



DECISION AND FINDINGS

Date of adoption: 19 June 2019

Case no. 2017-02

Zufe Miladinović

Against

EULEX

The Human Rights Review Panel, sitting on 19 June 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 it.
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.
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, pointed to what she perceived to be contradictions in the submissions of the HoM and demanded that the complaint be declared admissible.

6. By a decision of 27 March 2019, the Panel declared the case to be admissible ([http://hrrp.eu/docs/decisions/2019-03-27%20Admissibility%20Decision%202017-02%20\(Red.\).pdf](http://hrrp.eu/docs/decisions/2019-03-27%20Admissibility%20Decision%202017-02%20(Red.).pdf)). In that Decision, the Panel asked a number of questions of the parties and requested to provide any response by 20 May 2019. The questions were as follows:

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?
7. On 13 May 2019, the complainant sent her responses to the Panel's questions. On 20 May 2019, the HoM sent the Panel a letter with her responses. These letters were sent to the opposing party for information.

II. COMPOSITION OF THE PANEL

8. Following the resignation of one of its permanent members and pending her replacement, 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.

III. FACTS

9. The facts as submitted by the complainant may be summarised as follows.
10. The complainant is the wife of Mr Srboljub Miladinović.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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”.

17. The complainant alleges that nothing effective was done by the authorities to find her husband for more than ten years after he disappeared.
18. On 7 April 2009, the complainant filed a complaint with the UNMIK Human Rights Advisory Panel (HRAP). 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.”

19. 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”.

20. 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.”

21. 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.

IV. COMPLAINT

22. 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.
23. The case was also declared admissible in relation to Article 8 and 13 of the Convention and the rights guaranteed thereunder.
24. 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.
25. 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. The Panel also notes in that regard that Article 24(1) of the International Convention for the Protection of All Persons from Enforced Disappearance notes that a "victim" for the purpose of that Convention means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.

V. SUBMISSIONS OF THE PARTIES

The complainant

26. 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”) submissions on admissibility

27. The HoM’s submissions regarding admissibility were sent to the Panel on 22 May 2018. A number of submissions made in that context are relevant here and are therefore reiterated for present purposes.
28. The HoM submitted 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.
29. 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’ suggested that UNMIK had at some point talked to the complainant.
30. 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.
31. 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’.
32. The initial assessment of the case by a EULEX Prosecutor occurred on 6 March 2009.
33. On 20 July 2009, the EULEX Prosecutor issued a ‘Request to conduct investigation’.
34. On 11 January 2011, the War Crimes Investigation Unit of EULEX (WCIU) reviewed the case once again.
35. 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’.
36. On 1 December 2015, the Mission received a letter from the complainant dated 1 November 2015.
37. On 22 December 2015, the Mission responded to the complainant’s letter and attached 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.
38. On 14 May 2018, the case-file pertaining to the disappearance of Mr Miladinović was transferred by the Mission to the Kosovo institutions.
39. The case-file held by EULEX did 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.

40. 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 explained that the 'Dismissal of the Criminal Report' was not delivered to the complainant due to the 'political situation' at the time and submitted that the serving of documents with "Republic of Kosovo" was not feasible at the time.
41. The Panel also notes that the record does not suggest that EULEX interviewed or sought to interview any (potential) witness in relation to that case.

Complainant's submissions on the merit of the case

42. In her letter of 13 May 2019, the complainant indicates the following in response to the Panel's questions. First, she was not made aware of any efforts made by local (Kosovo) authorities to investigate this case. Second, the complainant reiterates that the Mission has failed to fulfil its responsibilities in this case and thus violated her rights under Articles 2, 3, 8, and 13 of the Convention. She notes, in particular:

"I have no information that EULEX has taken any efficient measures to ensure that the criminal investigation into my husband's disappearance is continued and that the perpetrators are brought to justice."

43. Third, in response to the Panel's enquiry on that point, she submits that the disappearance of her husband has caused her –

"great mental distress of high intensity and long duration, and that due to the lack of action aimed at investigating his disappearance and punishing the perpetrators, I still continue to suffer mental distress. My disappeared husband supported me, so after this disappearance I completely lost material security and means of support."

44. Finally, the complainant asks the Panel to order the Mission to –

"publically recognize the responsibility for its failure to carry out efficient investigation in relation to the disappearance of my husband, as well as for the pain and mental distress [she] suffered, to take adequate actions with the view to compensating the moral damage related to the established violations of the Convention and to take adequate steps towards the realization of a complete and comprehensive reparation program".

HoM's submissions on the merits of the case

45. The Head of Mission's submissions regarding the merits of this case were received on 20 May 2019. In her letter, the HoM states that it has no further available information to provide regarding questions a-c posed by the Panel in its Admissibility Decision (see above, para 6).

46. The Panel's fourth question was as follows: "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?". In response, the Mission reiterated that it had transmitted all documents in its possession regarding this case to the Kosovo authorities on 15 May 2018. The Mission then explains once again the process of reviewing and handing-over of such files. In this specific case, the HoM adds,

"the handover note prepared by the EULEX Chief Prosecutor and addressed to the Head of the SPRK, drew attention to the fact that a possible witness in the case had not been interviewed and recommended: that the mentioned witness [be] located and interviewed, and that the facts contained in the criminal reports are cross-checked with evidence available in other case files concerning temporally and geographically related offences".

47. The Mission does not specify what evidential material, if any, was transferred as part of the file. Nor does it address the Panel's second question (namely, whether the complainant was informed of this transfer).
48. In response to the Panel's question whether the Mission was monitoring this case, the HoM responded that the Mission "is not currently monitoring this case since, as far as it is aware, the case is not active".
49. Addressing more generally the merits of the complaint, the Mission says that it –

"cannot and will not deny that the way this case was handled was greatly affected by the enormous challenges that the Mission was faced with, in the implementation of its executive mandate in the field of war crimes and other serious crimes, from the very beginning of its existence".

These challenges, the Mission submits, were not only connected to the magnitude of the task but also to the number and state of the case-files received from UNMIK. The Mission explains that those case-files received as "closed" from UNMIK were those "for which the remains of the missing had already been located at the moment of hand-over".

50. The Mission describes receiving files from UNMIK with missing documents; un-indexed material; barely readable copies of documents; and databases that could not be searched easily. As a result, the Mission described in some detail the time and efforts necessary to review and try to organize that information.
51. The Mission points to what it says was another major challenge regarding the records inherited from UNMIK, namely, that "a large number of war crimes police case-files that should have been reported to the competent prosecutor authorities prior to the hand-over to EULEX, or that should have been dismissed for lack of evidence, were in fact handed over at the police stage despite having been mostly inactive for a considerable number of years". This required of EULEX to review a large (1,200) number of war crimes police files to decide which to investigate and which to set aside.

52. The Mission concludes as follows:

“Given the challenges described above and the limited resources available, it is conceivable that mistakes and oversights may have happened. In this particular case, on becoming aware of such, the Mission sought to remedy the situation at the moment of the hand-over of the case file to the competent Kosovo institutions as described above.”

VI. DELIBERATIONS

Executive mandate and responsibilities of the Mission

53. The actions of EULEX prosecutors and police form part in principle of the executive mandate of EULEX Kosovo in the in the justice, police and customs sectors. Therefore, they fall in principle 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).
54. The Panel has already had occasion to note that the EULEX Mission is not a State and that its ability to guarantee the effective protection of human rights cannot be compared in all relevant respects to what may be expected of a State (see the Panel’s decision in *A,B,C,D against EULEX*, 2012-09 to 2012-12, 20 June 2013, para. 50; *K to T against EULEX*, quoted above, para. 53; compare also HRAP decision in cases nos. 248/09, 250/09 and 251/09, 25 April 2013, para. 35).
55. Expectations placed upon the ability of EULEX to investigate and resolve complex criminal matters should therefore be realistic and not place upon EULEX a disproportionate burden that its mandate and resources could not reasonably be expected to meet (L.O. against EULEX, 2014-32, Decision and Findings, 11 November 2015, paras. 43 and 45, and its references to: Panel’s decision in *A,B,C,D against EULEX*, 2012- 09 to 2012-12, 20 June 2013, para. 50; *K to T against EULEX*, 2013-05 to 2013-14, 21 April 2015, para. 53; compare also HRAP decision in cases nos. 248/09, 250/09 and 251/09, 25 April 2013, para. 35; HRAP decision in cases nos. 248/09, 250/09 and 251/09, quoted above, paras. 70-71 See also *Sadiku-Syla against EULEX*, 2014-34, Decision on Admissibility, 29 September 2015, paras. 35-37; *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, paras. 72-74; see also HRAP decision in cases nos. 248/09, 250/09 and 251/09, quoted above, paras. 70-71). Therefore, in each case, the Panel must review whether there were concrete and real obstacles that might have undermined the capacity of EULEX to conduct a prompt and effective investigation of a case. Such an evaluation is not intended to justify operational shortcomings unrelated to concrete and demonstrable challenges. See, again, L.O. against EULEX, 2014-32, Decision and Findings, 11 November 2015, para. 44.
56. In the assessment of the present complaint, the Panel has taken into account the difficulties necessarily involved in the investigation of war-related crimes in a post-

conflict society such as Kosovo (see L.O. against EULEX, 2014-32, 11 November 2015, para. 44 and references cited therein; *Palić v. Bosnia and Herzegovina*, application no. 4704/04, judgment of 15 February 2011, para. 70; HRAP decision in cases nos. 248/09, 250/09 and 251/09, quoted above, paras. 44 and 62 *et seq*). Those difficulties should not, however, serve to camouflage or justify investigative failures that are not in any meaningful manner connected with the said difficulties. The Panel will, therefore, evaluate in each case whether a particular investigative step that was normally open to EULEX would have been rendered impractical by reasons associated with post-conflict circumstances independent of those conducting the investigation (L.O. against EULEX, 2014-32, Decision and Findings, 11 November 2015, para. 44).

57. Particularly relevant in assessing the Mission's response is the fact that its ability to fulfill its – investigative – obligations was affected by both the general circumstances in which crimes had been committed and by UNMIK's conduct in the aftermath of these crimes. Crimes committed in the context of an armed conflict are almost always a challenge to investigate. The challenge often remains in the immediate aftermath of a conflict because evidence might be destroyed or limited in nature and the willingness or ability of witnesses to provide information might be considerably reduced by the security circumstances. The Panel has duly taken into account these challenges when making its own assessment of the Mission's response.
58. The Panel has also taken into consideration the fact that EULEX Kosovo had to confront and address the investigative legacy of UNMIK. The Panel is not empowered to review or assess the actions of UNMIK. It does so here only insofar as it has affected the work of the Mission. It is indeed apparent from the Mission's submissions – and from the record of other cases that have come before the Panel – that UNMIK's safe-keeping and transfer of files to the Mission was less than adequate and rendered the work of the Mission even more complicated in relation to the investigation of cases recorded in those files. The Panel will, therefore, not impute to the Mission shortcomings and defects caused by the actions of UNMIK and will be carefully to limit its assessment to the Mission's own actions.
59. In every case, in particular cases of this seriousness, investigative authorities are expected to act with reasonable diligence and expeditiousness and to invest resources commensurate with the necessity and possibility of resolving the case. Whilst no investigative authority may be expected to resolve all cases brought before it, it is expected to act with such diligence, promptness and effectiveness as reflects the gravity of the matter under investigation (L.O. against EULEX, 2014-32, Decision and Findings, 11 November 2015, paras. 46 and 59, and their reference to ECtHR: *Varnava and Others v. Turkey*, Application no. 16064/90 *et al*, judgment of 18 September 2009, para. 191; *Palić v. Bosnia and Herzegovina*, Application no. 4704/04, judgment of 15 February 2011, para. 63).
60. A strict commitment and attachment to those standards is particularly important for a Rule of Law mission that is intended to serve as an example of society's commitment to ending impunity and building into it a sense of accountability for serious violations of rights. Any standard short of the one mentioned above would risk creating a sense of acquiescence with impunity and disregard for the victims' search for justice and

accountability (L.O. against EULEX, 2014-32, Decision and Findings, 11 November 2015, para. 46 and its references to ECtHR: Varnava and Others v. Turkey, Application no. 16064/90 et al, judgment of 18 September 2009, para. 191; Palić v. Bosnia and Herzegovina, Application no. 4704/04, judgment of 15 February 2011, para. 63); HRAP decision in cases nos. 248/09, 250/09 and 251/09, 25 April 2013, para. 80).”); Sadiku-Syla against EULEX, 2014-34, Decision and Findings, 19 October 2016, para. 37; see also HRAP decision in cases nos. 248/09, 250/09 and 251/09, quoted above, para. 80).

61. Regarding the issue of expeditiousness, the Panel wishes to note the following. Regarding its investigative obligations, the Mission is required to investigate credible allegations of human rights violations with diligence and expeditiousness, and to ensure in all cases that the investigative response of the Mission is commensurate to the gravity of the matter. In sum, the response must be such that it guarantees the effective protection of the rights at stake. See, generally, Sadiku-Syla against EULEX, 2014-34, 19 October 2016, para. 36. See also Varnava and Others v Turkey, Application no. 16064/90 et al, judgment of 18 September 2009, para. 191; Oğur v. Turkey, Application no. 21594/93, judgment of 20 May 1999, para. 88; Hugh Jordan v. the United Kingdom, Application no. 24746/94, Judgment 4 May 2001, paras. 105-09; Douglas-Williams v. the United Kingdom, Application no. 56413/00, Decision of 8 January 2002. When the obligation of the state or authority involves a duty to investigate, the requirement of expeditiousness applies to all stages and aspects of the investigation: its instigation, its conduct and its completion. The requirement of expeditiousness is relative in nature: it depends on the circumstances of each case, in particular the challenges posed by the case, the difficulties to access witnesses or to collect information. But investigative challenges and difficulties do not warrant procrastination, delays or unjustifiable slowness in the performance of investigative duties. This is an expression of the broader right to proceedings without undue delay, which is guaranteed to all parties to the proceedings. The Panel has thus pointed out that –

“The right to a fair and public hearing within a reasonable time as understood under Article 6 (1) of the Convention is designed to protect “all parties to court proceedings....against excessive procedural delays ...In addition, in criminal cases the right is designed to avoid that a person charged should remain too long in a state of uncertainty about his fate” [...]” (Maksutaj against EULEX, 2014-18, 12 November 2015, para. 57, it’s quotes are from Stogmuller v Austria, Application no. 1602/62, judgment of 10 November 1969, para. 5).

In evaluating, in a particular case, the reasonableness of time taken by the authorities, a number of factors have been identified as particularly important, including these: “In considering the reasonableness of the length of proceedings, the Panel is required to examine the particular circumstances of the case and consider these factors as relevant to that evaluation: (1) the complexity of the case, (2) the conduct of the applicant, and: (3) the conduct of the competent administration [...]” (Maksutaj against EULEX, 2014-18, 12 November 2015, para. 58, and its references to Konig v FRG, Application no. 6232/73, judgment of 28 June 1978, para. 99, Pedersen and Baadsgaard v Denmark, Application no. 49017/99, judgment of 17 December 2004, para. 45; see also, Thomas Rüsche against EULEX, 2013-21, 11 January 2017, para. 59-65). An examination of the consequence of the delays on the parties involved might also provide relevant evidence

of the reasonableness or otherwise of delays in the process (Maksutaj against EULEX, 2014-18, 12 November 2015, paras. 64-66 and references cited).

62. 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 it 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)).
63. The implications of the changes in the mandate of the Mission following the conclusion of the executive mandate of the Mission in June 2018 and the implications thereof for the purpose of this case are addressed briefly below.

“Enforced disappearance” as a grave violation of the victims’ fundamental rights

64. The practice of enforced disappearance is one of the most egregious sort of human rights violations. They involve the violation of not one right but many, including in many instances, the right to truth, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, the right to an effective remedy and such conduct violates or constitutes a grave threat to the right to life. See, e.g., Sadiku-Syla against EULEX, 2014-34, Decision and Findings, 19 October 2016, para. 33; Declaration on the Protection of All Persons from Enforced Disappearance (A/RES/47/133, 18 December 1992).
65. Particularly important in that context is the complainant's right to truth, i.e., the right of victims to know what happened to their close relatives and the circumstances under which they were made to disappear. See, in general, *El-Masri v The Former Yugoslav Republic of Macedonia*, Application no. 39630/09, judgment of 12 December 2012, paras. 191-193; *Desanka and Zoran Stanisić against EULEX*, 2012-22, 11 November 2015, para. 67; for judgments of the Inter-American Court of Human Rights, see e.g. *Velásquez Rodríguez v. Honduras*, judgment of 29 July 1988, para. 181; *Heliodoro Portugal v. Panama*, judgment of 12 August 2008, para. 244; *Anzualdo Castro v. Peru*, judgment of 22 September 2009, paras. 116-118; General Comment on the right to the truth in relation to enforced disappearance, Report of the Working Group on Enforced or Involuntary Disappearances, 2010, in particular, para 1 ('The right to the truth in relation to enforced disappearances means the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, and the circumstances of the disappearances, and the identity of the perpetrator(s).'), Document A/HRC/16/48; *Set of principles for the protection and promotion of human rights through action to combat impunity* (E/CN.4/2005/102/Add.1), in particular, Principles 2-4; *Orhan v. Turkey*, no. 25656/94, § 358, Judgment of 18 June 2002, para 358; *Imakayeva v. Russia*, Application No. 7615/02, Judgment of 9 November 2006, para 164; General Comment on the Right to the Truth in relation to Enforced

Disappearance, Report of the Working Group on Enforced or Involuntary Disappearances (2010), Document A/HRC/16/48 (reprinted in https://www.ohchr.org/Documents/Issues/Disappearances/GeneralCommentsDisappearances_en.pdf, pp 26 *et seq*).

66. For almost two decades, the complainant has lived with the uncertainty of the fate of her husband, what happened to him and in what circumstances he disappeared. The psychological suffering resulting from this is not just immense. It is ongoing. See also 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; Khadzhiyev 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; Resolution No. 828 of 1984, paragraph 3 (Parliamentary Assembly of the Council of Europe); and General Comment on article 17 of the Declaration, Report of the Working Group on Enforced or Involuntary Disappearances 2000. Document E/CN.4/2001/68 (referring and commenting upon Article 17(1) of the Declaration on the Protection of All Persons from Enforced Disappearance). The continuous nature of the violation of rights involved in such practice explains that the duty of the competent authorities to investigate these is a pressing and important obligation that can only be set aside or delayed in the narrowest of circumstances.
67. When it comes to investigating cases of enforced disappearance, an investigation should be started as soon as possible and delays avoided as much as possible. That is not just because of the effect upon surviving relatives. It is also because evidence will disappear or get lost and memory fades. Delays in investigations are therefore likely to negatively affect the possibility of an investigation establishing the circumstances under which a person has disappeared and bring culprits to justice. For illustrations of the application of this guarantee in different contexts, see generally, Gürtekin and Others v. Cyprus (dec.), no. 54879/00, ECtHR 22 June 2006; Al-Skeini and Others v. the United Kingdom [GC], no. 55721/07, ECtHR 7 July 2011; Jaloud v. the Netherlands [GC], no. 47708/08, ECHR 20 November 2014; Jelić v. Croatia, no. 57856/11, ECtHR 12 June 2014; recently applied in B. and Others v. Croatia, no. 71593/11, ECtHR 18 June 2015; Palić v. Bosnia and Herzegovina, no. 4704/04, ECtHR 15 February 2011; Lejla Fazlić and Others v. Bosnia and Herzegovina and 4 Other applications (dec.), nos. 66758/09, 66762/09, 7965/10, 9149/10 and 12451/10, § 37, ECtHR 3 June 2014; Mujkanović and Others v. Bosnia and Herzegovina (dec.), nos. 47063/08, 47067/08, 47091/08, 47094/08, 47096/08, 47099/08, ECtHR 3 June 2014; Nježić and Štimac v. Croatia, no. 29823/13, 9 April 2015.
68. Because of the effect of such acts upon the relatives of a disappeared, it is of fundamental importance that they should be involved in the investigation of such cases to the greatest possible extent. Investigative authorities are required as a matter of human rights law to keep victims of rights violations informed of the course of their investigation. In effect, this requires that they balance the right and interest of victims to be kept informed of the progress of the investigation with the necessary degree of

confidentiality that an investigation may legitimately require. Subject to legitimate considerations of confidentiality and security, victims are entitled to be sufficiently involved in and informed of the process of investigation. Whilst the exact tenor of what must be provided to them is hard to determine in the abstract, the information provided to those most directly concerned by the investigation must be such as to enable them to satisfy themselves that the matter is being duly and properly looked into and that all relevant and reasonable efforts are being made to establish the fate of their relative and identify those responsible for it. See, generally, *Dešanka and Zoran Stanisić against EULEX*, 2012-22, 11 November 2015, para. 66, referring to *L.O. against EULEX*, 2014-32, 11 November 2015, paras. 60-61, 72-73; *Ahmet Özkan and Others v. Turkey*, Application no. 21689/93, judgment of 6 April 2004, paras. 311-314, *Isayeva v. Russia*, Application no. 57950/00, judgment of 24 February 2005 paras. 211-214; *Al-Skeini and Others v. United Kingdom*, Application no. 55721/07, 7 July 2011, para. 167.

69. This obligation to keep victims abreast of investigative efforts is particularly important in a case involving an enforced disappearance as surviving relatives might have no other source of information regarding this matter and will continue to live in the hope that the fate of their relative will one day be elucidated. This, therefore, constitutes an obligation that competent investigative authorities will not easily be permitted to shed or ignore.

Cases of “enforced disappearance” in the context of the Mission’s mandate

70. The HoM does not dispute that the Mission was competent to investigate this case. It is apparent from the various steps taken by the Mission that it considered itself competent to look into this case and, as happened, to terminate it. This also transpires from the fact that it kept custody of the case-file pertaining to this case until the end of the Mission’s executive mandate.
71. The Panel has already determined that this sort of cases come within the executive mandate and investigative/prosecutorial competence of the Mission. See, e.g., *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; *Sadiku-Syla against EULEX*, 2014-34, Decision on Admissibility, 29 September 2015; *L.O. against EULEX*, 2014-32, Decision and Findings, 11 November 2015. Where such acts are committed in the context of an armed conflict, as was the case in this instance, the conduct in question could qualify as a war crime, crimes against humanity or ethnic-based crimes over which the Mission had specific and express jurisdictional competence under its then applicable mandate. See, generally, Article 3 (d) of the Council joint action. See also *Sadiku-Syla against EULEX*, 2014-34, 19 October 2016, paras. 44-46. In *D.W. et al*, the Panel said the following in relation to this matter:

‘there was a very real possibility that those crimes and the accompanying violations of rights were based on ethnic or religious considerations thereby going further into the jurisdictional territory over which the Mission has competence. In a post-conflict environment where ethnic and religious relations might still be tense and fragile, such cases are obvious investigative priorities. This, again, does not

appear from the record to have been considered relevant to the Mission's determination of "exceptional circumstances".'

D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., and I.R. against EULEX, 2014-11 to 2014-17, 19 October 2016, paras. 83 et seq, in particular para. 85.

72. The investigation of this sort of cases did not only form part of the Mission's mandate, but was a core and essential element thereof. In *L.O. against EULEX*, the Panel thus underlined that 'there can be little argument that investigating the fate of the disappeared – regardless of religion or ethnicity – must be and must remain an operational priority for EULEX as a Rule of Law Mission for which it must be provided with adequate resources' (*L.O. against EULEX*, case No. 2014-32, Decision and Findings, 11 November 2015, para. 47). The present case will be assessed in that light.
73. The Panel also takes notice of and draws attention to its earlier cases pertaining to instances of enforced disappearance. See, e.g., *Sadiku-Syla against EULEX*, 2014-34, Decision on Admissibility, 29 September 2015, paras. 34- 39; 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, paras. 72-76; *L.O. against EULEX*, 2014-32, Decision and Findings, 11 November 2015, paras. 43- 47, and 59-65; *Sadiku-Syla against EULEX*, 2014-34, Decision and Findings, 19 October 2016, paras.47; D.W., E.V., F.U., G.T., Zlata Veselinović, H.S., I.R. against EULEX, 2014-11 to 2014-17, Decision and findings, 19 October 2016, paras. 58, 60, 62-65, 81-82.
74. The above considerations will serve to assess the efforts made by the Mission in relation to this case and whether they may be said to be consistent with the Mission's overall mandate and human rights obligations.

The Mission's conduct in relation to the present case

75. For reasons outlined above, the Mission is not to be assessed against standards of perfection. It faced at the time a challenging post-conflict environment. Its resources were limited and, in some respects, inadequate to the task and expectations. This required the Mission to make choices and to prioritise certain efforts over others. Furthermore, the manner in which UNMIK conducted its own "investigative" efforts and the transfer of case-files from UNMIK to EULEX greatly complicated the work of the latter. In response, the Mission invested time, resources and energy into reviewing those records and trying to make sense of them.
76. These efforts did not, however, do much to protect and guarantee the effectiveness of the fundamental rights of the complainant and her husband. The Panel has identified two principal shortcomings in the Mission's conduct that have resulted in or contributed to the violation of the rights of the complainant and that of her husband:
 - i. Failure to fully and diligently investigate the case; and
 - ii. Failure to sufficiently involve and inform victims.

77. Regarding the investigation of this case, the Panel notes the following. As far as the Mission is concerned, this case covers a period of approximately nine years from March 2009 until June 2018. 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'. It is not clear exactly on what date the file was transmitted from UNMIK to EULEX. However, an initial assessment of the case by a EULEX Prosecutor occurred on 6 March 2009. On 20 July 2009, the EULEX Prosecutor issued a 'Request to conduct investigation'. On 11 January 2011, the War Crimes Investigation Unit of EULEX (WCIU) reviewed the case once again. 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'. The case remained inactive until 14 May 2018 when the case-file pertaining to the disappearance of Mr Miladinović was transferred to the Kosovo institutions
78. As noted above, on 1 December 2015, the Mission received a letter from the complainant dated 1 November 2015 and on 31 December 2015 a response from the Mission together with a copy of the 'Dismissal of the Criminal Report' was delivered to the complainant (see, *supra*, para 37).
79. 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.
80. 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 (other than by its letter of 22 December 2015; see para 78 above). The Mission explained 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. There is no indication of this having been actually attempted by the Mission or other possible means of delivery (including by phone, fax or email) having been considered.
81. Between 20 July 2009, when an EULEX prosecutor requested the opening of investigation into this case, and 3 December 2013 when the case was closed by EULEX on the basis that there was nothing in the case file to warrant an investigation (HoM Submissions on Admissibility, 22 May 2018, page 1), there is no indication of any attempt having been made by the Mission to investigate this case. Therefore, the fact that the case did not warrant an investigation was the result, at least in part, of the Mission's own failure to try and investigate this case. The record does not suggest that EULEX interviewed or sought to interview any (potential) witness in relation to that case. Nor is there any indication that they sought to interview any of the relatives of the disappeared. There is no apparent request in the record of this case of the Mission having sought the assistance of any other organisation that might have possessed information regarding this case.

82. This state of affairs is all the more unfortunate in that the Mission's attention to this case should have been attracted by the HRAP's decision as well as by the complainant's letter of 1 December 2015 (see, again, para 78 above). Despite this nudging, the Mission still failed to act, effectively leaving this case un-investigated and seemingly ignoring the complainant's right to truth, right to an effective remedy and other rights associated with the disappearance of her husband.
83. The fact that the violation of the complainant's rights was (and is) ongoing is not insignificant here. See, generally, United Nations, Working Group on Enforced or Involuntary Disappearances, General Comment on Enforced Disappearance as a Continuous Crime (<https://www.ohchr.org/Documents/Issues/Disappearances/GC-EDCC.pdf>). This means that, for almost a decade, the complainant hoped – and was entitled to expect – that the Mission would look into this case and investigate it properly. Every day of this decade, the complainant continued to be the victim of violation of her rights resulting from the Mission's failure to do so. The consequences for her are grave and must be acknowledged as such.
84. The fact that UNMIK considered the case "closed" was irrelevant to the Mission's own obligations. Those were not to be determined by UNMIK. Furthermore, the fact that a victim's remains have been found does not put an end to the obligation to investigate, which is ultimately intended to bring the perpetrators to justice and to bring justice (and truth) to the victim. Instead, such an obligation continues to exist for as long as the fate of the victim of enforced disappearance remains unclarified:

"Paragraph 6 of Article 13 [of the ICCPR] provides that: "An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified." The obligation to continue the investigation for as long as the fate and the whereabouts of the disappeared remains unclarified is a consequence of the continuing nature of enforced disappearances (see the Working Group's general comment on article 17 and its general comment on enforced disappearance as a continuous human rights violation and continuous crime)."

General Comment on the right to the truth in relation to enforced disappearance, Report of the Working Group on Enforced or Involuntary Disappearances (2010), Document A/HRC/16/48, para 4.

85. Also, the Mission knew from the HRAP's Decision that UNMIK's conduct in this case had been inadequate, which was further highlighted by the complainant's continued efforts to search for the truth and to get the Mission to fulfil its obligations. At no point did the Mission tell the complainant that it was incompetent to do so or would not investigate this case.
86. The second failure of the Mission that contributed to the violation of the complainant's rights is its failure to keep her informed of the steps taken in relation to this case. Such a requirement is a necessary element of the protection of the rights of the victims in the investigation of such a case. See, e.g., *Dešanka and Zoran Stanisić against EULEX*, 2012-22, 11 November 2015, para. 66, referring to *L.O. against EULEX*, 2014-32, 11

November 2015, paras. 60-61, 72-74; Ahmet Özkan and Others v. Turkey, Application no. 21689/93, judgment of 6 April 2004, paras. 311-314, Isayeva v. Russia, Application no. 57950/00, judgment of 24 February 2005 paras. 211-214; Al-Skeini and Others v. United Kingdom, Application no. 55721/07, 7 July 2011, para. 167.

87. This obligation is particularly important in the context of incidents of enforced disappearance where victims suffer emotionally from the absence of information regarding the fate of their loved one. Highlighting the victims' right to truth in this context, the General Comment of the Working Group on Enforced Disappearance says the following about this matter:

“Article 13 of the Declaration recognizes the obligation of the State to investigate cases of enforced disappearances. Paragraph 4 of Article 13 specifies that “the findings of such an investigation shall be made available upon request to all interested persons, unless doing so would jeopardize an ongoing criminal investigation.” In light of the developments that happened since 1992, the Working Group deems that the restriction in the last part of this paragraph should be interpreted narrowly. Indeed, the relatives of the victims should be closely associated with an investigation into a case of enforced disappearance. The refusal to provide information is a limitation on the right to the truth. Such a limitation must be strictly proportionate to the only legitimate aim: to avoid jeopardizing an ongoing criminal investigation. A refusal to provide any information, or to communicate with the relatives at all, in other words a blanket refusal, is a violation of the right to the truth. Providing general information on procedural matters, such as the fact that the matter has been given to a judge for examination, is insufficient and should be considered a violation of the right to the truth. The State has the obligation to let any interested person know the concrete steps taken to clarify the fate and the whereabouts of the person. Such information must include the steps taken on the basis of the evidence provided by the relatives or other witnesses. While the necessities of a criminal investigation may justify restricting the transmission of certain information, there must be recourse in the national legislation to review such a refusal to provide the information to all interested persons. This review should be available at the time of the initial refusal to provide information, and then on a regular basis to ensure that the reason for the necessity that was invoked by the public authority to refuse to communicate, remains present.”

General Comment on the right to the truth in relation to enforced disappearance, Report of the Working Group on Enforced or Involuntary Disappearances (2010), Document A/HRC/16/48, para 3.

88. The Mission did not provide an explanation for its failure to keep the complainant (or any other close relative of the primary victim) informed about this case other than in its 22 December 2015 letter which came in response to the complainant's enquiry. This failure contributed to the violation of the complainant's rights insofar as it added to the state of uncertainty in which she found herself.

89. When transferring the case-file pertaining to this case to the Kosovo authorities, the Mission took the positive step of making suggestions to those authorities as to what to do about it and suggested specific investigative measures that they could adopt (see, above, para 46). Whilst laudable and welcome, the Mission's actions at the time of hand-over of the case to the local authorities was too little too late. If anything, it highlighted the Mission's awareness of the shortcomings of its own actions and failure to carry out those basic investigative steps. The rights of the complainant – and those of his relative – had been violated for a decade or so and the Mission's invitations and suggestions to the local authorities have thus far been without apparent effect. The rights of the complainant therefore continue to be violated although the Mission is not anymore in a position to effectively address this as a result of the change in the nature of its responsibilities.
90. The Panel has not found indications in the record that would have prevented the Mission to conduct the basic investigated steps listed above (in particular, to interview relatives of the primary victim, to inquire with other organisations, to seek to interview those who might have had information about the circumstances of his disappearance and the possible whereabouts of his remains).

The Mission's new, reduced, mandate

91. The Mission's new mandate has significantly reduced the Mission's ability to affect the investigation of criminal cases, including this one. Its monitoring role does not enable it to request the commencement of an investigation, nor does it give it power to decide its course. Unless it is meaningless, that role must however permit the Mission to report upon unexplained, arbitrary or unjustified failures by the authorities to fulfil their basic human rights obligations. Investigating cases such as the present one falls right within that basic expectation.
92. The Panel considers that the change in nature of the Mission's mandate does not relieve the Mission from its obligation to redress as far as possible the effects of the violations for which it is responsible.
93. On that basis, the Panel will recommend that the Mission should further take steps to inquire with the authorities what steps, if any, are being taken to investigate this case and to report to the competent authorities in Brussels if it becomes apparent that the authorities are not fulfilling their obligations in that regard. Having failed to protect the complainant's rights for almost a decade, the Panel strongly recommends that the Mission should take steps now to make amends and repair these violations.

Consequences upon the rights of the complainant and her husband's rights

94. Article 2 of the Convention protects one of the most fundamental of human rights, namely, the right to life. That right is protected under a variety of human rights instruments and it constitutes a core, basic, element of the minimum human rights protection owed to any individual. It knows of only few, limited, exceptions. See, generally, General comment No. 36 (2018) on article 6 of the International Covenant on

Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018 (https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf) (hereafter, "General Comment 36").

95. Most importantly for present purposes, this right imports a procedural obligation on the part of the state or authority competent to investigate where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute such incidents including allegations of excessive use of force with lethal consequences. See, generally, Sadiku-Syla against EULEX, 2014-34, Decision and Findings, 19 October 2016; 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; Sadiku-Syla against EULEX, 2014-34, Decision on Admissibility, 29 September 2015; Nydia Erika Bautista de Arellana v. Colombia, Communication No. 563/1993, Views of the Human Rights Committee, 27 October 1995 para. 8.6; McCann and Others v. the United Kingdom, judgment of 27 September 1995, Series A no. 324, para. 161; Assenov and Others v. Bulgaria, judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII, para. 102;); Nachova and Others v Bulgaria, Application nos. 43577/98 and 43579/98, judgment of 6 July 2005, para. 110; Hugh Jordan v. the United Kingdom, Application no. 24746/94, judgment 4 May 2001, para. 105; General Comment 36, para. 27.
96. Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations. See, generally, General Comment 36, para. 27 and references cited.
97. Also relevant to the present case is Article 3 of the European Convention of Human Rights, which provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. A similar prohibition and guarantee is provided in many other human rights instruments, including Article 7 of the International Covenant on Civil and Political Rights. This is again a fundamental right of immense importance that must be protected at all times and circumstances.
98. It has been acknowledged in the jurisprudence of the Panel and in the practice of other human rights bodies that the emotional trauma that might result for relatives of a disappeared from the absence of information regarding the fate of their relative could reach the threshold of gravity required for this guarantee. See, e.g., L.O. against EULEX, 2014-32, Decision and Findings, 11 November 2015; 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; Sadiku-Syla against EULEX, 2014-34, Decision and Findings, 19 October 2016. See also Declaration on the Protection of All Persons from Enforced Disappearance (cited above in para 64), 5th Preambular paragraph (noting that enforced disappearance causes "anguish and sorrow") and Article 1(2) which provides that "[a]ny act of enforced disappearance (...) constitutes a violation of the rules of international law guaranteeing, (...) the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment"); and General Comment on the right to the truth in

relation to enforced disappearance, Report of the Working Group on Enforced or Involuntary Disappearances, 2010. Document A/HRC/16/48, para 4.

99. In the view of the Panel, the Mission's failure to adopt even the most basic investigative steps over a long period of time, and its failure to properly inform in a timely manner the complainant of the fact that the investigation of this case was effectively stayed, all contributed to violating the rights of the complainants under Article 2 of the Convention to have this matter fully and diligently investigated by the Mission.
100. These failures and omissions also contributed to the violation of the complainant's rights under Article 3 of the Convention and contributed to the emotional and psychological trauma resulting from not knowing what happened to her husband. That trauma is grave, durable and ongoing. It is not, of course, exclusively the consequence of the Mission's conduct, but the Panel is not competent to make determinations regarding UNMIK's responsibility in that regard. In any case, UNMIK's failure, however serious, would not excuse the Mission's own. Therefore, the findings made here are limited to those acts and failures of the Mission that contributed to the violation of the complainant's rights and those of her husband, having taken into consideration the challenges outlined above which the Mission faced at the time.
101. In light of the findings made above in relation to Articles 2 and 3 of the Convention, the Panel is not required to also make findings in relation to Articles 8 and 13 of the Convention. However, the Panel would note that the conduct imputed to the Mission appears *prima facie* to have negatively affected the complainant's rights to family life and her right to an effective remedy. Because of its findings in relation to Article 2 and 3 of the Convention, the Panel will not make definite findings in respect of the violation of these rights by the Mission.
102. Based on the above, the Panel has determined that the Mission had violated the rights of the complainant and those of her husband pursuant to Article 2 (procedural limb) and Article 3 of the Convention.

FOR THESE REASONS, THE PANEL UNANIMOUSLY

Finds that the Mission has violated the rights of the complainant and those of her husband as guaranteed by Article 2 (procedural limb) and 3 of the European Convention of Human Rights;

In that light, the Panel does not find it necessary to make determinations regarding possible violations by the Mission of Articles 8 and 13 of the Convention;

Notes that, based on the record available to the Panel, the violation of the complainant's right might be ongoing; and, therefore,

Recommends the following:

- i. Considering the gravity of the violations under consideration, the Panel invites the Head of Mission to carefully consider the possibility and the need for the

Mission to acknowledge the violation of the complainant and her husband's rights committed by the Mission;

- ii. The Panel also invites the Head of Mission to consider what actions, within its current mandate, could be taken to contribute to efforts being undertaken in relation to this case to see to it that the fate of the complainant's relative is established and that perpetrators are brought to justice;
- iii. The Panel further recommends that EULEX should urge competent local authorities in Kosovo to take all possible steps in order to ensure that the criminal investigation into the disappearance of Mr Miladinović is continued in compliance with Articles 2 and 3 of the ECHR so that the perpetrators can be brought to justice. In particular, the Panel invites the Mission to inquire whether those authorities have or plan to adopt the investigative measures suggested by the Mission at the time of transmission of the case-file in this case.
- iv. The Mission should continue to monitor developments in this case and press the local authorities to investigate it. Should the Mission determine that the authorities are unwilling to do so, it should report this fact to higher political authorities.
- v. The Panel recommends that the present decision be communicated to those authorities and be circulated to all relevant organs of the Mission.

Respectfully asks the Head of Mission to inform the Panel of the steps taken to implement the Panel's recommendations and to do so no later than 16 September 2019.

For the Panel,

Guénaël METTRAUX
Presiding Member

Anna BEDNAREK
Member