



## **DECISION AND FINDINGS**

**Date of adoption: 29 June 2021**

**Case no. 2016-22**

**Radmila Šapić**

**Against**

**EULEX**

The Human Rights Review Panel, sitting on 29 June 2021, with the following members present:

Ms Anna AUTIO, Presiding Member  
Mr Petko PETKOV, Member

Assisted by:  
Mr Ronald HOOGHMSTRA, 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 11 December 2019,

Having deliberated through electronic means in accordance with Rule 13(3) of the Panel's Rules of Procedure, decides as follows:

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

1. The complaint in this case was registered on 30 June 2016.
2. By letter of 1 July 2016, the Panel informed EULEX Kosovo ("the Mission") that this case had been registered with the Panel.
3. On 28 June 2017, the Panel requested this complainant to provide additional information.
4. On 20 September 2017 and 17 October 2017, the Panel sent two further requests for additional information via the representative for Serb families of the Missing Persons Resource Center (MPRC), an NGO based in Pristina. The complainant did not submit any additional information.
5. On 8 December 2017, the Panel transmitted a Statement of Facts and Questions to the then Head of Mission, EULEX Kosovo, inviting her to submit her answers and written observations on the complaints no later than 26 January 2018.

6. The Mission, by letter of 4 January 2019, requested clarification on certain points related to the form of the complaint, and to the relationship between the complainant and the individuals mentioned in the complaint.
7. By letter of 17 January 2019, the Mission was requested again to provide answers to the questions by 16 February 2019.
8. By letter of 31 January 2019, the Panel requested the complainant to rectify the matters related to the form of the complaint, and to clarify her relationship with the individuals mentioned in the complaint. The complainant did so on 7 February 2019.
9. By letter of 8 April 2019, the Mission was requested once more to provide answers to the questions and written observations as soon as practical.
10. On 20 June 2019, the complainant was informed that the Panel was still in the process of examining her complaint.
11. The Mission's observations, dated 17 April 2020, were received on 21 April 2020, and transmitted further by the Panel to the complainant on 8 July 2020.
12. On 28 July 2020, the Panel received the complainant's comments on the Mission's observations.
13. On 7 August 2020, the Panel transmitted the complainant's comments to the Mission.
14. On 11 December 2020, the Panel rendered its decision on admissibility, declaring the complaint admissible in respect of Articles 2, 3, 8 and 13 of the European Convention on Human Rights ("the Convention") and Articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights ([2020-12-11-Admissibility-Decision-2016-22.pdf \(hrrp.eu\)](#)). In that Decision, the Panel asked the parties to address the following questions:
  - **The complainant:**
    - i. Please describe the support or assistance, or housing, that your parents provided you and your family with before their disappearance.
    - ii. Please describe the personal and emotional effects that the disappearance of your parents has had on you and your family.
    - iii. Please describe the legal and financial effects that the disappearance of your parents has had upon you and your family. Please also describe any difficulties or hardship you may have experienced as a result of the fact that your parents remain disappeared, in seeking access to any support, payments, or legal title, such as those listed in the questions below. For example:
      - a) Have you had full, partial or no access to any benefits, wages, pension payments, social assistance, and bank accounts that your parents were or would have been entitled to?
      - b) Have you inherited the legal title to any property, including housing, that your parents may have owned?
      - c) Have you had any financial expenses as a result of the disappearance of your parents that have not been compensated for?

- **The Mission:**

- i. What submissions does the Mission wish to make with respect to the substance of the aforementioned human rights?
- ii. What steps, if any, have been taken by the Mission towards local authorities in relation to this case? In particular, has the Mission inquired with local authorities whether (a) they were aware of the existence of that case and (b) whether they are currently investigating it and, if not, (c) why.
- iii. What role, if any, does the Mission intend to play in the future in relation to this unresolved case of enforced disappearance? What concrete measure or action does the Mission consider within its (current) powers to seek to advance the investigation and resolution of this case? If the Mission does not intend to take any steps with respect to this case, why not?
- iv. Were the documents in relation to this case transmitted to the local Kosovo Authorities following the Mission's change of mandate in June 2018 and reduction of executive competence?
- v. Did the Mission attempt to identify relatives, including living children, of the disappeared persons in the present case, other than the relative identified in the Mission's submissions and the related confidential documents? If not, why not?
- vi. Did the Mission attempt to contact the complainant or the relatives of the complainant's disappeared parents beyond the steps outlined in the Mission's submission and the related confidential documents? If not, why not?

15. The parties were asked to make their submissions no later than 28 February 2021.
16. On 11 December 2020, the HoM submitted additional observations on the merit as part of the Mission's observations on merit pertaining to several cases related to missing persons, including the present one. The Mission submitted these observations in response to a letter by the Panel sent on 18 September 2020 stating that the Panel would begin to decide on admissibility and merit in a single decision in the new year (i.e., 2021), to speed up the proceedings in the missing persons cases. In the present case, the Panel decided first and separately on admissibility, and the Mission did not yet have the Panel's decision on admissibility of 11 December 2020 when providing these observations.
17. On 17 December 2020, the Panel forwarded the Mission's observations on the merit to the complainant, who was invited to submit her comments on the merit of the case, if any, before 31 January 2021.
18. On 30 January 2021, the complainant submitted her comments in response to the Mission's observations on the merit of the case.
19. On 19 April 2021, the Panel received the Mission's submissions pursuant to the questions in the admissibility decision. These were forwarded to the complainant for her information, also on 19 April 2021.
20. No further submissions were received from the complainant.

## **II. COMPOSITION OF THE PANEL**

21. Following the resignation of one of its permanent members and the resignation of its member who was a staff member of the Mission Monitoring Pillar, 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**

22. On or around 18 May 1998, many residents of the village Leçinë/Leočina left the village for safety reasons. The complainant's parents, residents of the village, remained in their house.
23. On or around 18 May 1998, an armed group entered the village and the family houses, including the house of the complainant's parents, according to a witness. This witness, a cousin of the complainant, managed to escape into a nearby forest. The witness heard screams and shots from inside the houses, and saw the armed group burn down the family houses.
24. There has been no trace of the complainant's parents.
25. Three other, more distant relatives of the complainant also disappeared on or around the same date. These individuals were the aunt of the complainant and her son, both present in the village at the time of the incident, as well as one other cousin of the complainant, who was last seen at a Serbian police check point on her way to the village. There has been no trace of these three individuals.
26. The disappearances were reported to the International Committee of the Red Cross (ICRC), the Yugoslav Red Cross, and to the United Nations Interim Administration Mission in Kosovo (UNMIK). The ICRC and the Yugoslav Red Cross opened tracing requests for the complainant's parents on 20 May 1998 and 24 June 1998, respectively.
27. During the period 2001-2002, ICRC and the Association of the Families of the Missing took ante-mortem data from certain members of the family to facilitate the tracing.

## **IV. SUBMISSIONS OF THE PARTIES ON THE MERIT**

### **The complainant**

28. The complainant alleges in her complaint that, in the exercise of its executive mandate, the Mission should have investigated the disappearance of her parents and culpably failed to do so in violation of her and her parents' fundamental rights.

### **Head of Mission – submissions dated 17 April 2020**

29. The Panel notes that the Mission had provided certain submissions on the merits in its earlier submissions dated 17 April 2020, and which are, in part, outlined in the Decision on Admissibility (paras 27 to 38) and relevant to the present decision also.
30. In those submissions, the Mission explained, *inter alia*, that the combined effect of a large number of cases and limited resources caused the Mission to prioritise 1,200 case files labelled 'war crimes' by UNMIK – over 'missing persons files' – and, within the former category, cases that appeared 'more promising in terms of investigation outcomes'.

31. The Mission stated that it “does not dispute that the complainant, as an indirect victim of the violations alleged, has a right to an effective investigation into the disappearance of her parents. However, it maintains that its relevant units took all reasonable steps to investigate the case and did not violate the complainant’s rights”.
32. The Mission referred to the procedural obligation under Article 2 of the Convention being ‘one of means and not of result; what is relevant is that the authorities have done all that could reasonably be expected of them in the circumstance of the case’ (referring to the European Court of Human Rights cases of *Trivkanovic*, para 78; *Borojevic*, para 57; and *Njezic*, para 69).
33. The Mission further stated as follows:

”[...] at the moment of the hand-over from UNMIK, the criminal investigation by the UNMIK CCIU [Central Criminal Investigation Unit] was considered closed. EULEX did not archive the case; on the contrary, its Prosecutor requested the WCIU [EULEX War Crimes Investigation Unit] to undertake investigative steps. The WCIU could not follow up on the request of the prosecution during the early years of EULEX mandate, due to the high number of similar requests coming from the SPRK [Special Prosecution Office of the Republic of Kosovo] (nearly 900 [...]). However, it did undertake investigative steps in 2013, when a new letter of entrustment was issued by another Prosecutor. Regrettably, these steps did not lead to the discovery of any useful leads to move the investigation forward and therefore the case was ultimately dismissed. As mentioned above, the dismissal does not preclude the possibility of filing a new criminal report should new information come to light.”
34. Finally, the Mission stated that as there was no evidence in the present case, the dismissal of the criminal report was not only a reasonable step but also a proportionate one considering the large number of cases and the fundamental obstacles the Mission faced.

#### **Head of Mission – submissions dated 11 December 2020**

35. By letter of 11 December 2020, the Head of Mission indicated that there was ‘no need’ for additional submissions on the merit of this case and submitted that ‘the Mission does not believe that the complainant’s rights were violated’.
36. The Mission made several generic submissions, echoing those in its submissions dated 17 April 2020, regarding some of the practical challenges associated with the investigation of these types of cases, and acknowledged that it had faced challenges with the management of the files received from UNMIK.

#### **Complainant’s submissions in reply**

37. On 17 December 2020, the Mission’s submissions on the merit of the case were forwarded to the complainant.
38. By letter of 30 January 2021, the complainant provided comments on the Mission’s submissions, notably disagreeing with the conclusion by the Head of Mission that the complainant’s rights had not been violated.
39. The complainant in her comments stated that the Mission’s had an obligation to investigate all cases of missing persons, and not hold certain cases, such as the disappearance of her parents and other family members, a lesser priority. The complainant also referred to the significant passage of time since the facts, and the

diminishing likelihood that, 22 years after the facts, the cases could be resolved. The complainant appeared to allege that the Mission has deliberately delayed the investigation of this and other cases to a point where the perpetrators can no longer be found.

40. The complainant further asked the Mission to “review the rejected criminal charges in this case, because in [the complainant’s] opinion, not all investigative actions have been exhausted, that could lead to the prosecution of those responsible for the disappearance, kidnapping and murder of [the complainant’s] parents [...]”.

#### **Head of Mission – submissions dated 19 April 2021**

41. In its submissions pursuant to the Panel’s questions in the Decision on Admissibility, the Mission referred to its earlier submissions in which the Mission stated that in its opinion, there had been no violation of the complainant’s rights.
42. In reference to the Panel’s invitation, in its Decision on Admissibility, to the Mission not to reiterate submissions that the Panel has already rejected in earlier cases, the Mission stated that it cannot comply with the invitation, as its observations on the merits in a case are “based on an evaluation of all relevant facts established following a thorough research of available records”.
43. The Mission stated that it “regrets that Ms Šapic was not informed about the dismissal of the criminal report pertaining to the disappearance of her parents and apologises for this omission”.
44. The Mission further stated that it “categorically rejects the claim” made by the complainant that the Mission had been deliberately delaying the case and noted there was no evidence to substantiate the allegation.
45. In reference to a claim made by the complainant that the Mission had not interviewed the only surviving witness in the case, the Mission stated that it could not have done so as the witness passed away before the start of the Mission’s mandate. The Mission also referred to the investigative steps that it took in 2013, outlined in paragraph 32 of the Panel’s Decision on Admissibility, highlighting the lack of useful leads as a result of the steps and the consequent dismissal of the criminal report.
46. As for the complainant’s request for the Mission to review the rejected charges, the Mission stated that it has no mandate to do so, and suggested that the complainant should communicate with the ‘relevant authorities’ in case she deems she has information that is relevant to the investigation.
47. In respect of Articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights, the Mission noted that the complainant had not alleged a violation of these rights and had not replied to the Panel’s questions in the Decision on Admissibility. The Mission further noted that “EULEX is well aware that enforced disappearances may impact on the enjoyment of economic, social and cultural rights [...]. However, these considerations have nothing to do with the conduct of EULEX executive mandate. In accordance with the Kosovo Law No.04/L-023 on Missing Persons, as a close relative of persons missing in relation to the conflict in Kosovo, Ms Sapic is entitled to exercise a number of rights and the enjoyment of these rights does not depend on the outcome of any criminal investigations”.
48. To the Panel’s question on the steps taken by the Mission towards local authorities in this case, the Mission stated that the case file was handed over in November 2018, and that the complainant can request access to it and request to be heard by the competent

authorities. The Mission further provided the relevant contact details, passed on to the complainant when the Panel forwarded the Mission's submissions to her on 19 April 2021.

49. To the question on the role, if any, that the Mission intends to play and any concrete measures within its current mandate that it can take with respect to this case, the Mission repeated that it had passed the case file to the competent authorities in November 2018 and "invited the SPRK to make a fresh assessment of this case as well as of all other cases that were dismissed during EULEX mandate". Moreover, the Mission made a general remark of its support to the Kosovo institutions, including in cases of missing persons.
50. To the question of the handover of documents in the case to the Kosovo authorities following the change in the Mission's mandate in June 2018, the Mission stated that it had handed over the entire case file in November 2018.
51. As for whether the Mission had attempted to identify relatives, including living children, of the disappeared persons in the present case, other than the relative identified in the Mission's earlier submissions and the related confidential documents, the Mission stated that it "has not found evidence that such attempts were made, but cannot exclude it".
52. To the question of whether the Mission attempted to contact the complainant or the relatives of the complainant's disappeared parents beyond the steps outlined in the Mission's submission and the related confidential documents, and if not, why not, the Mission did not provide a direct response. Instead, the Mission stated as follows: "In the coming period, the Mission will contact the complainant with a view to reply to any questions she may have".

#### **Complainant's submissions on the Decision on Admissibility**

53. The Panel did not receive further submissions from the complainant and did not receive a response to the Panel's questions in its Decision on Admissibility.

### **V. DELIBERATIONS**

#### **"Enforced disappearance" as a grave violation of a victim's fundamental rights**

54. The practice of enforced disappearance is one of the most egregious human rights violations. Enforced disappearances often involve the violation of not one type of right but many, including the right to truth, the right to recognition as a person before the law, the right to liberty and security of the person, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, and the right to an effective remedy. Importantly, such conduct also 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; *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 61; Declaration on the Protection of All Persons from Enforced Disappearance, A/RES/47/133, 18 December 1992.
55. Particularly important in cases of enforced disappearance 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 their relatives were made to disappear. See, in general, *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 62.
56. The right to truth in relation to human rights violations is not only an individual right. It is also a collective right, serving to preserve memory at the level of society and acting as a

safeguard against the recurrence of violations. See *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, Preamble. In the post-conflict context of Kosovo, investigations of enforced disappearances contributed – and continue to contribute – to promoting truth, to the collective memory of such human rights violations, and to ensuring their non-recurrence.

57. In the present case, the complainant has lived for well over two decades with the uncertainty regarding the fate of her parents, what happened to them and in what circumstances they disappeared. The psychological suffering resulting from this is not just immense. It is ongoing. See *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 63.
58. It is because of the continuous nature of the violation of rights involved in enforced disappearances that the duty of the competent authorities to investigate these cases effectively is a pressing and important obligation that can only be set aside or delayed in the narrowest of circumstances. See *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 64.

#### **Duties and obligations of the authorities regarding acts of enforced disappearance**

59. The actions of the Mission's prosecutors and police formed part of its executive mandate, prior to the change in the Mission's mandate in June 2018. As such, they 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 whether the underlying conduct in question consists of a positive act or a culpable omission by the Mission. (See *Krlić against EULEX*, 26 August 2014, para. 25; *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 48).
60. The Panel has already had occasion to note that the 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, e.g., 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; see also Human Rights Advisory Panel of UNMIK (HRAP) decision in cases nos 248/09, 250/09 and 251/09, 25 April 2013, para. 35; *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 49).
61. Expectations placed upon the ability of the Mission to investigate and resolve complex criminal cases should therefore be realistic and not place upon it a disproportionate burden that its mandate and resources could not reasonably be expected to meet (see *L.O. against EULEX*, 2014-32, Decision and Findings, 11 November 2015, paras. 43 and 45).
62. In each case, the Panel is therefore expected to review whether there were concrete and real obstacles that might have undermined the capacity of the Mission to conduct a prompt and effective investigation into a case. Such an evaluation is not intended to justify operational shortcomings unrelated to concrete and demonstrable challenges. (see *L.O. against EULEX*, 2014-32, Decision and Findings, 11 November 2015, para. 44; *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 50).
63. In every case, in particular in instances of this level of 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 (see *L.O. against EULEX*, 2014-32, Decision and Findings, 11 November 2015, paras. 46 and 59; see also *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; *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 54).

64. The European Court of Human Rights has laid down a number of general principles on what human rights law requires and expects of an effective investigation into allegations of rights violations under Article 2 of the European Convention (*Mustafa Tunç and Fecire Tunç v. Turkey*, Application no. 24014/05, Judgment, 14 April 2015 (Grand Chamber), paras 169ff). In particular, the Court stated in *Mustafa Tunç and Fecire Tunç v. Turkey* as follows:

172. In order to be 'effective' as this expression is to be understood in the context of Article 2 of the Convention, an investigation must firstly be adequate (see *Ramsahai and Others v. the Netherlands* [GC], no. [52391/99](#), § 324, ECHR 2007-II). That is, it must be capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible.

173. The obligation to conduct an effective investigation is an obligation not of result but of means: the authorities must take the reasonable measures available to them to secure evidence concerning the incident at issue (see *Jaloud v. the Netherlands* [GC], no. [47708/08](#), § 186, ECHR 2014; and *Nachova and Others v. Bulgaria* [GC], nos. [43577/98](#) and [43579/98](#), § 160, ECHR 2005-VII).

174. In any event, the authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (see *Giuliani and Gaggio v. Italy* [GC], no. [23458/02](#), § 301, ECHR 2011).

175. In particular, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and, where appropriate, the identity of those responsible (see *Kolevi v. Bulgaria*, no. [1108/02](#), § 201, 5 November 2009).

176. Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. It is not possible to reduce the variety of situations which might occur to a bare check-list of acts of investigation or other simplified criteria (see *Tanrikulu v. Turkey* [GC], no. [23763/94](#), §§ 101-110, ECHR 1999-IV; and *Velikova v. Bulgaria*, no. [41488/98](#), § 80, ECHR 2000-VI).

[...]

178. A requirement of promptness and reasonable expedition is implicit in this context (see *Al-Skeini and Others*, cited above, § 167).

179. In addition, the investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests. There must also be a sufficient element of public scrutiny of the investigation, the degree of which may vary from case to case (see *Hugh Jordan v. the United Kingdom*, no. [24746/94](#), § 109, ECHR 2001-III). The requisite access of the public or the victim's relatives may, however, be provided for in other stages of the procedure (see, among other authorities, *Giuliani and Gaggio*, cited above, § 304; and *McKerr v. the United Kingdom*, no. [28883/95](#), § 129, ECHR 2001-III).

[...]

181. The question of whether an investigation has been sufficiently effective must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (see *Dobriyeva and Others v. Russia*, no. [18407/10](#), § 72, 19 December 2013; and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. [47848/08](#), § 147, 17 July 2014)."

65. Regarding the requirement of expeditiousness, the Panel wishes to note that 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, *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 56; *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.)
66. An investigation into an enforced disappearance should be started as soon as possible and delays avoided as much as possible. This is not just because of the effect of the uncertainty 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: *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 65; *Gürtekin and Others v. Cyprus*, ECtHR Inadmissibility Decision of 11 March 2014; *Al-Skeini and Others v. the United Kingdom* [GC], Application no. 55721/07, ECtHR Judgment of 7 July 2011; *Jaloud v. The Netherlands* [GC], Application no. 47708/08, ECtHR Judgment of 20 November 2011; *Jelić v. Croatia*, Application no. 57856/11, ECtHR Judgment of 12 June 2014; *B. and Others v. Croatia*, Application no. 71593/11, ECtHR Judgment of 18 June 2015; *Palić v. Bosnia and Herzegovina*, Application no. 4704/04, ECtHR Judgment of 15 February 2011; *Lejla Fazlić and Others v. Bosnia and Herzegovina and 4 Others*, Applications nos. 66758/09, 66762/09, 7965/10, 9149/10 and 12451/10, ECtHR Judgment of 3 June 2014; *Mujkanović and Others v. Bosnia and Herzegovina*, Applications no. 47063/08 et al., ECtHR Inadmissibility Decision of 3 June 2014; *Nježić and Štimac v. Croatia*, Application no. 29823/13, ECtHR Judgment of 9 April 2015.)
67. 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 as outlined above, 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. (See *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 57.)

68. However, investigative challenges and difficulties do not authorise 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 judicial proceedings. See, again, *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 57. 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; reiterated in *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 57).

69. A strict commitment and attachment to these standards is particularly important for a rule of law mission operating in a post-conflict context, such as the EULEX Kosovo 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. (See *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 55.) Any standard short of the one mentioned above would risk creating a sense of acquiescence with impunity and disregard for a victims’ search for justice and accountability (see *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 55; *L.O. against EULEX*, 2014-32, Decision and Findings, 11 November 2015, para. 46).

70. It should also be emphasized 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 – Articles 2 and 3 of the Convention are non-derogable rights (see 2016-15 *Dragan Janačković against EULEX*, Decision and Findings, 26 March 2021, para 37). 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)). See also *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 59.

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

71. The Panel has already determined that this type of case, involving an enforced disappearance, comes 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; *Zlata Veselinović, H.S., I.R. against EULEX*, 2014-11 to 2014-17, Decision on Admissibility, 30 September 2015; *L.O. against EULEX*, 2014-32, Decision and Findings, 11 November 2015; *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019.) The Mission does not dispute that it was competent to investigate this case. Indeed, it took certain investigative steps in the present case in the exercise of its jurisdictional competence.

72. Where acts such as enforced disappearance are committed in the general 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 relations 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.’

See *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.

73. The investigation of this type of case 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’

See *L.O. against EULEX*, case No. 2014-32, Decision and Findings, 11 November 2015, para. 47. See also *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019.

74. The above considerations will serve to assess the efforts made by the Mission in relation to the present case and whether these efforts may be said to be consistent with the Mission’s overall mandate and its human rights obligations.
75. The Panel also wishes to address the issue of legal labelling of relevance to this and other similar cases that have come before the Panel. In its submissions (see, *supra*, para 30), the Mission suggests that the WCIU prioritized the review of the so-called ‘war crimes files’ over the ‘missing persons files’. The Panel notes that the proposed distinction cannot be regarded as sound here. First, the distinction is legally artificial: instances of enforced disappearance or missing persons can constitute a war crime and have been prosecuted under various categories of war crimes since at least the Second World War (See, e.g., *Vesko Kandić against EULEX*, 2016-24, Admissibility Decision and Decision and Findings, 11 December 2020, paras. 86-92). The Panel notes in that respect that it was the ‘war crime’ unit of the Mission that dealt with such cases, thereby making it clear that, even from the institutional point of view, there was no conflict between missing persons and war crimes cases.
76. Second from the point of view of human rights law, the distinction is not meaningful. The obligation to investigate that arises in such a case from Articles 2 (procedural limb) and 3 of the Convention is indifferent to the legal characterisation given to the act under local laws (or international law). In other words, from the point of view of its human rights obligations, the Mission was no less obliged to investigate such a case if it regarded it as a ‘war crimes case’ than if it regarded it as a ‘missing person case’. (See, e.g., Inter-American Convention on Forced Disappearance of Persons (1994); UN General Assembly, *Declaration on the Protection of All Persons from Enforced Disappearance*, UN Doc A/RES/47/133, 18 December 1992 (hereafter 1992 Declaration on Enforced Disappearance), art. 1(1); UN Economic and Social Council, Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc E/CN. 4/1996/38, 1 January 1996; UN Human Rights Committee, *CCPR General Comment No. 6: Article 6 (Right to Life)*,

30 April 1982 (hereafter General Comment No. 6), s. 4; UN General Assembly, Disappeared Persons, UN Doc A/RES/33/173, 20 December 1978 (hereafter UN Doc A/RES/33/173); UN General Assembly, Question of Enforced or Involuntary Disappearances, UN Doc A/49/610/Add.2, 23 December 1994.)

### **Circumstances in which the Mission was to fulfil its human rights responsibilities**

77. 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 these were, in some respects, inadequate to the task and expectations. This required the Mission to make choices and to prioritise certain efforts over others.
78. Furthermore, the manner in which UNMIK conducted its own investigative efforts and the manner in which it transferred its files to EULEX greatly complicated the work of the Mission. In response, the Mission invested time, resources and energy into reviewing those records and trying to make sense of them. For these efforts, the Mission must be commended.
79. 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 (*L.O. against EULEX*, 2014-32, 11 November 2015, para. 44 and references cited therein; *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 51; see also *Palić v. Bosnia and Herzegovina*, application no. 4704/04, judgment of 15 February 2011, para. 70; and HRAP decision in cases nos. 248/09, 250/09 and 251/09, quoted above, paras. 44 and 62 *et seq.*).
80. Those difficulties should not, however, serve to justify investigative failures that are not meaningfully 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; *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 51).
81. Particularly relevant in assessing the adequacy of the Mission's response is the fact that its ability to fulfil its investigative obligations was affected by both the general circumstances in which crimes were 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 and the willingness and ability of witnesses to provide information might be considerably reduced in such context. The Panel has duly taken into account these challenges when making its own assessment of the Mission's response. (See, again, *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, paras 52-53.)
82. The Panel has also taken into consideration the fact that EULEX Kosovo had to confront and address the investigative legacy of UNMIK. The Human Rights Advisory Panel of the United Nations (HRAP) found that UNMIK failed in many respects to fulfil its human rights obligations in relation to victims of "enforced disappearances" on a number of occasions. The proper, diligent and organised accounting of information pertaining to the commission of such serious violations of rights is an important element of the effective protection of those rights. In light of the nature and gravity of the acts under consideration, the HRAP found that UNMIK's record-keeping practice was inadequate. (See *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 53.)

## Findings regarding the Mission's alleged failures

83. The Mission was required to fulfil its executive responsibilities in a manner consistent with relevant human rights standards. This implied, *inter alia*, that it would investigate the present case – a case that was within its *jurisdictional* competence involving the violation of rights guaranteed under Articles 2 and 3 of the Convention -, and to do so diligently, promptly and thoroughly (see e.g. *Sadiku-Syla against EULEX*, 2014-34, Decision and Findings, 19 October 2016, para. 36).
84. The Mission was, furthermore, required to keep the relatives of the missing adequately apprised of its efforts to investigate this case (see e.g. *L.O. against EULEX*, 2014-32, Decision and Findings, 11 November 2015, paras 61-62).
85. The present case, as well as other cases of enforced disappearance/missing persons, fell right within the scope of the Mission's jurisdictional competence and human rights responsibilities.
86. At the same time, as outlined above, there is no question that the Mission operated in difficult circumstances for much of the time of concern to this case.
87. It is also clear from the record of this case that the Mission took a number of concrete steps relevant to the present complaint. It took active steps to review and organise records received from UNMIK. In particular, the Panel takes note of the series of investigative steps that the Mission undertook in the present case. As outlined in the Panel's Decision on Admissibility (para 32), and based on the Mission's submissions and the verification by the Panel of the related confidential documents in the Mission's possession, the Mission took the following steps:
  - On 18 July 2009, the EULEX Prosecutor issued a request to conduct an investigation into the alleged kidnapping of the complainant's parents and of two other individuals. The Mission states that "[i]t would appear that the 18 July 2009 'request to conduct an investigation' was not followed up by the WCIU".
  - On 18 October 2013, another EULEX Prosecutor with the Special Prosecution Office of the Republic of Kosovo (SPRK) issued a 'letter of entrustment' requesting the EULEX War Crimes Investigation Unit (WCIU) to locate an eye witness of the incident, and other individuals not related to the victims in the present case. When the WCIU followed up on the request, it learned that the eye witness had died in the meantime, and that although interviews with the other individuals had been carried out, these did not lead to the discovery of any useful information.
  - Consequently, on 2 December 2013, a EULEX Prosecutor dismissed the criminal report because, "in light of the information gathered until that point, there was 'no indication on who the possible suspects could be and on possible evidence to be used in further criminal proceedings.' In the dismissal, the EULEX Prosecutor also indicated that the decision did not preclude 'the possibility of filing a new criminal report should additional evidence come to light' and that the injured party could make an appointment with the EULEX Prosecution to discuss the case if he wished to. The dismissal mentioned only one injured party; the address of this injured party was located in Serbia outside the boundaries of Kosovo".

- In June 2018, the Mission's prosecutorial unit initiated a request for mutual legal assistance to Serbia, through the Kosovo Ministry of Justice, as the unit noted that the dismissal had not been notified to the injured party.
  - On 8 June 2015, EULEX received from UNMIK the Opinion of the UNMIK Human Rights Advisory Panel of 14 December 2014 in cases 264/09 and 265/09, issued upon an application filed by the complainant's brother. On 24 June 2015, the Mission forwarded this Opinion to the Kosovo Chief State Prosecutor together with an invitation to assess the case and forward it to the competent prosecuting authorities.
  - On 28 June 2015, the Office of the Chief State Prosecutor informed EULEX that the case had been transmitted to the SPRK.
88. These investigative efforts were not, however, sufficient to protect and guarantee the effectiveness of the fundamental rights of the complainant and her parents. 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:
- i. A failure to diligently and expeditiously investigate the case; and
  - ii. A failure to sufficiently involve and inform close relatives of the disappeared persons.

#### *Investigation into the disappearance*

89. As a preliminary matter, the Panel wishes to highlight the distinction between the question of *competence* to investigate and that of an *obligation* to do so. The *competence* of the Mission to investigate crimes that involve the violation of certain human rights – and the scope thereof – was determined by a succession of domestic laws, in particular, the Law on Jurisdiction in its various iterations. As for the Mission's *obligation* to investigate these, it arose *not* from these provisions which set out EULEX Prosecutors' jurisdictional competence over these cases, but from Articles 2 and 3 of the Convention (and similar human rights provisions), which mandates the Mission to guarantee the effectiveness of these rights in the context of its executive function. (See e.g. *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 83.)
90. In that sense, whilst the Mission took some steps towards the fulfilment of its obligations in this case, these efforts were not enough to meet the human rights standards set out above that were binding on the Mission at the time.
91. The records available to the Panel demonstrate that the Mission took no steps or follow-up action in the case between the request to conduct an investigation issued by the EULEX Prosecutor on 18 July 2009, and 18 October 2013 when another EULEX Prosecutor issued a letter of entrustment requesting the WCIU to locate an eye witness and other individuals relevant for the case. There was no follow-up to the request to conduct an investigation issued by the EULEX Prosecutor in July 2009. The only occasion throughout the period of the Mission's competence and obligation to investigate the case when active investigation steps to locate evidence or a witness were taken was pursuant to the second request by a different Prosecutor to the WCIU, over four years later, in October 2013.
92. The Panel views the lapse of time and lack of follow-up as falling short of the requirements of diligence and expeditiousness. Moreover, the Mission stated in its submissions that it had no evidence of it attempting to identify relatives, including living children, of the disappeared persons (other than the relative identified in the Mission's earlier submissions

and the related confidential documents), where the standard of diligence would have required for it to take steps towards identifying such relatives.

93. The above shortcomings in the investigation also have no cogent explanation. As noted above (see para 79), the Panel is required to account for the practical realities of investigation work when making its assessment of whether the investigation was sufficiently effective. The Mission advanced a number of arguments to explain its failure to investigate adequately and promptly the present case (and other similar cases) and to keep the relatives of the disappeared in this case properly informed (see para 87 above, and paras 28 to 31 in the Decision on Admissibility, referring to the Mission's submissions received on 21 April 2020).
94. It is correct, as the Panel has acknowledged above, that the task facing the Mission was daunting, in particular in the immediate aftermath of the conflict. At the beginning of its mandate, there were hundreds of cases involving serious violations of human rights for the Mission to investigate. It is also correct that its resources – human and financial – were limited.
95. In addition, these difficult investigations were to be conducted with only limited support from local authorities, and in a post-conflict situation the presence of a number of relevant but suboptimally coordinated international actors that would have rendered a difficult situation even more challenging. Furthermore, the Mission inherited records from UNMIK that were poorly organised. This required the Mission to conduct its own, repeated, review of those records.
96. Where the submissions of the Head of Mission find their limitations is in the fact that the shortcomings and failings identified by the Panel in the present case are not specific to this case. Instead, they reflect systemic shortcomings by the Mission with regard to its human rights obligation to conduct an effective investigation into a disappearance, including the following: a general lack of adequate planning for investigations and prosecutions; a lack of policy of prioritisation of cases; a lack of focus on cases involving serious human rights violations; a lack of prompt and effective investigations, including a lack of effective and prompt follow-up where action was taken, as demonstrated in the present case; a general failure to inform relatives of missing persons of the nature and scope of the Mission's efforts to find their relatives (or their remains) and circumstances in which they disappeared; no clear policy on cases of enforced disappearances and no prioritisation thereof; low number of 'resolved' missing persons cases; unreasonable reliance on records and determination by UNMIK (see, e.g. *Q.J. against EULEX*, 2016-23, Decision and Findings, 11 December 2020, paras. 45-47; *Vesko Kandić against EULEX*, 2016-24, Admissibility Decision and Decision and Findings, 11 December 2020, paras 80-84).; questionable practices by prosecutorial staff (See e.g. *W. against EULEX*, 2011-07, Decision and Findings, 10 April 2013, paras. 34-35; *F. and Others against EULEX*, 2011-27, Decision and Findings, 5 December 2017, paras. 60-63); acts carried out without clear legal basis (See e.g. *W. against EULEX*, 2011-07, Decision and Findings, 10 April 2013, paras. 41-43; *G.T. against EULEX*, 2019-01, Decision and Findings, 11 December 2020, para. 70); and, failure to request relevant records from potential sources of information.
97. These factors are not the consequence of challenges associated with the Mission's mandate or with a lack of resources. They are the consequence of poor planning, inadequate operational management of investigations and prosecutions, absence of a clear policy on case prioritisation, failure to put in place a system of communication with relatives of missing persons, and failure to have a clear investigative and prosecutorial policy in respect of missing persons cases. They also demonstrate an inability by the

Mission to ensure that the planning and implementation of its activities consistently took into account the Mission's human rights obligations.

98. The Panel further notes that the Mission cannot delegate its human rights obligations to third parties, such as UNMIK. The inactivity of other international organisation that dealt with the case (or failed to do deal with the case) before the Mission became involved does not diminish the responsibility of the Mission when it comes to the assessment of the fulfilment of the Mission's own human rights obligations. For instance, the classification of cases by UNMIK had no legal bearing on the Mission's own responsibilities. Moreover, the Mission knew, as is clear from its submissions, that UNMIK's records were unreliable.
99. In sum, the Mission's failure to meet the requisite standards of diligence and expeditiousness in the present case are to a significant extent attributable to the Mission's own shortcomings, rather than factors beyond the Mission's control.
100. Based on the above, the Panel finds that the failure by the Mission to use all available investigative means diligently and in a timely manner to resolve the case contributed to the violation of the complainant's rights under Article 2 (procedural limb) of the Convention to have the disappearance of her parents effectively investigated.

#### *Informing relatives of the disappeared persons*

101. As outlined above (see, *supra*, paras 55 and 56), investigative authorities are required as a matter of human rights law to keep close relatives of victims informed of the course of the investigation. In effect, this requires that they balance the rights and interests 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, *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 66; *Desanka and Zoran Stanisic against EULEX*, 2012-22, 11 November 2015, para. 66.).
102. This obligation to keep victims abreast of investigative efforts is particularly important in a case involving acts of enforced disappearance as surviving relatives might have no other source of information regarding the fate of their relative(s) and they will continue to live in the hope that the fate of their relative(s) will one day be elucidated. As a result, close relatives of the disappeared victims suffer emotionally from the absence of information regarding the fate of their loved one. Such a requirement is a necessary element of the protection of the rights of the victims in the investigation of such a case. Importantly, the obligation to inform the relatives is also related to the right to truth, as outlined above (see, *supra*, para 56).
103. In relation to the present case, there is no indication on the record of the Mission having fulfilled its obligation to inform the complainant of the existence, course, and tenor of the investigation. The Mission itself stated that it had no evidence of any attempts by it to identify living relatives or children of the disappeared persons, though it further stated that it could not exclude it.
104. The Mission did not provide an explanation for its failure to keep the complainant (or any other close relative of the primary victims) informed about this case. In response to the

Panel's query on that point, the Mission said that it "regrets that Ms Sapic was not informed about the dismissal of the criminal report pertaining to the disappearance of her parents and apologises for this omission".

105. By failing to reach out to the complainant or to even try to do so, the Mission violated her rights. In this context, the supposedly inadequate quality or sufficiency of investigative leads had no bearing on the Mission's obligation to inform the relatives. With or without such information, it was required to inform the relatives of the missing of their actions and efforts, which it failed to do. The Mission's failure to contact and inform the complainant of their decision to dismiss the criminal report contributed to the violation of the complainant's rights insofar as it added to the state of uncertainty and related suffering in which she found herself all through the relevant period.
106. Based on the above, the Panel finds that the Mission contributed to the violation of the complainant's rights under Article 3 of the Convention to be adequately informed of the course of action taken to investigate the disappearance of the complainant's parents, and thereby contributed to her psychological and emotional trauma.

### **Economic and social rights**

107. The Panel in its Decision on Admissibility found that the complaint might be relevant to Articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights. The Panel noted that

"One circumstance in which there may be an impact on the economic, social and cultural rights is where the disappeared person has provided for the family, or held legal title to family property or assets, or a claim to certain benefits or payments. An effective investigation into a disappearance may have the direct consequence of establishing the disappeared person's legal existence or death, and therefore the title to property and access to support that the family members may be able to claim (see Report of the Working Group on Enforced or Involuntary Disappearances, Addendum, Study on enforced or involuntary disappearances and economic, social and cultural rights, A/HRC/30/38/Add.5, paras. 25-27). The Panel therefore addressed a series of questions to the complainant with relevance to assessing whether the complainant's rights under these provisions had been affected in this case. The complainant did not provide a response to those questions." (para 52)

108. Referring to the Mission's submissions (see, *supra*, para 47), the Panel reiterates that the legal characterisation of a case is done by the Panel, and complainants need not invoke any specific legal provisions to bring a case before the Panel. It is therefore irrelevant that the complainant did not allege a violation of a particular provision with respect to economic and social rights, just as it is irrelevant for the Panel's examination of a complaint under the Convention or other international human rights law provisions.
109. The Panel agrees with the Mission's observation that the Mission's executive mandate did not directly relate to matters of economic and social rights. However, this category of rights is potentially relevant for the Panel's assessment of the consequences of the Mission's actions or omissions upon the human rights of the complainant: the Mission's failure to carry out an effective investigation can in certain cases have the direct consequence of depriving a complainant of some of their economic and social rights, as outlined above. In the present case, the complainant did not provide a response to the Panel's questions in the Decision on Admissibility on matters of economic and social rights. The Panel, noting also its findings on other legal grounds above, will therefore not make findings separately on these rights.

### **The Mission's new, reduced, mandate since June 2018**

110. The Mission's new mandate, which entered into force in June 2018, has significantly reduced the Mission's ability to affect the investigation of criminal cases, including this one. Its new monitoring role does not enable it to request the commencement of an investigation, nor does it give it power to decide its course. (See *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 98.)
111. The Panel considers that the change in nature of the Mission's mandate does not relieve the Mission from its obligation to provide remedy for the violations for which it has contributed. (See also *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 99; and Council Decision (CFSP) 2018/856 of 8 June 2018, Article 1 on the Mission's human rights obligations.)
112. On that basis, the Panel will recommend that the Mission should further take active steps to inquire with the authorities what measures, if any, are being taken to investigate this case, and to report to the competent authorities in Brussels if it becomes apparent that local authorities are not fulfilling their obligations in this regard. Having failed to protect the complainant's rights, the Mission must now take steps to seek to remedy these violations.

### **Conclusions and findings**

113. Based on the above, the Panel finds that the Mission has violated the rights of the complainant under Article 2 (procedural limb) and 3 of the Convention by failing to carry out an effective investigation into the disappearance of her parents, and by failing to provide her and other close relatives with any information regarding this case. Considering the seriousness of the rights concerned, the gravity of the Mission's failure and the length of time concerned, the violation must be regarded as particularly serious and ongoing.
114. The Panel consider it unnecessary to make additional findings regarding Articles 8 and 13 of the Convention. It is quite apparent, however, that the conduct of the Mission has had a negative effect on the rights of the complainant as are protected by those provisions. In his assessment of what measures or steps should be taken to remedy the violations recording in the present decision, the Head of Mission is invited to account for this fact.
115. The Panel invites the Head of Mission to take steps and measures that are commensurate with these findings. In this regard, the Panel takes note of the Mission's statement in its submissions that it will contact the complainant "with a view to reply to any questions she may have". Reaching out to a victim is a welcome action. Yet it is an action the Mission should have taken starting in 2009 when the Mission became aware of the case, as per the above findings. The Panel notes that the step proposed by the Mission is unlikely to be sufficiently meaningful, or rise to the level of a measure commensurate with the above findings of violations of the Convention. The Panel therefore reiterates its invitation to the Head of Mission to ensure that the Mission take remedial measures commensurate with the findings.

### **FOR THESE REASONS, THE PANEL UNANIMOUSLY**

**FINDS** that the Mission has violated the rights of the complainant as protected under Articles 2 (procedural limb) and 3 of the Convention;

**FINDS FURTHER** that the violations are serious and ongoing and that they, therefore, call for the adoption of remedial measures commensurate to those;

**CALLS UPON** the Head of Mission to adopt remedial measures commensurate to the gravity of the violations involved;

**FINDS** that it does not need to make findings on the merit in respect of Articles 8 and 13 of the Convention, or of Articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights;

**INVITES THE HEAD OF MISSION** to review the interpretation currently given to the nature and scope of the Mission's human rights obligations and to give consideration to the following:

1. The Panel invites the Head of Mission to consider formally acknowledging the violation of the rights of the complainant by the Mission and to offer adequate relief for it.
2. The Panel further invites the Mission to inquire, as part of its monitoring activity, with the competent prosecutor whether the matter is being investigated and, if not, why that is, and to report on the same to the competent authorities in Brussels.
3. The Panel invites the Mission to consider what concrete and meaningful steps the Mission could take to contribute to moving forward the investigation of cases of enforced disappearance/missing persons.
4. The Panel invites the Head of Mission to carefully consider what adequate and meaningful remedies are available to the Mission in a case such as the present one where the Mission has been found to have violated the rights of a relative of a missing person and to inform the Panel of its conclusions.
5. The Panel invites the Mission to distribute the present Decision to
  - i. Relevant personnel within the Mission;
  - ii. Relevant officials of the European Union who have responsibility for Kosovo, the Balkans region, rule of law matters, or human rights issues; and
  - iii. The local authorities competent to investigate the case.

**INVITES** the Mission to report to the Panel regarding the implementation of the above recommendations at its earliest convenience and no later than 30 November 2021.

For the Panel,

Anna AUTIO  
Presiding Member

Petko PETKOV  
Member