DECISION ON ADMISSIBILITY AND MERIT OF THE CASE

Date of adoption: 26 March 2021

Case no. 2016-30

Svetlana Đorđević

Against

EULEX

The Human Rights Review Panel ("the Panel"), sitting on 26 March 2021 with the following members present:

Mr Guénaël METTRAUX, Presiding Member
Ms Anna BEDNAREK, Member
Ms Anna AUTIO, 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 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 22 September 2016.

2. On 23 September 2016, the Head of Mission of the European Union Rule of Law Mission in Kosovo, EULEX Kosovo ("the Mission") was informed about the registration of the complaint.

3. On 20 September 2017, the Panel sent a request for additional information via the representative for Serb families of the Missing Persons Resource Center ("the MPRC"), a non-governmental organisation based in Pristina. No further information was received in relation to this case at that stage.

4. On 8 December 2017, the Panel transmitted a Statement of Facts and Questions to the Head of Mission (HoM) inviting the Mission to submit answers and written observations on the complaints no later than 26 January 2018.

5. By letter of 17 January 2019, the Mission was again requested to provide answers to the questions, this time no later than 16 February 2019.

6. By letter of 8 April 2019, the Mission was again requested to provide answers to the questions as soon as practical.

7. On 20 June 2019, the complainant was informed that the Panel was still in the process of examining her complaint.

8. On 8 July 2020, more than two years after first being asked, the HoM submitted his observations on the admissibility of the complaint.

9. On 8 July 2020, the HoM's letter was submitted for information to the complainant, who was given an opportunity to make any further submissions in response to that letter until 4 September 2020. The complainant did not provide any response.

10. By letter of 18 September 2020, the Panel informed the Mission that, in order to expedite proceedings, it intended to deal with issues of admissibility and merit at the same time in a single decision. To that end, the Panel invited the Mission to provide its submissions on merit in those cases where it had already provided its comments on admissibility.

11. On 11 December 2020, the Mission submitted additional comments regarding the merit of the complaint.

12. On 17 December 2020, the Mission's comments on merit were forwarded to the complainant who was invited to submit her comments on the merit of the case, if any, before 31 January 2021.

13. Due to an unforeseen complication with the delivery of postal communications, the Panel decided to extend the deadline for the complainant to submit comments on the merit of the case. By letter of 11 February 2021, the complainant was informed that the deadline had been extended until 19 March 2021.

14. The complainant did not avail herself of the opportunity to provide additional comments on the merit of her complaint.

II. FACTS

15. The facts of the case, as they appear from the complaint, can be summarised as follows.

16. On either 28 July 1999, or 28 August 1999, the complainant's brother, Dejan Stanojević, was allegedly abducted while he was waiting for a train at the station in Mitrovica.

17. The disappearance of the complainant's brother was reported to KFOR, the United Nations Mission in Kosovo (UNMIK) and the International Committee of the Red Cross ("the ICRC"). On 18 May 2000, the ICRC opened a tracing request for Dejan Stanojević.

18. Family members received various unconfirmed reports that Dejan Stanojević was being held in detention in Pristina, or that he had been sighted somewhere in Serbia, or that he was located elsewhere.

19. On 15 October 2002, a body was found. An autopsy was performed on 15 November 2002, which determined a “blunt injury to the head” as the cause of death.

20. It appears that between 2000 and 2004, UNMIK authorities interviewed several individuals to ascertain the fate of the deceased after July 1999.

21. On 10 January 2005, the Office on Missing Persons and Forensics of UNMIK confirmed the identity of the body as being that of Dejan Stanojević. The identification was based on ante-mortem data as well as on a comparison of DNA evidence provided by the complainant.

22. On 10 March 2005, a Death Certificate was issued for Dejan Stanojević by the Office of the Medical Examiner of the Department of Justice of UNMIK.

23. On 13 April 2005, the body of Dejan Stanojević was returned to the complainant.

III. COMPLAINT AND STANDING

24. The complainant alleges that there has never been any investigation into the circumstances of the disappearance of her brother who went missing in July or August 1999. She does not specify any particular right(s) said to have been affected by this alleged failure.

25. The Panel considers that the complaint relates to at least 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), which guarantees a person’s fundamental right to life and, under its procedural head, provides for an obligation to investigate cases of suspicious deaths; and, Article 3 of the Convention which guarantees a person’s right not to be subjected to torture or inhuman or degrading treatment or punishment.

26. In addition, the complaint might be relevant to the rights provided in Articles 8 and 13 of the same Convention, which guarantee, respectively, the rights to family life and access to an effective remedy to anyone whose rights and freedoms provided in the Convention have been violated.

27. The same rights are protected 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.

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

IV. SUBMISSIONS OF THE PARTIES REGARDING ADMISSIBILITY

The complainant

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

Head of Mission ("HoM")

30. In his submissions of 8 July 2020, the Head of Mission submitted that the Mission became aware of the death of Dejan Stanojević following the hand-over of cases and case-files from UNMIK to EULEX in the period December 2008 - March 2009. The Mission received copies of several documents pertaining to this case, including the death certificate issued in March 2005 (indicating "blunt injury to the head" as the cause of death), as well as several other scattered documents originating from different police units within UNMIK.

31. An UNMIK *Case Analysis Review Report* produced by the War Crimes Unit – Ante-Mortem and Exhumation Section, dated 7 July 2008, indicated that the deceased had been identified but that no cause of death was listed. This report recommended that the case should be transferred to the War Crimes Unit – Investigation Section ("WCIU") to determine "if a war crime had been committed".

32. The Mission states that:

> "EULEX has no information relating to this case pertaining to the period after 7 July 2008. It cannot be excluded that the original documents relating to Dejan Stanojević were transferred to the Kosovo police authorities at some point in time before the beginning of the EULEX mandate in December 2008."

33. The Mission also notes that, according to its records, the complainant has not had direct contacts with EULEX in relation to the death of her brother.

34. The Mission states that documents pertaining to this case were transmitted to it by UNMIK during the period April to December 2008 along with a large number of similar files. The Mission also provides a lengthy explanation of the process of recording, storing and categorisation of case-files received from UNMIK. The Mission does not make it clear how this process affected its handling of the present case. It does, however, point to a number of shortcomings affecting the manner in which UNMIK had organised and registered its cases. As a result, the Mission had to undertake several reviews of its records. It also points out that certain cases were forwarded to the District Prosecution Office and that the WCIU prioritized the review of the so-called 'war crimes files' over the 'missing persons files'.

35. Asked what steps the Mission took to investigate cases of enforced disappearance dating back to the Kosovo conflict (or its immediate aftermath), the Mission provides a detailed account of certain steps it took in that regard. The Mission briefly responds that "indirectly, [it] investigated and prosecuted instances of enforced disappearances in the framework of war crimes cases."

36. Regarding the present case, the Mission said that it "did not have any involvement in [the case of the disappearance and violent death of Dejan Stanojević]".

37. The Mission states that there is no information available regarding potential investigative steps taken by UNMIK after the identification and return of the body to the family in April 2005. The Mission claims to have had no knowledge of the case as an on-going criminal investigation. It therefore did not seek to inquire with other organizations about the case. Nor did it make any effort to contact relatives of the deceased, including the complainant.

38. The Mission also invites the complainant to inquire with the relevant Kosovo institutions in order to find out whether or not any criminal investigation is currently ongoing in relation to her brother.

39. Regarding the Panel's question as to whether the Mission had violated the rights of the complainant under Articles 2 or 3 of the European Convention of Human Rights, the Mission responds that in light of the case-law of the Panel on issues of admissibility in similar cases, including the Panel's stance on the six month rule and the applicability of Article 3 of the Convention also in cases of suspicious deaths, EULEX sees no point in reiterating or submitting similar observations as submitted heretofore.

40. Furthermore, the Mission notes that:

> "the identification certificate issued on 10 March 2005 indicates that the remains of Dejan Stanojević had been located on 15 October 2002 and identifies as cause of death 'blunt injury to the head'. EULEX accepts that given the identified cause of death, the present case can be considered as a 'suspicious death' giving rise to an obligation under Article 2 of the Convention. As part of the hand-over from UNMIK, EULEX did receive some documents relating to Dejan Stanojević and has disclosed all the information available to it. As stated [in its submissions], between 2000 and 2004, UNMIK authorities interviewed several individuals to ascertain the fate of the deceased after July 1999; EULEX however, does not possess any document which would indicate that UNMIK conducted investigative activities in relation to this case, after the remains were identified as belonging to the brother of the complainant."

41. The Mission submits that:

> "EULEX does not dispute that the complainant has a right to know what happened to her brother and that the case raises issues under the Convention. However, it deems that an assessment of the conduct of EULEX under the procedural head of Article 2 and under Article 3 of the Convention in relation to this specific disappearance, cannot disregard the magnitude of the challenge posted by the very high number of crimes as well as the context and the circumstances in which the Mission was called to implement its mandate."

On that basis, the Mission invites the Panel to evaluate the Mission's actions in a realistic and proportionate manner.

42. The Mission adds that:

> "[t]he nature of the overall circumstances in which EULEX was called to implement its mandate required the prioritization of some cases over others."

It also says:

> "Constrained by the limited resources at its disposal as well as the short timeframe of its mandate (since its inception in 2008, the EULEX mandate has been extended every

two years), the Mission was compelled to take rapidly difficult decisions in order to avoid a total stalemate. The Mission trusted that the initial qualification of the alleged criminal offenses by UNMIK must have been sound and decided to prioritize the review and examination of the around 1,200 case-files that had already been labelled by UNMIK as 'war crimes' over the so called 'missing persons files'. Within the 'war crimes' category, it identified those cases that appeared more promising in terms of investigation outcomes and dismissed the others. EULEX did not undertake a systematic effort to locate all possible files, part of files, or documents, which may have been held by other organizations and focused on the material that it had received from UNMIK. As explained above, EULEX prosecutors considered that they should focus on alleged criminal offences that were committed during the armed conflict and leave the post-conflict cases to the basic prosecution offices."

43. The Mission further submits that:

> "The Mission does acknowledge that its police and prosecutorial units could have done more to keep victims and the wider public informed about its strategies and constraints with a view to manage expectations more adequately and be more transparent. However, it maintains that it would have been simply disproportionate to expect that the Mission could investigate all killings and disappearances at the same time as well as maintain all victims' relatives informed of the states of any investigations. Therefore, in the present case and in considering the fundamental obstacles presented, the Mission does not believe that the complainant's rights were violated."

V. THE PANEL'S ASSESSEMENT REGARDING THE ADMISSIBILITY OF THE CASE

44. In effect, the Mission does not challenge the admissibility of this case and takes note of the fact that the Panel has declared similar cases to be admissible (see *Milorad Trifunović against EULEX*, 2016-09, Admissibility Decision, 19 June 2019, para. 17).

45. The Panel has indeed satisfied itself that all conditions of admissibility have been fulfilled in relation to this case.

VI. SUBMISSIONS OF THE PARTIES REGARDING THE MERIT OF THE CASE

The complainant

46. As noted above, the complainant alleges that, in the exercise of its executive mandate, EULEX Kosovo should have investigated the disappearance and killing of her brother and culpably failed to do so in violation of her and her brother's fundamental rights. The Panel has determined above that the present complainant should be considered in light of Articles 2 (procedural limb), 3, 8 and 13 of the European Convention of Human Rights.

Head of Mission

47. By letter of 11 December 2020, the Head of Mission responded to the invitation to provide additional observations on the merit of the case, beyond what was stated in its observations on admissibility.

48. The Mission makes a number of generic submissions regarding some of the practical challenges associated with the investigation of this sort of cases and acknowledges that the management of the files it received from UNMIK has been particularly challenging.

49. The Mission clarifies that under its current mandate it is not authorized to disclose information on ongoing investigations that it has obtained during its monitoring activities. The Mission submits that,

> "Therefore, when inviting complainants to contact the competent institutions, the Mission is simply referring them to the authorities that are under the law, competent and authorized to release information to them in relation to any investigative steps they may have undertaken since the end of EULEX executive mandate in the criminal justice system in June 2018."

50. With regard to its human rights obligations, the Mission recalls that:

> "the procedural obligation under Article 2 of [the European Convention on Human Rights], is one *'of means'* and *'not of result'*. Crucial in the assessment of its implementation is that *'the authorities have done all that could reasonably be expected of them in the circumstances of the case.'* (See, for example, European Court of Human Rights (ECtHR) *Trivkanović v. Croatia*, no. 12986/13, Judgment of 6 July 2017, para. 78; *Borojević and others v. Croatia*, no. 70273/11, Judgment of 4 April 2017, para. 57; *Nježić and Štimac v. Croatia*, no. 29823/13, Judgment of 9 April 2015, para. 69)."

51. In addition, the Mission recalls that:

> "*'the nature and degree of scrutiny must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work.'* (See, for example, ECtHR *Cindrić and Bešlić vs Croatia*, no. 72152/13, Judgment of 6 September 2016, para.69; *Zdjelar and others v. Croatia*, no. 80960/12, Judgment of 6 July 2017, para. 83; *Velcea and Mazare v. Romania*, no. 64301/01, Judgment of 1 December 2009, para. 105; and *Armani da Silva v United Kingdom*, no. 5878/08 5878/08, Judgment of 30 March 2016, para.234)."

52. The Mission also submits that:

> "As acknowledged in the Panel's consolidated case law, as well as in the relevant case law of the UNMIK Human Rights Advisory Panel, expectations upon the ability of a rule of law mission such as EULEX to investigate and prosecute cases such as the present one should be 'realistic' and 'proportionate'. An assessment of what is 'realistic' and 'proportionate' in relation to a single case, must take into account '*all relevant facts*' and the *realities of investigative work* as described [in the Mission's submissions]. The inability to investigate an alleged enforced disappearance cannot be deemed a violation of human rights, when the failure to investigate materializes in a context of large scale crimes involving thousands of victims and where it is clear that no investigative authority may be expected to resolve all cases brought before it. This consideration applies *a fortiori* to a situation where the authority responsible is not a State, but an international Mission with limited resources at its disposal and a time-limited mandate (since its inception in 2008 the EULEX mandate has been extended every two years)."

53. The Mission further acknowledges that:

> "the management of the files inherited from UNMIK was a challenge and that [the Mission] was unable to rectify many inconsistencies and duplications. It also acknowledges that its police and prosecutorial units should have ensured better communication with victims and victims' relatives, and also with the wider public. However, it maintains that it would have been simply disproportionate to expect that

the Mission could investigate all killings, suspicious deaths and disappearances and reopen cases that had already been terminated by the UNMIK authorities."

54. The Mission concludes:

"Therefore, in the present case and in considering the fundamental obstacles presented, the Mission does not believe that the complainant's rights were violated."

Submissions in reply

55. On 17 December 2020, the Mission's submissions on the merit of the case were forwarded to the complainant who was invited to submit her comments on the merit of the case, if any, before 31 January 2021.

56. Due to an unforeseen complication with the delivery of postal communications, on 1 February 2021, the Panel decided to extend the deadline for the complainant to submit comments on the merit of the case until 26 February 2021.

57. No further submissions were received.

VII. THE PANEL'S ASSESSMENT REGARDING THE MERIT OF THIS CASE

General considerations

58. 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 cases within its *jurisdictional* competence that involved the violation of rights guaranteed under Articles 2 and 3 of the European Convention of Human Rights. Regarding the relevant legal standards applicable, see: HRRP, Case-Law Note on the Duty to Investigate Allegations of Violations of Rights, pp. 3-5 (and cited caselaw); and *Sadiku-Syla against EULEX*, 2014-34, Decision and Findings, 19 October 2016, para. 36; *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. 88; *Sadiku-Syla against EULEX*, 2014-34, Decision on Admissibility, 29 September 2015, para. 58. See also ECtHR: *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; *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.

59. As a consequence, it was required that the Mission kept relatives of the missing adequately apprised of its efforts to investigate this case. HRRP, *Case-Law Note on the Duty to Investigate Allegations of Violations of Rights*, pp. 28-30 (and cited caselaw); and *L.O. against EULEX*, 2014-32, Decision and Findings, 11 November 2015, paras 61-63; *U.F. Against EULEX*, 2016-12, Decision and Findings, 12 February 2020, para 97; *Milijana Avramović Against EULEX*, Decision and Findings, Case no. 2016-17, 4 June 2019, para 55; *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 66; *Desanka and Zoran Stanisić against EULEX*, 2012-22, 11 November 2015, para. 66; see also *Ahmet Özkan and Others v. Turkey*, Application no. 21689/93, ECtHR Judgment of 6 April 2004, paras. 311-314; *Isayeva v. Russia*, Application no. 57950/00, ECtHR Judgment of 24 February 2005 paras. 211-214; *Al-Skeini and Others v. United Kingdom*, Application no. 55721/07, ECtHR Judgment of 7 July 2011, para. 167.

60. Hence, the present case, as well as other similar cases of enforced disappearance/missing persons, has to be considered as falling right within the scope of the Mission's executive competences and responsibilities.

61. The Mission advances a number of arguments to try and justify its failure to investigate the present case (and other similar cases) and to keep the relatives of the disappeared properly informed.

62. The Panel notes that many and most of those arguments have already been raised and rejected in earlier cases of the same sort. The Panel will therefore limit its considerations of those to what is strictly necessary to the resolution of the present case.

Challenges associated with the investigation of missing persons/enforced disappearance cases

63. The Head of Mission suggests that the Mission's conduct in relation to individual cases should be considered in light of the overall challenge, which the investigation of all missing persons cases represented for the Mission. The Panel shares this view only up to a point.

64. It is correct, as the Panel has repeatedly acknowledged, that the task facing the Mission was daunting. 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 – in expertise, finances and personnel – were limited. In addition, these difficult investigations were to be conducted with only limited support from local authorities and in a post-conflict situation that would have rendered a difficult situation even more challenging. Furthermore, the Mission inherited records from UNMIK had been poorly kept and organised. This required the Mission to conduct its own, repeated, review of those records. Regarding these difficulties, see also: *U.F. Against EULEX*, 2016-12, Decision and Findings, 12 February 2020, para 60; *L.O. against EULEX*, 2014-32, 11 November 2015, pars 43-45; *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; *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 *Human Rights Advisory Panel of UNMIK (HRAP)* Decision in cases nos 248/09, 250/09 and 251/09, 25 April 2013, para. 35 and paras 70-71.

65. The argumentation contained in the submission of the Head of Mission pointing at its limitations does not relate to this specific case. Instead, it reflects systemic shortcomings of the Mission, including these: 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; a general failure to inform relatives of missing persons; no clear policy on cases of enforced disappearances and no prioritisation thereof; meagre number of 'resolved' missing persons cases; unreasonable reliance on records and determination of 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 a general failure to request relevant records from potential sources of information (e.g., ICRC; Serbian authorities;

OSCE). These factors, and others, are all apparent from cases that have come before the HRRP. These are not the consequences 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 clear policy of cases 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 this sort of cases. They also demonstrate an inability by the Mission to ensure that the planning and implementation of its activities consistently take into account the Mission's human rights obligations.

66. The Panel wishes to point out in passing that the Mission realised already during the hand-over process that the files transferred by UNMIK were not adequately organised. Hence, the Mission was on notice that it needed to exercise due care while taking over the responsibility for the proceedings and fulfilling obligations under local and international law. As the newly established international mission with executive responsibilities covering investigation and prosecutorial functions, the Mission was expected to act with due diligence. For the purpose of understanding of the extent of its tasks in the post-conflict environment, it would have been necessary for the Mission to get acquainted with the content of the case file. This seems not to have taken place to the detriment of the victims of human rights violations like in the present case.

67. Based on the above, the Panel would invite the Head of Mission to conduct a full review of the investigative and prosecutorial records of the Mission over its lifespan to have a clear, complete and informed understanding of the causes and circumstances of its inability to fulfil this part of its mandate effectively, and in a manner consistent with its human rights obligations. This should help the Head of Mission address the outstanding human rights legacy of these failings with a view to ensuring that the Mission is able to remedy those human rights violations it committed over the course of its existence.

The lack of evidence of a pre-existing investigation

68. In its submissions regarding the admissibility of this complaint (see, *supra*, paras. 36), the Mission submits that it,

> "did not have any involvement in [the case of the disappearance and violent death of Dejan Stanojević]."

The Mission suggests that this was because there was no information available regarding potential investigative steps taken by UNMIK after the identification and return of the body to the family in July 2008. Therefore, the Mission claims to have had no knowledge of the case as an on-going criminal investigation.

69. These submissions fail to convince for the following reasons. Contrary to the suggestion that there was a "lack of information", there were in fact a variety of records documenting the discovery, identification and return of the body of the missing person to his family. The Mission indicates that UNMIK investigators had questioned family members about the disappearance of Dejan Stanojević, and his sisters had given DNA evidence for identification purposes. If this information was available to the Mission, it cannot claim that it was not aware of the previous investigative steps taken by UNMIK. It should have started an investigation into this case and verify whether any of these relevant elements could serve as a lead to identify additional information. From the record, it is apparent that no such efforts were made.

70. The Mission cannot use its own failure to investigate to justify an absence of information. Information arises from investigation, not the other way around. It was therefore the

responsibility of the Mission to try and generate such information. While its obligations in that regard were one of means not of result, it is apparent from the record that it did not even try to seek and obtain information aside from what it inherited from UNMIK.

71. The Panel notes that the human rights obligations of the Mission are not qualified. Obligations arising from Articles 2 and 3 of the Convention to investigate this sort of cases must be met regardless of the quality of the evidence. An authority cannot absolve itself of its investigative obligations because of a lack of information before it has even started to investigate. Obtaining information is the very point of an investigation. If, after an effective and reasonable effort to investigate commensurate to the importance of the rights at stake, no or insufficient information could be obtained, the authorities cannot be held responsible for finding more. That, however, is not the case in the case at hand. The Mission did not even try or start to investigate. It therefore cannot use an absence of (adequate or sufficient) information as a basis for its failure to commence an investigation.

72. As mentioned above, the Mission also suggests that it had no knowledge of the case because there was apparently no on-going investigation carried out by UNMIK following the identification and return of the body.

73. The Panel cannot accept this reasoning as justification for the Mission's failure to act. First, as the Mission has repeatedly underlined, it knew UNMIK's records to be unreliable. This should have raised concerns about the quality of its work and diligence accorded to its investigative responsibilities. Even if did not, the Mission's human rights responsibilities were its own. They could not be delegated to third parties, including UNMIK. It was therefore the responsibility of the Mission to review those records (as it did) so as to form its own opinion of the course of action to be taken in relation to each individual case. The apparent absence of an investigation by UNMIK therefore had no legal bearing on the Mission's own responsibilities.

74. Such an explanation provides no justification for the Mission's failure to investigate this case and to keep relatives of the missing duly informed.

75. Moreover, the Mission underlined with regard to its human rights obligations, that "the procedural obligation under Article 2 of [the European Convention on Human Rights], is one *'of means'* and *'not of result'*. Crucial in the assessment of its implementation is that *'the authorities have done all that could reasonably be expected of them in the circumstances of the case* (see para 48 of this Decision). In the Panel's view, the assessment of the implementation should indeed take into consideration whether the authorities "have done all that could reasonably be expected of them". The latter expression though has to be understood as relating to the actions of the authorities. The admission of absolute inactivity on the side of the Mission does lead to a conclusion that in the case at hand it has done all that could reasonably be expected of the Mission in the circumstances.

76. Lastly, in evaluating the conduct of the Mission, the Panel has taken into consideration the importance of the rights at stake and the severity of their violation. In the present case, and other similar cases, the rights involved could hardly be more significant and their violation serious. In light of this, the Mission's conduct should have reflected these facts and it did not. The violation of its obligations is therefore serious and it means that the rights of the complainant continued to be violated for almost two decades.

Informing relatives of the missing person

77. The Mission has not put forward a cogent explanation for its failure to inform the relatives of the missing in this case of its actions or decision not to investigate this case.

78. In this context, the supposedly inadequate quality or sufficiency of information 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. It failed to do so and has not provided cogent reasons for that failure.

79. Based on the above, the Panel finds that the Mission failed to fulfil its obligation under Article 2 (procedural limb) of the Convention to keep the close relatives of Dejan Stanojević adequately informed of the course of action taken to investigate his disappearance.

Regarding Article 3 of the Convention

80. International human rights law demands that in a case such as the present one, relatives of the disappeared should be kept sufficiently informed of the course of the investigation of the case and the course of proceedings. See, generally, *U.F. against EULEX*, 2016-12, Decision and Findings, 12 February 2020, para 97; *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 66; *Desanka and Zoran Stanisić against EULEX*, 2012-22, 11 November 2015, para. 66; *L.O. against EULEX*, 2014-32, 11 November 2015, paras. 60-61, 72-73; HRRP, *Case-Law Note on the Duty to Investigate Allegations of Violations of Rights*, pp 28-30; see also *Ahmet Özkan and Others v. Turkey*, Application no. 21689/93, ECtHR Judgment of 6 April 2004, paras. 311-314, *Isayeva v. Russia*, Application no. 57950/00, ECtHR Judgment of 24 February 2005, paras. 211-214; *Al-Skeini and Others v. United Kingdom*, Application no. 55721/07, ECtHR Judgment of 7 July 2011, para. 167.

81. This requirement is intended to ensure that relatives can meaningfully contribute and participate and it seeks to diminish the strain and pain of not knowing what happened to their loved one. See also *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 66; *U.F. against EULEX*, 2016-12, Decision and Findings, 12 February 2020, para 96.

82. The Panel also recalls the case-law of the European Court of Human Rights regarding the circumstances wherein the right to freedom from inhuman treatment may be violated in cases of enforced disappearance. In its Judgment in *Basayeva and Others v. Russia* (nos. 15441/05 and 20731/04, Judgment of 28 May 2009, para. 159), the Court observed that,

> "the question whether a member of the family of a "disappeared person" is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicants a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that the essence of such a violation does not mainly lie in the fact of the "disappearance" of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva v. Russia*, no. 7615/02, § 164, 9 November 2006)."

83. The 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. See *U.F. against EULEX*, 2016-12, Decision and Findings, 12 February 2020, para 98; *Zufe Miladinović against EULEX*, 2017-02, 19 June 2019, para. 87; *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 78. 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., *U.F. against EULEX*, 2016-12, Decision and Findings, 12 February 2020, para 98; *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 77; *Desanka 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; *Zufe Miladinović against EULEX*, 2017-02, 19 June 2019, para. 86; see also *Ahmet Özkan and Others v. Turkey*, Application no. 21689/93, ECtHR Judgment of 6 April 2004, paras. 311-314, *Isayeva v. Russia*, Application no. 57950/00, ECtHR Judgment of 24 February 2005, paras. 211-214; *Al-Skeini and Others v. United Kingdom*, Application no. 55721/07, ECtHR Judgment of 7 July 2011, para. 167.

84. Competent authorities will not easily be permitted to disregard or ignore this obligation. See *S.H. against EULEX*, Decision and Findings, case no. 2016-28, 11 September 2019, para. 67; *U.F. against EULEX*, 2016-12, Decision and Findings, 12 February 2020, para 98.

85. The Panel also notes that 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. This is essential for the victims, but also equally important for society at large.

86. Adding to the gravity of the matter is the fact that the violation of the said rights has been ongoing for almost two decades – half of which was under the responsibility of the Mission. In that sense, the complainant would have been entitled to assume that those with the responsibility of investigation were derelict in the fulfilment of their responsibilities and contributed in so doing to their suffering.

87. In the present case, the complainant's brother, Dejan Stanojević, disappeared in the summer of 1999. There were apparently conflicting rumours regarding his whereabouts. Although his body was found in October 2002, it was not until January 2005 that his body was identified. Only in April 2005 was his body returned to his family.

88. In the interim, the complainant had reported her brother's disappearance to the investigative authorities of UNMIK, and various individuals had been interviewed about her brother's disappearance. Furthermore, she had given blood samples for DNA analysis which were eventually used to help identify her brother's body.

89. Based on this sequence of events, it would have been reasonable for complainant to assume that an investigation into her brother's disappearance and murder would be ongoing. There had clearly been steps taken by UNMIK to investigate her brother's case. Only through the communications between the Panel and the Head of Mission has it now

become clear that there was, in fact, no on-going investigation into the disappearance and murder of Dejan Stanojević. From the legal point of view, the discovery of his remains did not put an end to the Mission's obligations. Instead, it had to investigate the matter in order to establish the circumstances in which he had disappeared and so as to try to identify those responsible for his disappearance in order to bring them to justice.

90. There has been no investigation since at least 2008, when the Mission took over responsibility for the UNMIK investigation files.

91. While the return of her brother's body in 2005 may have served to alleviate to some extent complainant's suffering, in the absence of any information regarding the circumstances of her brother's abduction and death the uncertainty surrounding her brother's fate will have remained. That is valid especially in the context of the identified cause of death as indicated in the autopsy being "blunt injury to the head".

92. This uncertainty is revealed to be all the more complete given the alleged total ignorance of the Mission of her brother's case, and the entire absence of any investigative steps following the establishment of the Mission in Kosovo.

93. In these circumstances, the Panel considers that the complete disregard by the Mission for its obligation to conduct an investigation into the disappearance and death of Dejan Stanojević, its serious and ongoing nature despite the existence of preliminary evidence of a crime combined with the Mission's failure to communicate with relatives of the disappeared, constitutes precisely such special factors which warrant the conclusion that the Mission's attitude towards the complainant amounts to a violation of her right to freedom from inhuman treatment, as guaranteed by Article 3 of the Convention.

Continued executive mandate

94. The Mission has reiterated a submission that it had already made in earlier cases to the effect that it stands ready to help should new information regarding the complainant's relative become available.

95. The Panel has already expressed its circumspection about such submissions, in particular, as it could give the complainant the impression that the Mission is still involved in the investigation of this case, while it is not. Such a statement is moreover inconsistent with the approach of Mission that it may not do anything in those cases due to lack of executive mandate and respect for the independence of the authorities of Kosovo. Furthermore, as already noted, the Mission knows that without an investigation, such information is unlikely to become available. It is therefore necessary for the Mission to add substance to its words. See *Q.J. against EULEX*, 2016-23, Decision and Findings, 11 December 2020, paras. 60-64.

96. The Panel invites the Head of Mission to adopt a full and effective strategy for the Mission to finally make the issue of the disappeared a priority of the Mission.

97. Until this occurs, the Panel would invite the Mission to refrain from reiterating its 'readiness to help', which has already been recorded by the Panel and which does not provide any form of remedy to the complainant but rather may create false expectations in a situation of on-going suffering due to the unresolved disappearance of a close relative.

Conclusions and findings

98. 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

investigate the disappearance of her relative and 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.

99. The Head of Mission is therefore invited to take steps and measures that are commensurate with this fact.

100. Based on those findings, the Panel considers it unnecessary to make additional findings regarding Articles 8 and 13 of the Convention. It is apparent, however, that the conduct of the Mission has had a negative effect on the rights of the complainant as 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.

101. In this context, the Panel invites the Mission to give due consideration to the necessity and effectiveness of raising repeatedly the same arguments which have already been addressed in earlier cases. The Panel invites the Mission to anchor its future submissions in an analysis of the Mission's activities as viewed from the perspective of its human rights obligations.

102. The Panel would also invite the Head of Mission to give consideration to the necessity for the Mission to conduct a transparent and effective review of its activities and legacy – in particular, from the point of view of its human rights obligations – so that lessons are learnt from the experience of the Mission for future such endeavours.

FOR THESE REASONS, THE PANEL UNANIMOUSLY

FINDS that the complaint is admissible pursuant to Articles 2 (procedural limb), 3, 8 and 13 of the European Convention of Human Rights;

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 on-going 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;

INVITES THE HEAD OF MISSION, in particular, 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 invites the Mission to continue looking for and to identify the prosecution office responsible for the investigation of this case.

3. The Panel further invites the Mission to inquire with the competent prosecutor whether the matter is being investigated and, if not, why that is.

4. The Panel invites the Mission to consider what concrete and meaningful steps should be taken to contribute to moving forward the investigation of cases of enforced disappearance/missing persons. The Panel is willing to continue to engage with the Head of Mission in trying to find solutions for that purpose. The Panel wishes to note, however, that steps taken thus far by the Mission are inadequate from the point of view of the Mission's human rights obligations and incapable of contributing meaningfully to resolving those cases.

5. The Panel invites the Head of Mission to carefully consider what remedies are still 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.

6. 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, Common Security and Defence Policy (CSDP) missions, or human rights issues.

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

For the Panel

Guénaël METTRAUX
Presiding Member

Anna BEDNAREK
Member

Anna AUTIO
Member