases where the applicants have direct domestic access to the investigative authorities.”

54. The realistic prospect of an investigation is therefore an important consideration in assessing this question as illustrated, *inter alia*, by the *Palić v. Bosnia and Herzegovina* case before the European Court of Human Rights. In that case, the applicant's husband had been missing since 1995. His remains were exhumed and identified fourteen years later. Two suspects were identified but evaded prosecution. As to the six-month time-limit, the judgment distinguished the *Varnava and Others* case, finding that Mrs Palić could still realistically expect that an effective investigation would be carried out when she lodged her application in 2004, so that she had acted with reasonable expedition for the purposes of the six-month rule. See *Palić v. Bosnia and Herzegovina*, para. 70.
55. Regarding this condition of admissibility, the Panel would point to the following principles, which arise from the Panel's case-law. Complaints filed beyond the 6-month timeframe set by the Rules will in principle be declared inadmissible in accordance with Rule 29(c) of Rules of Procedure. See *Mikić against EULEX*, 15 June 2015, pars 8-9; *K.P. against EULEX*, 21 April 2015, par 15; *Martinović against EULEX*, 23 November 2011, pars 17-18. In some instances, however, the Panel has exercised its discretion to declare admissible complaints that were filed belatedly but where particular circumstances pertaining to the case justified that the matter not be declared inadmissible on such grounds. The particular gravity of the alleged violation or the belief on the part of the complainant that the matter was still under the Mission's consideration have been regarded as particularly relevant in that regard by the Panel. See, e.g., *Sadiku-Syla against EULEX*, 29 September 2015, pars 44 *et seq.*; *D.W. and others against EULEX*, 30 September 2015, pars 91 *et seq.* Furthermore, the Panel has held that if the violation of fundamental rights is ongoing, the 6-month deadline has not lapsed in principle until the violation ceases. See, e.g., *Zahiti against EULEX*, 7 June 2013, par 42. In such a case, the deadline starts to run on the date after the impugned action said to have caused or resulted in a right violation. See, e.g., *Y against EULEX*, 15 November 2012, pars 30-31. It should also be remembered in this context that EULEX Kosovo is a rule of law mission, not a state, and that compliance with human rights obligations forms a core and essential element of its mission (see references above).
56. Regarding the application of the above principles and considerations in the present case, the Panel notes the following. The complaint was filed with the Panel on 19 April 2017. This was approximately 16 months after the complainant was served with a copy of the 'Dismissal of the Criminal Report' by the Mission. However, the 'Dismissal' did not put an end to the Mission's responsibility to investigate this case. That responsibility lasted until at least 14 May 2018 when the case-file pertaining to the disappearance of Mr Miladinović was transferred to the Kosovo institutions. Until that point, the Mission was competent to investigate this case. This is apparent already from the fact that the Mission informed the complainant that the case would remain active until the fate of the victim could be established (see, *supra*, para. 19). The Mission did not inform the

complainant that it had ceased to be competent to investigate this case and it in fact remained competent to do so until the end of its executive mandate.

57. The Panel also notes that under the revised OPLAN, as reflected in Rule 25(4) of the Panel's Rules of Procedure, complaints relating to cases transferred from EULEX to Kosovo institutions shall be filed within six months from the end of the EULEX Executive Mandate in the criminal justice system as defined in Kosovo law or within six months from the transfer of the casefile. Considering that this case was transferred on 14 May 2018, the deadline for filing of a complaint had not yet expired at the time of filing of the present complaint.
58. Also relevant is the fact that, since the disappearance of Mr Miladinović, the complainant took a number of steps to try to obtain information about his fate from various authorities which she thought might be competent or might have information about the fate of her husband. She never renounced despite the fact that the case went from one authority to another over the course of time (UNMIK; EULEX; local authorities). It could thus hardly be claimed that the complainant was inactive or that delays were unexplained.
59. Furthermore, the delay in the filing of the complaint alleged by the Mission did not cause it any prejudice as far as proceedings before the Panel are concerned. The interest that the Mission might have in the strict enforcement of the 6-month deadline must also be interpreted in that light.
60. The Panel also notes the absence of efforts on the part of the Mission to inform the complainant of the course of its investigation. The "Dismissal" was only sent in response to the complainant's own initiative. The complainant does not appear to have been informed of any aspects of the Mission's review and investigation of this case. Furthermore, nothing in the "Dismissal" document suggested that the Mission would cease to try to elucidate this case as indeed it was expected to do under the terms of the then applicable OPLAN.
61. Therefore, looking back at the holdings of the *Varnava* Judgment, the delay imputed to the complainant cannot be said to be either excessive or unexplained as the complainant continued to promptly and contact those authorities which she thought could help move this investigation forward. As noted by the European Court,

"[i]f there is an investigation of sorts, even if sporadic and plagued by problems, the relatives may reasonably wait some years longer until hope of progress being made has effectively evaporated."

It is clear that the complainant never lost that hope and that she pursued her efforts with all those authorities which she thought could help her find out what happened to her husband.

62. In those circumstances, the Panel is satisfied that the complainant acted diligently and that the 6-month deadline set by the Rules has been complied with in this case.
63. The Panel notes that, *ratione temporis*, it is competent to consider the actions of the Mission until 14 June 2018. After that date, the Mission ceased to have any executive responsibilities in relation to that case. Activities carried out after that date could be relevant, however, to evaluate the extent to which the Mission might be said to have fulfilled its human rights obligations. The Panel therefore invites the Mission to make reference in its submissions to any effort undertaken by the Mission to ensure that this case was or is being investigated (if any), including after that date.

*The Panel's competence ratione materiae*

64. The HoM does not challenge the Panel's jurisdiction *ratione materiae* and the Panel is satisfied that it is competent, *ratione materiae*, in this matter.

*The Panel's competence ratione personae*

65. The HoM does not challenge the Panel's competence *ratione personae* over this complaint. As is apparent from the above, the Panel is indeed satisfied that it has competence *ratione personae* over the matter.

**FOR THESE REASONS, THE PANEL UNANIMOUSLY**

**DECLARES ADMISSIBLE**, without prejudging the merit of the matter, the complaints with regard to alleged violations of Articles 2, 3, 8 and 13 of the European Convention of Human Rights;

**ASKS THE PARTIES TO ADDRESS THE FOLLOWING QUESTIONS** as part of their submissions on the merit of this case, without prejudice to the views and conclusions of the Panel:

**i. For the Mission:**

- a. Prior to 3 December 2013 and the 'Dismissal of the Criminal Report', what investigative step(s) had the Mission taken to try to elucidate this case? Were relatives of the disappeared informed of those efforts?
- b. Has any step been taken to investigate this case or to collect information after that date?
- c. Upon receiving a letter from the complainant on 1 December 2015, did the Mission take any step to investigate this case? If so, what step(s)?
- d. When transferring the case-file to the Kosovo institutions, was any investigative material passed along to the local authorities in relation to this case? Was the complainant informed of this transfer?
- e. Is the Mission monitoring this case?

**ii. For the complainant:**

- a. Are you aware of any effort by the local (Kosovo) authorities to investigate this case?
- b. Has the Mission violated or contributed to the violation of the complainant's rights under Articles 2, 3, 8 and 13 of the Convention? If so, in what manner?

- c. What are the consequences – personal, financial and emotional – associated with the disappearance of your relative?

**ASKS THE PARTIES** to make any submission on the merit of this case no later than 20 May 2019 or, if more time is needed, make a timely request to have more time by that date.

For the Panel,

Guénaël METTRAUX  
Presiding Member

Anna BEDNAREK  
Member