The Human Rights Advisory Panel
Building D, UNMIK HQ Prishtinë/Priština, Kosovo | E-mail: hrap-unmik@un.org | Tel: +381 (0)38 504-604, ext. 5182

Kadri BALAJ, Shaban XHELADINI, Zenel ZENELI and Mustafë NERJOVAJ

against

UNMIK

Case No. 04/07

OPINION

27 February 2015

TABLE OF CONTENTS

The Human Rights Advisory Panel, sitting on 27 February 2015,
with the following members present:

Marek Nowicki, Presiding Member
Christine Chinkin,
Françoise Tulkens

Assisted by
Andrey Antonov, Executive Officer

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

Having deliberated, makes the following findings and recommendations:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 11 October 2007 and registered on the same date. During the proceedings before the Panel, the complainants were represented by Mr Halim Sylejmani, a lawyer from Kosovo, and by Mr Paul Troop and Mr Jude Bunting, lawyers from the United Kingdom.

2. With respect to the complete history of the proceedings, the Panel refers to its admissibility decisions on this case of 31 March 2010 (§§ 11-31) and of 11 May 2012 (§§ 3-17)[1].

3. On 5 February 2009, responding to the Panel's request, the former Acting Director of the UNMIK Department of Justice (DOJ), informed it of his agreement to present to the Panel the complete criminal investigative file in relation to this matter.

4. On 10 February 2009, the UNMIK requested the Panel to send all received investigation material to that Office, as it was needed "for the ongoing compensation claim procedure in UN HQ NY" (the UN Third Party Claims Process).

5. On 18 February 2009, the Panel received the files from the office of the Acting Director of the DOJ. All material was shortly thereafter transferred into the UNMIK's custody, as requested.

6. On 19 March 2009, the Panel held a closed hearing on this case, which was attended by the complainants, their representatives and UNMIK representatives. During the hearing the complainants announced that they would not further participate in a closed hearing and requested it to be held in public. In turn, the Special Representative of the Secretary General (SRSG) informed the Panel that the representatives of UNMIK would not attend the hearing under the procedure envisaged by the Panel and that he intended to adopt an administrative direction which would clarify the nature of public hearings before the Panel. In light of this, on 12 May 2009, the Panel decided not to proceed with the hearing.

[1] All texts are available at the Panel's webpage: www.unmikonline.org/hrap/Eng/Pages/default.aspx

7. On 31 March 2010, the Panel declared the complaint inadmissible, having regard to Administrative Direction No. 2009/1 of 17 October 2009 Implementing UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel. In that decision, the Panel concluded that once the projected UN Third Party Claims Process had been concluded, "the complainants [could] request the Panel to reopen the … proceedings".

8. On 17 December 2010, the complainants informed the Panel of the completion of the UN Third Party Claims Process with respect to each of them. All the complainants had received compensation and signed the release forms in relation to future claims against UNMIK. They requested the Panel to proceed with the complaint as originally presented to it, in particular with the procedural parts of the complaint.

9. Following the complainants' request, in a decision adopted on 11 May 2012, the Panel decided to reopen the proceedings, to declare the case admissible and to proceed with the examination of its merits.

10. On 14 May 2012, the Panel informed the complainants and UNMIK about its decision to reopen the proceedings and invited the parties to complete their comments.

11. On 30 May 2012, Mr Sylejmani informed the Panel that no additional comments would be forthcoming.

12. In light of the completion of the UN compensation procedure, on 30 July 2012 the Panel requested the SRSG to have the complete investigative file returned to it. There was no response to this request.

13. On 4 September 2012, the SRSG provided UNMIK's final comments on the merits of the complaint, indicating that he might submit additional comments at a later stage.

14. On 23 April 2013, the Panel requested additional clarification from the SRSG and the complainants' representative. The complainants' representative responded on 15 July 2013. The SRSG did not avail himself of the opportunity to provide additional clarifications.

15. By the same request of 23 April 2013, the Panel reiterated to the SRSG its request for the return of the complete investigative file to the Panel.

16. On 30 October 2013, UNMIK returned the requested file to the Panel (see § 61 below).

17. On 5 and 8 December 2014, upon Panel's request, UNMIK Police provided additional information.

II. THE FACTS

18. The complaint originally filed by the complainants relates to the actions of UNMIK Formed Police Units (FPU) comprising officers from various countries, on the occasion of a protest demonstration organised in Prishtinë/Priština by Vetëvendosje movement, on

10 February 2007. As a result of these actions, Mr Mon Balaj, the son of the first complainant, and Mr Arben Xheladini, the son of the second complainant, were killed, and other demonstrators were wounded, some seriously, including Mr Zenel Zeneli and Mr Mustafë Nerjovaj, the third and fourth complainants.

A. General background[2]

1. UNMIK, as the authority governing Kosovo

19. The events at issue took place in the territory of Kosovo while it was under the control of the UNMIK. The Mission was established after the UN Security Council, on 10 June 1999, adopted Resolution 1244 (1999), where it decided upon the deployment of international security and civil presences – KFOR and UNMIK respectively – in the territory of Kosovo.

20. Pursuant to UN Security Council Resolution 1244 (1999), the UN was vested with full legislative and executive powers for the interim administration of Kosovo, including the administration of justice. Resolution 1244 (1999) also mandated UNMIK to "promote and protect human rights" in Kosovo in accordance with internationally recognised human rights standards.

21. From the establishment of UNMIK until 9 December 2008 (see § 24 below), UNMIK Police, headed by the UNMIK Police Commissioner, had primacy in law enforcement in all regions of Kosovo. Formation of the Kosovo Police Service (KPS) had started almost immediately as well. As the KPS was gaining capacity and expertise, from 2002 onwards, some law enforcement functions started being gradually shared with, and later handed over to, the KPS by UNMIK Police. Nevertheless, UNMIK Police retained overall control over law enforcement in Kosovo, as well as having a monitoring and advisory role.

22. While working to restore the system of administration of justice in Kosovo, UNMIK first established, in June 1999, an Emergency Justice System composed of a limited number of local judges and prosecutors. The regular justice system became operative in January 2000. In February 2000, UNMIK authorised the appointment of international judges and prosecutors, initially in the Mitrovicë/Mitrovica region and later across Kosovo, to strengthen the local justice system and to guarantee its impartiality. International judges and prosecutors were attached to the District Courts and Public Prosecutor's Offices in Kosovo, carrying out all judicial and prosecutorial functions. The UNMIK DOJ exercised control over the functioning of the judiciary.

23. As explained in the Presentation Paper of the UNMIK Police and Justice Component (July 2003), UNMIK Special Police Units (SPU) were "a distinct component of UNMIK Police. The SPUs perform a specialist function in that they represent a large, paramilitary, mobile and self-sufficient force of officers capable of rapid deployment to high-risk situations." Once deployed, the SPUs "added substantially to the capacity of UNMIK to carry out tactical police functions." The same Paper further explains that "the principal duties of the SPUs are to respond to public disorder, conduct crowd control during violent

[2] The references drawn upon by the Panel in setting out this general background include, among others: Quarterly reports of the UN Secretary-General on the United Nations Interim Administration in Kosovo; UNMIK Police Annual Reports; Lëvizja Vetëvendosje's website (www.vetevendosje.org).

demonstrations and civil unrest, provide facility protection and assistance to UN agencies where necessary, and to provide protection and security to UN officials, UNMIK Police and the Border Police in the discharge of their duties. The SPUs also provide operational support and backup to UNMIK Police."

24. On 17 February 2008, Kosovo unilaterally declared itself independent from Serbia. Subsequently, on 9 December 2008, UNMIK's responsibility with regard to police and justice in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX) assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.

2. The Lëvizja Vetëvendosje movement

25. The Lëvizja Vetëvendosje (Movement for Self-Determination, Vetëvendosje) was apparently founded in 2004. It defines itself as "a community of people that refuse to submit, ... aim to achieve and realize the right to self-determination for the people of Kosova ... working to achieve radical social and political changes that will enable respect for human rights, civil rights and social justice for each and every citizen of Kosova without discrimination."

26. The action where Vetëvendosje for the first time expressed its strong position in favour of the independence of Kosovo, took place on 17 July 2005 when 24 activists of the movement sprayed their slogan "No Negotiations – Self-Determination" on the wall surrounding the UNMIK Headquarters in Prishtinë/Priština. From that time until February 2007, this organisation carried out a number of public actions directed against international involvement into "internal" Kosovo affairs.

27. Particularly notable was the demonstration held by Vetëvendosje in Prishtinë/Priština, on 28 November 2006. Before this demonstration, Vetëvendosje had made the following public statement:

> "the Albanian people face another danger [because] of our unrelenting enemy, Serbia. The people of Kosova are now oppressed by the political institutions of UNMIK. They are trampling our rights in every field of social life … Kosova is governed by a political neo-colonial system called UNMIK, a political project based on the infamous Resolution 1244 … But the biggest problem remains the fact that, on top of all these things that are mentioned, Serbia has open pretensions to reoccupy Kosova."[3]

3. Political and security situation preceding the events

28. The situation in Kosovo in the months before the events subject to this complaint was characterised by a high level of tension because of the "comprehensive settlement proposal for Kosovo's future status" (the Ahtisaari Plan) and the unclear future of the

[3] See Newsletter (in English) no. 19, of 26 November 2006, available at Vetëvendosje's website [electronic source] - www.vetevendosje.org/wp-content/uploads/2013/09/newsletter_19.pdf (accessed on 20 January 2015).

province. Generally it was described by the UN Secretary-General in his 9 March 2007 report to the Security Council (S/2007/134), the relevant parts of which read:

> "3. The future status of Kosovo has remained the principal political issue in Kosovo over the reporting period. The announcement by my Special Envoy on 10 November that his presentation of the Settlement Proposal to the parties would be delayed until after 21 January to allow for the holding of parliamentary elections in Serbia was received with deep disappointment by Kosovo Albanians. The reaction among the population was generally restrained, with the exception of a demonstration by the Kosovo Albanian self-determination movement Vetevendosje on 28 November, Albanian Flag Day, in which both the Government and UNMIK headquarters in Prishtinë/Priština were attacked by approximately 4,000 demonstrators throwing projectiles.
>
> 4. The Settlement Proposal was generally well received on 2 February [2007] by Kosovo Albanian leaders and the public, though a number of concerns were voiced on its elements such as the proposed disbandment of the Kosovo Protection Corps (KPC) and decentralization. Radical Kosovo Albanian elements and Kosovo Serbs both rejected the Settlement Proposal, though for opposite reasons…
>
> 8. … There was a relatively small number of potentially destabilizing incidents. General crime levels decreased during 2006… The only area of significant increase was in crimes against property… Potentially ethnically motivated incidents also dropped significantly...
>
> 9. Vetëvendosje and their linkages to other groupings such as the War Veterans' Association remain a cause for concern. Radical groups are likely to continue to exploit any public dissatisfaction ensuing from my Special Envoy's proposals and the future status process, including delays in the process. Other fringe elements may seek to use the charged atmosphere of the future status process to provoke interethnic violence for their own ends…"

29. In turn, this is the description of the demonstration of 28 November 2006, given by Vetëvendosje[4]:

> "This is what really happened on Tuesday 28th November. Tens of thousands of people marched through the centre of Prishtina. At the government building, Albin Kurti made a short speech to emphasize once again the objective of the demonstration: to oppose the negotiation team of Kosova. Then activists threw bottles filled with red paint at the walls of the buildings, and at the windows, and we attached the '5 reasons'[5] for our attack on the gates. Some people in the crowd threw stones which our organizers tried to stop. We knew that most of the staff in the building would not be working that day, and before the action began, we told the police to move back so that they would not be hurt. Not a single person was injured as a result of our demonstration. This is

[4] See Newsletter (in English) no. 20, of 3 December 2006, available at Vetëvendosje's website [electronic source] - www.vetevendosje.org/wp-content/uploads/2013/09/newsletter_20.pdf (accessed on 20 January 2015).
[5] For the full text of these Vetëvendosje's "5 reasons", see *ibid.*

a testament to the professional organization of the demonstration and its control by our activists.

Following this, we moved with the crowd to UNMIK where we placed a padlock on the front gate and removed one slab of the defensive wall that surrounds the building. A chain of activists protected the entrance, preventing the crowd from entering because this was not our objective. Then we also threw bottles of red paint at UNMIK. Red paint was used to symbolize the colour of the flag, and the colour of blood. The UNMIK police fired tear gas at the crowd, which incited a reaction of stone throwing, which once again we tried to stop. Even though throwing stones was not our plan, we understand people's indignation and as organisers take responsibility for this act. Despite the gas, we attached the '5 reasons' for our attack on the wall.

The crowd regathered after a few minutes, and we continued our march until we reached our office and Albin Kurti explained that the demonstration was over. Everyone left peacefully.

Our movement has never ascribed to 'passive resistance'. Every action has inflicted some form of damage in order to send a message to UNMIK and the PISG [Provisional Institutions of Self-Government]: writing graffiti on walls, on UNMIK jeeps, deflating their tires, throwing paint at buildings, throwing eggs, boycotting Serbian products, blaring an emergency announcement at UNMIK and blockading institutions and the border. Is a boycott less violent than breaking a window?

We are nonviolent because we have never threatened the lives of people or attempted to injure or kill people. Our only target is the institutions and the buildings or cars which represent them. This is the only nonviolent means we have of preventing these institutions from leading Kosova towards certain war."

4. Structure and responsibilities of UNMIK Police on 10 February 2007

30. According to the UNMIK Police Policy and Procedures Manual, dated 16 August 2005, at the time relevant to this case, UNMIK Police consisted of Civilian Police, Special Police, and Border and Boundary Police (BBP).

31. UNMIK Police was headed by the UNMIK Police Commissioner. The high command of UNMIK Police also included:

- four Deputy Police Commissioners in the following fields: Operations, Crime, Administration of UNMIK Police, and Administration of KPS;
- the Commander of the BBP;
- the Chief of Staff;
- the Director of Operations.

32. By February 2007, some positions within the UNMIK Police command structures, for instance the Deputy Police Commissioner for KPS, the Assistant Deputy Police Commissioner / Operations, the Head of Public Order Department and the Chief Inspector of the Police Inspectorate of Kosovo (PIK), had been occupied by KPS officers.

It is not clear to the Panel if any UNMIK Police officers were subordinate to KPS officers and, if so, whether the latter were authorised to give orders to UNMIK Police officers.

B. Circumstances leading to the deaths of Mr Mon Balaj and Mr Arben Xheladini and to the injuries to Mr Zenel Zeneli and Mr Mustafë Nerjovaj

1. Announcement of a demonstration by Vetëvendosje

33. In its public announcement released on 5 February 2007[6], Vetëvendosje movement called upon the general public to come out for a demonstration against the Ahtisaari Plan. They also wanted to express dissatisfaction about the general mandate and behaviour of UNMIK and the PISG in Kosovo. The demonstration was to take place on 10 February 2007, in the Prishtinë/Priština city centre. The announcement and invitation to join the demonstration were also distributed via text messages on mobile telephones, as well as via Internet-based social networks.

34. According to the information received by the Panel, Vetëvendosje did not officially inform the relevant UNMIK authorities of their plans to organise this demonstration or of their planned route; nor did they communicate any other relevant details. Nevertheless, UNMIK authorities seemed to have been fully informed about the timing and locations in which the demonstration was planned to take place.

2. Preparatory actions by UNMIK authorities

35. The operations plan, called "Operational Order MSD [Movement for Self-Determination] Demonstration on 10th February 2007" (Ops Plan), was prepared by the UNMIK Police Main Headquarters (MHQ) Operations Planning Unit, and was dispatched to all relevant sections at the UNMIK Police MHQ, all regional police HQs, the BBP HQ and all FPUs. The front page states that, before distribution, the Ops Plan was to be approved by all relevant police commanders, both UNMIK Police and KPS: the Director of Operations, the Deputy Commissioner Operations and Deputy Police Commissioner. Final approval was to be given by the UNMIK Police Commissioner. However, no signed copy of the Ops plan is in the Panel's possession.

36. Chapter 1, "Information", of the Ops Plan, among other issues, assessed the expected overall risk as "medium" but warned UNMIK Police and KPS units that some provocations were possible.

37. Chapter 2, "Intention", of the Ops Plan, stressed: "It is the Police Commissioner's intention that the police adhere to the strategic policy as outlined in December last year [2006] ... in dealing with protests/demonstrations." The policy referred to there, entitled "Police Commissioner's Guidelines to deal with spontaneous or announced demonstrations by self-determination movement", was apparently supposed to be attached to the Ops Plan as "Annex A". Its contents are not known to the Panel, as the copy in its possession has no such annex. Chapter 2 ends with the following: "The policing response will be proactive and preventative action will be taken wherever

[6] See Newsletter (in English) no. 28, of 5 February 2007, available at Vetëvendosje's website [electronic source] - www.vetevendosje.org/wp-content/uploads/2013/09/newsletter_28.pdf (accessed on 20 January 2015).

necessary. The security measures for this operation have to be kept high profile. Standard rules of engagement apply!"

38. Chapter 3, "Method", of the Ops Plan, clarified the command lines and outlined the functions of each police element or unit participating in the operation.

39. In Chapter 5, "Communications", the Ops Plan stated that the Head of Operation was the Deputy Commissioner Operations and that "[h]e shall be informed about every single incident connected to this operation passing via MHQ Operations Room or MHQ Command Centre's Staff."

40. It appears from the statements of a number of interviewed UNMIK Police officers that together with the Ops Plan a separate request No. 128/07 was sent to the three FPUs: Polish, Romanian and Ukrainian. It reportedly carried further instructions for the deployment of those units and specified that tear gas and full Crowd and Riot Control (CRC) equipment was needed, but that long barrel weapons should not be brought. However, the Panel is not in possession of this document.

41. UNMIK Police had invited Vetëvendosje representatives to take part in the preparations for the demonstration, but they did not respond to the invitation and refused to meet UNMIK Police representatives.

42. After the above-mentioned demonstration of 28 November 2006 (see § 27 above), UNMIK authorities had paid particular attention to the actions of Vetëvendosje movement. Most senior UNMIK Police officers, in their subsequent statements given to the investigators, mentioned that the instructions from the Mission leadership, and thus their intention, was not to allow a repetition of what had happened then. Therefore, a document called "Strategic Approach for dealing with spontaneous or announced demonstrations by Vetëvendosje/Movement for Self-Determination activists" was adopted by the UNMIK Police Commissioner, on 8 December 2006. This document reads, in relevant parts:

> "1. During the last months an increased number of demonstrations – announced or spontaneous – have been seen from the Vetevendosje/Movement for Self-Determination … activist group. The purpose is partly to create resistance against (especially) PISG and UNMIK and partly to provoke a confrontation with the Police and other authorities, to maximise publicity for their activities and thereby win more supporters and increase pressure on PISG and UNMIK. The most recent activities by members of MSD have shown that they are now willing to resort to more openly violent and unlawful acts.
>
> 2. The following principles should guide the policing approach for dealing with MSD activists:
>
> a. Demonstrations are lawful as long as they remain peaceful. Police will usually adopt a low but visible profile, and for as long as MSD activists remain within the limits of peaceful protest, will seek not to respond to attempted provocations and will minimise opportunities for confrontation.
> b. All available evidence gathering options will be exercised…

c. Violent criminal behaviour will not be tolerated. Police will take necessary immediate action; including if appropriate, on-the-spot arrests.
d. If demonstrators begin to attack persons or property, to attempt to force their way into premises or commit other serious crimes, the police will act according to the strategic intention for dealing with public disturbances and riots."

43. In general, the police were instructed to prevent a situation arising similar to that of the demonstration on 28 November 2006.

3. The demonstration and related events on 10 February 2007

44. On 10 February 2007, Vetëvendosje movement organised a protest in Prishtinë/Priština, which started at approximately 14:00 and lasted until around17:30. The protesters came from various parts of Kosovo; according to the police records, at least 50 buses with protestors arrived in Prishtinë/Priština in the morning of 10 February 2007. The protesters marched from Vetëvendosje's office in the Pejton neighbourhood, by Mother Theresa Street, in the direction of the city centre. The protestors were joined by many others on the way. According to the official records of the KPS, approximately 2,500 people participated in the protest. Apparently, the plan was to have a rally in front of the Kosovo Assembly and Government building.

45. However, the police blocked Mother Theresa Street near the Skenderbeg monument and did not allow the demonstrators to approach the Government building, which was less than 300 metres away from the cordon set by the police. The cordon consisted of a metal "crowd control" fence, a first police line manned by the KPS Regional Operation Support Unit (ROSU) officers and a second police line, consisting mostly of UNMIK Police FPU officers. Behind the cordon, a few armoured vehicles and personnel carriers, some equipped with mounted gas launchers, were parked and a few reserve police units were on standby.

46. The following equipment was used by the SPU: bulletproof vests, leg and arm protective clothing, helmets (without protective fibreglass visors), protective plastic shields, gasmasks, handcuffs, rubber truncheons, regular sidearm (pistols), pepper spray, tear gas and rubber bullets. The guns for shooting rubber bullets were two types: the Romanian FPU used two-barrel, manually loading and extracting, smooth bore, 12-gauge calibre shotguns (IZH-54), which look like hunting rifles. The Polish and Ukrainian FPU used 12-gauge calibre pump-type shotguns. A few armored personnel carriers and service dogs were visibly on standby.

47. Being unable to proceed to the planned location, the demonstrators held the rally at the square in front of the National Theatre, just before the police cordon. At that location, a number of the Vetëvendosje's leaders, including Mr Albin Kurti, addressed the crowd from a truck used as an improvised stage, which was equipped with microphones and loudspeakers. Another vehicle, which was parked next to the truck, was carrying plastic dolls that depicted different local and international officials related to the process of the Kosovo status settlement.

48. At about 15:00, after the speeches of the Vetëvendosje's leaders were completed, the protesters started removing the barricades (metal fence) in order to move closer to the

first line of police officers. As the police did not react and did not try to prevent the protesters from doing so, the barricades were removed and placed on the side of the road, thus clearing unimpeded access to the cordon formed by police officers.

49. Shortly thereafter, the protesters started shouting "UÇK, UÇK[7]" and began pushing the police. As the Panel has observed by watching video footage from the scene which was in the file provided by UNMIK, the protesters were not armed. A few moments later, a group of about 20 Vetëvendosje activists, wearing only white T-shirts, including Mr Albin Kurti, locked their arms forming a human chain and tried to break through the police line near the Skenderbeg monument. The police pushed back. At this moment, some stones and other projectiles (cans, sticks and so on) were thrown at the police. The police response followed immediately; they used pepper spray and launched tear gas to disperse the crowds. Sporadic shooting of the first rubber bullets occurred at this time. Most of the protesters immediately retreated but did not completely disperse.

50. When the tear gas was deployed, the KPS officers left their positions in the front line of the police cordon, as they had no gas masks. Thus, the UNMIK Police line, mostly manned by Romanian FPU officers, became the first line in the cordon and continued with the anti-riot action.

51. Although no more direct confrontations seem to have taken place, some protesters from time to time came forward and threw objects at the police. UNMIK Police officers held their initial positions and continued to launch tear gas; also sporadically shooting rubber bullets, particularly targeting those who came forward to throw at the police sticks, stones and tear gas canisters picked up from the ground.

52. Some time later, UNMIK Police began moving forward, pushing the protesters from Mother Theresa Street to the side streets. At the same time, KPS officers used truncheons to disperse the crowd; a few active protesters were arrested at that time.

53. By 17:30, the protest was completely disbanded.

54. During and after the above-mentioned protest, 19 persons were arrested and 82 requested medical assistance. Of them, around 30 were injured by rubber bullets, 56 others had injuries in different parts of their bodies, mostly caused by the use of physical force. Many of the protesters were injured in the upper parts of their bodies.

55. As to the property damaged by the demonstration, three vehicles were damaged (one UN vehicle, one government vehicle and one civilian car), windows of the Iliria hotel and two shops were smashed.

56. All four victims subject of this complaint received serious injuries and were treated first in the Emergency Centre of Prishtinë/Priština University Hospital. Two of them, Mr Mon Balaj and Mr Arben Xheladini, were shortly transferred to the hospital in the US KFOR camp "Bondsteel" for treatment, where they died shortly thereafter, despite the doctors' efforts. Mr Mustafë Nerjovaj was also subsequently transferred to the German KFOR field hospital in Prizren for further treatment. Mr Zenel Zeneli, because of the seriousness of his injuries, remained in the University Hospital. The injuries sustained by the four

[7] "UÇK" (Albanian: *Ushtria Çlirimtare e Kosovës*) stands for the Kosovo Liberation Army (KLA).

victims, as well as the circumstances in which they were caused are detailed below (see § 90 "A", "B", "C" and "D").

4. Developments following the events

57. The Minister of Internal Affairs of the Kosovo PISG, Mr Fatmir Rexhepi, resigned on 13 February 2007. The next day, at the request of the SRSG, Mr Stephen Curtis, the UNMIK Police Commissioner, also resigned.

58. Subsequently, the UN Secretary-General referred to the demonstration in his report of 9 March 2007 (cited in § 28 above):

> "4. …Vetevendosje again held a protest against the [status settlement] plan, the Kosovo negotiating team, UNMIK and the future envisaged International Civilian Office on 10 February, the intent of which was clearly violent. Tragically, two protesters died from rubber-bullet wounds to the head. The Minister of Internal Affairs of the Kosovo Provisional Institutions of Self-Government and the UNMIK Police Commissioner resigned shortly afterwards, while the leader of the Vetevendosje movement remains in pre-trial detention. An inquiry into the deaths and an investigation into Vetevendosje are ongoing. While there is little mainstream support for the actions of this movement, the continued lack of clarity on Kosovo's status, which hampers social, economic and political progress, creates a fragile environment which was exploited by radical elements."

59. In light of the upcoming rotation of the Romanian FPU personnel, due to the end of their tour of duty, the SRSG requested the Government of Romania to delay this contingent's rotation for one month. On 22 February 2007, the Romanian Government informed the SRSG of its agreement to grant such an extension to facilitate the investigation. The Government of Romania likewise made no objection to the investigative actions involving their police officers.

60. On, 23 March 2007, the whole Romanian FPU contingent left Kosovo and returned to Romania. The decision to recall these police officers was taken by the Government of Romania, despite a request from the UN Headquarters to have the "gunmen" SPU officers remain in Kosovo until the investigation was completed.

C. The investigation

1. Disclosure of relevant files

61. In the present case, the Panel received from UNMIK the original investigative file previously held by the UNMIK Special Prosecutor and the Task Force under his supervision (see § 85 below). The file included 29 binders of numbered documents; some material evidence, with the chain of custody certificates and original hand-over forms, was also in the file. Attached to the file was one DVD with video footage of the demonstration and police action (see § 49 above).

62. Concerning disclosure of the information contained in the files, the Panel must clarify that, although its assessment of the present case stems from a thorough examination of the

available documentation, only the relevant information contained therein is disclosed. Hence a synopsis of relevant investigative steps taken by investigative authorities is provided in the paragraphs to follow.

2. Initial investigative steps

63. The investigation into the violence surrounding the demonstration started on 10 February 2007. A large part of Mother Theresa Street was sealed by the KPS officers, as the potential crime scene, and at around 18:00 KPS forensic officers had already started examining it, ending at around 20:00. The scene was measured and photographed. A large number of items, such as spent shell casings, empty gas canisters, rubber projectiles, sticks and stones, were collected and sealed for further examination.

64. The clothes of the deceased victim Mr Mon Balaj were seized by the KPS officers at the Prishtinë/Priština hospital, on 10 February 2007, and sent in their original condition for safekeeping to the KPS Forensic Laboratory. The police were not able to locate the clothes of the other deceased victim, Mr Arben Xheladini.

65. According to the data in the Kosovo Police criminal information database, on the same day, at 18:00, the Prishtinë/Priština Regional Investigation Unit (RIU) registered an investigation under the no. 2007-AB-0526, in relation to the following offences:

> "1) N/A Demonstration;
> 2) N/A Disturbing Public Order;
> 3) 316 Obstructing Official Persons in Performing Official Duties;
> 4) 317 Attacking Official Persons Performing Official Duties."

66. The case no. 2007-AB-0526 has 15 suspects, with Mr Albin Kurti being at the top of the list. Most of the investigative documents dated 10 – 12 February 2007 bear this case number. The file does not indicate whether a separate case was registered in relation to the investigation into the deaths and injuries to the protesters.

67. Also on 10 February 2007, KPS investigators went to the Prishtinë/Priština clinic and collected from there a number of items, including the clothing of Mr Mon Balaj and a number of rubber projectiles, extracted by the doctors treating the injured protesters.

68. On 11 February 2007, the RIU requested a Public Prosecutor at the District Public Prosecutor's Office (DPPO) of Prishtinë/Priština to issue an order for autopsies of the two deceased victims. On the same day, a local pre-trial judge of the Prishtinë/Priština District Court issued the sought order; the District Court's registry number affixed on it is PNH 85/07.

69. Also on the same day, the KPS RIU investigators requested a Public Prosecutor at the DPPO Prishtinë/Priština to issue a request to all major TV channels in Kosovo to release to the Police the video footage related to the events of 10 February 2007.

70. By an e-mail in the late afternoon of the 11 February 2007, an UNMIK International Prosecutor requested the UNMIK Police Chief of Investigations to provide to international prosecutors, including Mr Robert L. Dean, a complete report on the events

of 10 February 2007, especially the autopsy reports and the assessment of injuries inflicted upon protesters.

71. On 12 February 2014, upon the order of the pre-trial judge of the District Court (DC) Prishtinë/Priština, an international forensic medicine expert of the Office of the Medical Examiner of the UNMIK Office of Missing Persons and Forensics conducted the autopsies of the two deceased victims. The preliminary results were released immediately. Accordingly, it was established that they were hit by rubber bullets with the diameter 18.5 mm.

72. The complete autopsy reports were released later: in relation to Mr Arben Xheladini on 27 February 2007 and in relation to Mr Mon Balaj on 3 March 2007; both included an overview of the injuries and findings on the cause of death. According to the autopsy reports, the examination of Mr Arben Xheladini's body was attended by four KPS officers, seven UNMIK Police officers, one International Prosecutor and an UNMIK language assistant. The examination of Mr Mon Balaj's body was attended by four KPS officers, seven UNMIK Police officers, two International Prosecutors (one of them being Robert L. Dean) and an UNMIK language assistant.

73. By 12 February 2007, UNMIK Police RIU investigators had already collected the necessary samples of the rubber ammunition used during the operation from the Polish, Romanian and Ukrainian FPUs. One of these UNMIK Police investigators was Romanian. On the same day, two Romanian UNMIK Police investigators went to the KFOR base in Prizren, where they collected information on the identity of the victim shot during the demonstration (Mr Mustafë Nerjovaj) who was being treated there, his condition of health and description of his sustained injuries.

3. Investigation by UNMIK Police and the Special Prosecutor

74. On 12 February 2007, a special "Task Force 10.02.2007" was formally established to investigate the circumstances of the protest and the violence that had occurred.

75. According to its organisational chart, the Task Force consisted of 18 UNMIK Police officers permanently assigned to it, three Liaison Officers and two officers from the Kosovo Police. It is also stated there that "more than 30 IPO's [International Police Officers] worked for the 'Task Force 10.02.2007' temporally [sic.]". Two observers from the Police Inspectorate of Kosovo (PIK) were also attached to the Task Force. According to the above-mentioned organisational chart (which spelled out the names and nationalities of all Task Force's members), no Romanian UNMIK Police officers were assigned to it.

76. On 13 February 2007, a Task Force's investigator requested the management of the Prishtinë/Priština Clinic to release medical documents and personal clothing of Mr Zenel Zeneli and Mr Mustafë Nerjovaj. However, according to a police report dated 14 February 2007, none of the requested items had been located in the clinic. The clothes, which Mr Mustafë Nerjovaj wore on 10 February 2007, during the demonstration, were collected from him on 15 March 2007, after he was interviewed by UNMIK Police at his home. However, they had been washed in the meantime. The file has no record as to the whereabouts of the clothes of Mr Zenel Zeneli.

77. Also on this day, a KPS firearm expert confirmed to the Task Force team leader that the shotguns used by the Polish and Romanian FPUs were able to shoot rubber ammunition of the 12th calibre, while the carbines used by Ukrainian FPU were not designed to use this type of ammunition.

78. On 14 February 2007, Mr Robert L. Dean, an UNMIK International Prosecutor and at that time the Acting Director of the UNMIK DOJ, was appointed as the Special Prosecutor to oversee the investigation and head the Task Force. It appears from the file, that the prosecutor's case was registered as no. PC 119/07.

79. The investigation established that the Romanian FPU was represented by three platoons: "Alpha" (32 officers, three of them shooters), "Bravo" (32 officers, three of them shooters) and "Charlie" (21 officers, three of them shooters). They were placed in a combat formation, with the "Alpha" platoon on the right wing, the "Bravo" platoon in the centre and "Charlie" platoon on the left wing (the side of the road where the National Theatre and Hotel Illiria were situated). Similar information on the participation of the Polish and Ukrainian FPU was made available to the Task Force.

80. Interrogations of the Polish FPU commanding officers and shooters who used rubber bullets during the demonstration were conducted on 13 and 14 February 2007. According to the records, seven out of nine officers were interrogated by two UNMIK Police investigators, one of whom was Romanian; the records reflect no information on the presence of an interpreter during these interviews. One of the officers was re-interviewed on 14 March 2007, by two other UNMIK Police investigators (not from Romania).

81. The Romanian FPU members, who participated in the operation on 10 February 2007, were interrogated on a number of occasions. In the first wave of interviews, on 15 and 16 February 2007, the investigators interviewed the shooters and the commanding officers of the Romanian SPU. According to the records, each of these interrogations was conducted by two UNMIK Police investigators, one of whom was Romanian. No interpreter was present in those interrogations; their records were written in Romanian and subsequently translated into English. All of them were re-interrogated on 9 – 11 March 2007, also by two UNMIK Police investigators, neither of whom was Romanian, and with a professional interpreter.

82. On 16 February 2007, a KPS firearm expert confirmed to the Prosecutor that the only ammunition containing the rubber projectiles matching in size the bullets extracted during the autopsies were RB1, used by the Romanian SPU.

83. On 20 February 2007, two UNMIK Police investigators (one of them Romanian) interviewed eight Ukrainian FPU members who participated in the Operation. The translation during all those interrogations was performed by an English-speaking officer of the Ukrainian FPU. These eight statements contain very similar wording. Four commanding officers of the Ukrainian SPU were interviewed later, on 15 and 16 March 2007, by different UNMIK Police investigators (not Romanian). In three interviews, the translation was also done by a Ukrainian SPU officer, and one was conducted in English.

84. Between 15 and 20 February 2007, KPS officers interviewed more than 50 civilian witnesses, among them eyewitnesses to the shooting of the four victims in this case. Some

were able to describe the officers who shot at the victims, but none were able to identify them by photographs. No live identification parade was undertaken at any stage.

85. The overview of the investigative actions undertaken by the Task Force from the commencement of the investigation until 16 April 2007 is provided in the "Interim Report of the Special Prosecutor to the SRSG regarding the deaths and serious wounding of protesters during the 10 February demonstrations in Prishtinë/Priština" (Interim Special Prosecutor's Report, pages 5 and 6). As stated there, the main purpose of the investigation in this period was "to narrow the field of possible police shooters, and to see by forensics, witnesses, and examining all collected evidence to identify the person or persons who fired the fatal shots and those shots which caused serious injury." The following investigative actions were undertaken:

> "Officer reports from all police involved in the police action were collected and reviewed; follow up interviews of appropriate officers; screening and follow up interviews of over 200 KPS ROSU officers who were involved in the police action; elements of the Ukrainian and Polish FPU units involved in the police action were interviewed; the entire 93 person Romanian FPU was interviewed and those deploying rubber bullets re-interviewed; UNMIK mission intake photographs of the Romanian gunners were obtained for possible identification purposes; aerial and on scene photographs of the area of encounter including ground elevation and land-mark and fixed objects measurement; door to door canvassing by police to locate witnesses in the area of the encounter; video footage and still photographs (over 1.800 photos) of the demonstration and encounter were collected and analyzed; persons who obtained footage and pictures located and interviewed; 21 members of the Illiria Hotel staff interviewed and some re-interviewed; over 100 civilian participants in the demonstration interviewed; injured persons and relatives interviewed; witnesses located in Norway and Germany contacted; autopsies of two deceased and medical records collected of seriously wounded; collection of recovered projectiles from deceased and one wounded; firearms laboratory examination of recovered ammunition and examination of samples of rubber bullets obtained from Polish, Ukrainian, and Romanian FPU; 170 additional samples of RB1 rubber bullet ammunition obtained from Romanian FPU and submission of evidence to German BKA laboratory where velocity and impact / distance testing is ongoing; interviews of FPU coordinators and operational commanders regarding the police action during the protest; advertising in local media seeking potential witnesses to contact KPS managed hot-line; identification of the manufacturer of the RB1 ammunition and seeking the details of specification, distribution, and recommended usage of the ammunition."

86. Concluding his overview of the investigative activity, the Special Prosecutor added:

> "Not surprisingly, the Task Force confronted obstacles during the course of their investigation. Some obstacles could be anticipated such as language and required translation issues as well as logistics. Potential witnesses had to be located not only throughout Kosovo ... Notwithstanding repeated requests, the French and Italian MSU [Multinational Support Unit] under NATO command have not yet agreed to be interviewed by the task force. The task force was hopeful that the telephone hot line established by the KPS and publicized by the

media would result in useful information and leads. This unfortunately was not the case."

87. The Romanian SPU officers who were initially interviewed by Romanian UNMIK Police Officers without the interpreter (see § 81 above), were later re-interviewed by two other UNMIK Police officers of other nationalities, with the assistance of sworn-in professional interpreters.

4. Findings and conclusions of the Special Prosecutor

88. The results of the investigative actions were presented to the Special Prosecutor in the interim Report on Enquiries of Demonstration on February 10th 2007 dated 13 March 2007, in the First Report Task Force 10.02.2007 of 16 April 2007 (First Task Force's Report) and in the Second Report Task Force 10.02.2007 (Second Task Force's Report) dated 11 June 2007.

89. Based on the results of the investigation presented in these reports, the Special Prosecutor issued and made publicly available two reports. The first, "Interim Special Prosecutor's Report" of 16 April 2007 (see § 85 above) and the second "Report of the Special Prosecutor to the SRSG" (Second Special Prosecutor's Report) of 29 June 2007.

90. The Interim Special Prosecutor's Report of 16 April 2007 contains under the heading "Results" the following findings (the original emphasis preserved):

"from the outset, the goal of the task force was to narrow down the range of possible shooters. The first and most significant breakthrough in this regard was by obtaining and examining the projectiles causing the deaths of Mon Balaj and Arben Xhelladini and the wounding of Zenel Zeneli and Mustafa Nerjovaj. …

At this point the report will address what has been determined regarding four specific individuals who were shot by police during the afternoon of 10 February.

A. **Mon Balaj** – Mon Balaj's shooting was witnessed by a number of people. It is clear that during the protest he entered into the Illyria Hotel on Mother Theresa Street. At some point he ran from the hotel, jumped off the terrace and was soon thereafter struck in the head behind his right ear with the rubber bullet that pierced his skull. He died as the result of a rubber bullet type RB1 wound to the head. Mon Balaj had entered the Illyria Hotel on Mother Theresa and when MSU entered the hotel he ran from the hotel, leapt from the terrace, collapsed as he was struck by the bullet. An autopsy was performed and the bullet recovered. The bullet was an RB1 type.

B. **Arben Xhelladini** – Little is known regarding the circumstances of the shooting and death of Arben Xhelladini. He was shot in the front of his forehead. An autopsy was performed and the bullet recovered. The bullet was a RB1 type rubber bullet.

C. **Mustafa Nerjovaj** – He was shot in the head by an RB1 projectile. This was recovered and examined. His wound was inflicted when he bent down to

pick up a tear gas canister in order to throw it back to the police. The bullet was a RB1 type rubber bullet.

D. **Zenel Zeneli** – He was shot in the chest and the projectile remains within his chest. He is unable to recall details of the infliction of his injuries. From x-rays, it appears that the projectile lodged in his chest is an RB1 projectile.

E. **Others wounded** – Police were not able to obtain the projectiles and are not now in position to assess the specifics of what caused these wounds.

F. … 8 Romanian FPU gunners stated that they fired RB1 bullets. Polish FPU units also utilized rubber bullets but not of the size and type striking the victims in question. The deadly shots were caused by a particular round of rubber bullet, the RB1. Each Romanian shooter was identified and questioned …

G. The only other unit deploying rubber bullets was the Polish FPU…

H. At the present time, there is a reasonable suspicion to believe that crimes were committed by a Romanian gunner or gunners resulting in the deaths Mon Balaj, Arben Xhelladini, and the wounding of Zenel Zeneli. As noted above, *reasonable suspicion that crimes were committed* is the required standard set forth in *PCPCK* [Provisional Criminal Procedure Code of Kosovo], *Art. 207(4)*. The crimes in question for which reasonable suspicion exists are Murder, Negligent murder, Attempt to murder and Grievous Bodily Harm. Although it could be argued that these deaths were accidental, that would not detract from the reasonable suspicion that such shooting was criminal. Accidental shootings can be inflicted in a negligent, hence, criminal manner. … To raise a defence of Necessary Defence the actor must be acting to avert an unlawful, real, and immanent attack. More crucially, such act must be proportionate to the degree of danger posed by the attack. … Nothing in the evidence thus far suggests that [the victims] Mon Balaj, Arben Xhelladini, or Zenel Zeneli were doing anything that threatened the life of any police officer or any person at the time any of them was shot. That they received these wounds from ricochet or low trajectory shots appears very unlikely. Under these circumstances, the shootings to the head and chest with rounds of RB1 gives rise to a reasonable suspicion of criminal action on the part of the shooting police.

I. At the present time there is not a reasonable suspicion that a specific Romanian FPU gunner or gunners inflicted the two deadly wounds or one nearly deadly wound. To assign "suspect" status on all 10 (or of the eight who used RB1) of the Romanian gunners would be contrary to the dictates of the Code. The suspected unlawful acts of one, two or even three of the Romanian gunners can not be attributed to the remaining five, six, or seven police who must have assumed to have done their work properly. At the present time we are in the position of having to guess who the offending gunner or gunners may be. The law simply does not allow for guesswork in filing criminal charges and proceedings against a person. … However, because of the nature of the weapons used (smooth bore 12 gauge shot guns)

and the three types of rubber bullets used, forensics experts are unable to make an association between any recovered fired projectile and any particular weapon. In addition, notwithstanding considerable efforts to locate a witness who would be in position to identify a particular shooter of Mon Balaj, Arben Xhelladini, or Zenel Zeneli, no such witness had been located.

J. Accordingly, the facts and circumstances at this time do not allow for the filing of an initiation of a criminal investigation. None of the Romanian gunners can be labelled as a suspect as defined in *PCPCK Art. 151(1)* as the level of reasonable suspicion as to a particular gunner does not yet exist. They are merely "possible" or "potential" suspects. The term "possible suspect" does not exist in the code. We must continue to bear in mind that as to most of Romanian FPU gunners on 10 February 2007, there is no indication of any wrongdoing."

91. In a footnote no. 8 to the conclusion "I" above, the Special Prosecutor provided an additional explanation for his decision not to initiate investigation against all Romanian shooters. He stated (throughout the original emphasis preserved):

> "When a criminal case advances to the stage of an indictment, there must be a *well-grounded suspicion* that the defendant had committed a crime. See *PCPCK Art. 316 (1) 4). Well-grounded* suspicion requires even more evidence and proof than does *reasonable suspicion*. Conviction at trial requires proof beyond reasonable doubt which is the highest standard of proof in criminal law."

92. The conclusions (point 5) of the Interim Special Prosecutor's Report of 16 April 2007 are the following (throughout the original emphasis preserved):

"A. The evidence to date leads to the conclusion that deaths of Mon Balaj and Arben Xheladini were unnecessary and avoidable. There appears to be no justification for shooting to the head of Mon Balaj and to the head of Arben Xhelladini or to the chest of Zenel Zeneli. The goals of the operational plan were to protect the buildings and crowd control. The infliction of the fatal and near fatal injuries took place at considerable distance from the government buildings to be protected. One is also left with the conclusion that the use of rubber bullets at all on that date may have been ill advised and inappropriate under the circumstances. This will be the subject of further inquiry.

B. The evidence developed to date supports the conclusion that the fatal and near deadly rubber bullets shots were fired from one or two of the Romanian FPU gunners. There were 10 Romanian FPU gunners that day. 59 rubber bullet rounds of RB1 variety were discharged by the Romanian gunners. At least eight Romanian gunners fired these 59 RB1 rubber bullet rounds. The evidence does not however provide a basis to further identify who may have fired the deadly or wounding rounds of RB1 ammunition. No witness was able to identify any shooter of the injured persons in question. The state of the evidence gathered thus far does not meet the threshold of reasonable suspicion of criminal activity committed by any <u>particular</u> person. Therefore, formal initiation of criminal

proceedings pursuant to *PCPCK Articles 220 and 221* is not warranted under the law at this time.

C. In light of the above, UNMIK, the United Nations, and the Government of Romania may consider initiating appropriate procedures for compensation for the surviving family members of those fatally shot and for those seriously wounded."

93. In the last part of his first Report, "Continuing Investigative Efforts", the Special Prosecutor stated:

> "To date questions have arisen regarding the operational planning and preparation to the 10 February 2007 protests, the rules of engagement, the chain of command, as well as the crucial points of decision making that took place which led to the police use of rubber bullets on that day. Furthermore, we are fully aware that the use of rubber bullets is controversial. It is not our intent to defend or condemn the use of rubber bullets in general. ... We will examine the generally accepted and prevailing standards for the deployment of rubber bullets and the accepted training of such tactics. It has also come to light that there may have been incomplete, unclear, or inaccurate transmission of information and orders between ground commanders and headquarters. This may have adversely affected command decisions during the protest. ... There is some question as to whether the operational orders for the protest contemplated the use of rubber bullets. … It should be noted that the investigation has raised serious questions regarding the manufacture, composition and quality of the rubber bullet ammunition utilized on the day under investigation."

94. In the Second Special Prosecutor's Report to the SRSG, dated 29 June 2007, the Special Prosecutor supplemented the Interim Report of 16 April 2007 with "an assessment and critique of practices and procedures employed by UNMIK Police in planning and carrying out the police functions prior to and during the 10 February protests, particularly as it relates to the decision to use rubber bullets against the crowd that day" (pp. 2-3). However, this Report did not add anything to the substance of the findings in relation to the identification of those directly responsible for killing and injuring the protesters.

95. With regard to the additional investigative actions, the Second Special Prosecutor's Report states:

> "Further interviews with witnesses ... did not provide any further information that would allow for identifying a particular gunner as being responsible for the shooting deaths of Mon Balaj, Arben Xhaladini, and the wounding of Zenel Zeneli. Task Force investigators were able to screen and interview elements of MSU units on the scene which had not taken place by 16 April 2007. Likewise, these interviews did little to further ascertain the identity of any particular individual Romanian FPU gunner. Accordingly, the findings of the April Report remain as stated therein" (p. 4).

96. The Special Prosecutor concluded that there had been various flaws with respect to the legal framework, the police preparation and planning and the operation and decision

making process for the 10 February protest. In particular, he identified the following circumstances as contributing to the tragic outcome (pp. 17 - 18):

- legal environment of contributing nation;
- obsolete ammunition (13 years beyond the expiry date);
- ambiguity of operational order (misunderstanding of the types of equipment to be distributed to the officers participating in the crowd control);
- breakdown of chain of command;
- breakdown of supervision;
- ambiguity and imprecision in authorisation to deploy rubber bullets.

97. In his recommendations, the Special Prosecutor advised that the UN should conduct a thorough review of the applicable UN policies, to clarify whether the use of rubber bullets by police on UN peacekeeping missions is warranted at all.

5. Closing of the investigation by the Special Prosecutor

98. Following the release of the above mentioned Interim and Second Reports, the investigation appears to have been discontinued. However, the file in the Panel's possession does not contain a copy of any decision of the Special Prosecutor in this regard, issued in accordance with the requirements of the PCPCK.

99. In numerous public statements, Vetëvendosje leaders, the relatives of the deceased victims, as well as the two surviving victims, expressed their dissatisfaction with the results of the UNMIK investigation, in particular its failure to establish individual criminal responsibility and the lack of any action (including disciplinary) against the commanders involved in the planning and coordination of the police operation on 10 February 2007. The investigation was called a "cover-up" for the crimes committed by international police.

100. Nevertheless, as far as the Panel is aware, no attempt to reopen this investigation was undertaken. In any event, the Panel was not presented with any document to indicate that the complainants, or any other interested party, had appealed that decision, or attempted to undertake criminal proceedings as subsidiary prosecutors, as envisaged by the applicable criminal procedure rules (see § 123 below).

6. Inquiry conducted by the Police Inspectorate of Kosovo

101. On 11 February 2007, the UNMIK Police Commissioner invited the Chief Inspector of the PIK to "... undertake an independent overview of the investigations surrounding the deaths of persons during the disturbances of 10 February 2007 in Pristina." In the same letter, the Commissioner guaranteed all cooperation from UNMIK Police's side.

102. The Panel was presented with the full text of the Extraordinary Inspection Report by the PIK, dated 1 March 2007, which was however entitled "*An inquiry into the conduct of the KPS during the civil disturbances in Prishtinë/Priština on Saturday 10th February 2007*". In the "Introduction" part, the Report clarifies that:

> "1.2 The stated objective of the inspection was to ascertain and assess the performance of those senior KPS officers who were responsible for the conduct

> of KPS officers in the area of Mother Theresa Street during the civil disturbance of Saturday 10th February …
> 1.3 … the PIK inspection did not see to investigate any allegations of misconduct – criminal or disciplinary – by KPS officers or UNMIK Civilian Police. Such investigation is being undertaken by a team appointed by the UNMIK Police Commissioner…
> 1.4 Likewise, the report is not concerned with the agreement by the UNMIK Police Commissioner and Minister of Internal Affairs that the Police Inspectorate should conduct an independent overview of the UNMIK investigations surrounding the death of persons during the civil disturbance. The findings of the PIK in regard to this matter will be the subject of a separate report, to be published after the completion of the UNMIK investigation."

103. The report presents another version of how the demonstration on 10 February 2007 developed and highlights the following:

- there were two operation plans prepared for the handling of the demonstration: one by the UNMIK Police and one by the KPS; there were two command centres and two chains of command, which slowed down the passing of orders and getting instructions through between the commanding officers and the police on the ground, and added to the overall confusion;
- the metal barriers, which formed the first line of the police barricade, were neither connected to each other, nor did the KPS officers make any attempt to stop the protesters from removing them; thus, it appeared to cause no trouble to the demonstrators to remove the barriers;
- the KPS officers manning the first line of the police cordon, despite serious anti-riot training given to them, appeared confused and lacked leadership and proper command;
- the KPS officers were not equipped with gas masks, although they have them among their special equipment.

104. The report put forward a list of seven recommendations of a general nature, related to the improvement of the functioning of the Kosovo Police.

105. In an e-mail, dated 7 March 2007, a Senior Adviser to the Principle Deputy SRSG informed the Special Assistant of the Director of the DOJ that the SRSG's office had no objection to publication of the above report of the PIK, as it was "co-drafted behind the scenes by OSCE [and] pre-cleared by Bob Dean".

7. Investigation by Romanian judicial authorities

106. It appears that at UNMIK's request, the responsible Romanian judicial authorities conducted a criminal investigation into the events of 10 February 2007 (see § 156 below). These proceedings were closed on 15 December 2009 by the competent Military Prosecutor of the Military Prosecutor's Section within the Prosecutor's Office attached to the Romanian High Court of Cassation and Justice. The Panel was not presented with a detailed description of the proceedings undertaken by the Romanian judicial authorities, but only with the decision of 15 December 2009.

107. In his decision, the prosecutor concluded that because the individual(s) responsible for shooting the protesters and causing deaths and injuries to them could not be identified, it would be against the requirements of the Romanian Criminal Procedure Code, Article 10(1)(c), to proceed with the criminal investigation opened by the Romanian judicial authorities and he dismissed the proceedings.

108. On 1 July 2009, the SRSG additionally clarified that "UNMIK has little information in this regard since it is not a matter falling within UNMIK's mandate. The information UNMIK has was gleaned from the press and indicates that Amnesty International has been inquiring with Romanian authorities about the progress of their investigation into the matter."

109. On 15 July 2013, at the Panel's request, the complainants' legal representative confirmed that, because "…there was no first- or second-instance decision of the criminal courts of Romania … [r]ather, the decision not to proceed with the investigation was taken by the Military Prosecutor's Office Section of the Prosecutor's Office within the High Court of Cassation and Justice", they had not filed any formal objection to that decision.

8. UN administrative investigation / Disciplinary proceedings

110. The file in the Panel's possession does not reflect anything in relation to any administrative investigation carried out by UN authorised bodies, with regard to any possible misconduct and/or negligence by UNMIK personnel.

9. UN third-party claims procedure / Payment of compensation

111. For the complete description of this process and its outcome, the Panel refers to its admissibility decisions on this case, dated 31 March 2010 and 11 May 2012 (see above, §§ 5 and 8).

112. In 2010 and 2011, the UN Third-Party Claims Process was completed for each of the complainants and compensation for the material damages associated with the deaths of the complainants' relatives and for the injuries to the two other complainants caused by the actions of UNMIK Police was paid.

113. The Panel recalls that the compensation paid to the complainants was not based on any acknowledgment of a violation of the victims' human rights. Rather, it constituted an ex gratia payment. Moreover, as was repeatedly explained to the complainants by the UNMIK negotiation team, the compensation is limited to economic loss, including in particular loss of earnings. No compensation has been paid for pain and suffering, moral anguish, punitive or moral damages or other types of loss which are not directly related to the injury (see the UN General Assembly resolution 52/247 of 17 July 1998 on *Third-party liability: temporal and financial limitations*).

III. THE COMPLAINT

114. The complainants claim that the killing of Mr Mon Balaj and Mr Arben Xheladini and the serious injury to Mr Zenel Zeneli and Mr Mustafë Nerjovaj constitute violations of the right to life, the prohibition of torture and inhuman or degrading treatment and the

right to peaceful assembly. They also claim that there has been no effective investigation into the incident, resulting in a violation of the procedural aspect of the right to life and the prohibition of torture and inhuman or degrading treatment. Finally, they claim that by not being able to bring a claim against UNMIK before a court or before any other body capable of providing redress, their rights to a fair trial and to an effective remedy have been violated.

115. They invoke the following human rights instruments:

- the Universal Declaration of Human Rights (UDHR), in particular Articles 3, 5, 8, 10 and 20;
- the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), in particular Articles 2, 3, 6, 11 and 13;
- the International Covenant on Civil and Political Rights, in particular Articles 2, 6, 7 and 21;
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in particular Articles 2, 10, 12, 13, 14 and 16.

116. The Panel considers that the specific provisions of the four mentioned human rights instruments factually cover the same following relevant areas: the right to life, the right to be free from torture and inhumane and degrading treatment, the right to a fair trial, the right to peaceful assembly and right to an effective remedy.

IV. THE LAW

A. Relevant domestic law

1. UNMIK Regulation 1999/1

117. UNMIK Regulation no. 1999/1 of 25 July 1999 *On the Authority of the Interim Administration in Kosovo*, as amended by UNMIK Regulations nos. 1999/25 (12 December 1999) and 2000/51 (27 September 2000), set forth the main legal framework for the functioning of the United Nations Administration Mission in Kosovo (UNMIK). It states in relevant parts:

> **Section 1**
>
> **Authority of the interim administration**
>
> 1.1 All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General.
>
> **Section 2**
>
> **Observance of Internationally Recognized Standards**
>
> In exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights...

2. UNMIK Regulation 1999/24

118. The UNMIK Regulation no. 1999/1 of 25 July 1999 *On the Law Applicable in Kosovo*, as amended by UNMIK Regulation no. 2000/59 (27 October 2000), clarifies which laws apply in Kosovo and provides the hierarchy of the laws. It stipulates the following:

Section 1

Applicable Law

1.1 The law applicable in Kosovo shall be:

(a) The regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued thereunder; and

(b) The law in force in Kosovo on 22 March 1989.

In case of a conflict, the regulations and subsidiary instruments issued thereunder shall take precedence.

…

1.3 In exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards, as reflected in particular in:

(a) The Universal Declaration on Human Rights of 10 December 1948;
(b) The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Protocols thereto;
(c) The International Covenant on Civil and Political Rights of 16 December 1966 and the Protocols thereto;
(d) The International Covenant on Economic, Social and Cultural Rights of 16 December 1966;
(e) The Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965;
(f) The Convention on Elimination of All Forms of Discrimination Against Women of 17 December 1979;
(g) The Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment of 17 December 1984; and
(h) The International Convention on the Rights of the Child of 20 December 1989.

3. Constitutional Framework for Provisional Self-Government in Kosovo

119. The Constitutional Framework was promulgated by UNMIK Regulation 2001/9. It reads in the relevant parts:

Chapter 3
Human Rights

3.1 All persons in Kosovo shall enjoy, without discrimination on any ground and in full equality, human rights and fundamental freedoms.
3.2 The Provisional Institutions of Self-Government shall observe and ensure internationally recognized human rights and fundamental freedoms, including those rights and freedoms set forth in:
(a) The Universal Declaration on Human Rights;

(b) The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
(c) The International Covenant on Civil and Political Rights and the Protocols thereto;
(d) The Convention on the Elimination of All Forms of Racial Discrimination;
(e) The Convention on the Elimination of All Forms of Discrimination Against Women;
(f) The Convention on the Rights of the Child;
(g) The European Charter for Regional or Minority Languages; and
(h) The Council of Europe's Framework Convention for the Protection of National Minorities.

3.3 The provisions on rights and freedoms set forth in these instruments shall be directly applicable in Kosovo as part of this Constitutional Framework.

4. Provisions of Criminal Law and Procedure

120. The local law applicable to this case was the Provisional Criminal Code of Kosovo (PCCK), which was enacted by UNMIK Regulation no. 2003/25 and entered into force on 6 April 2004.

121. The possible criminal charges under the PCCK considered by the Special Prosecutor were: Murder (Article 146), Aggravated murder (Article 147), Negligent murder (Article 149), Grievous bodily harm (Article 154), possibly read together with Attempt (Article 20). The Special Prosecutor likewise considered application of the provisions which decriminalise an act or allow mitigating or waiving possible punishment such as Necessary defence (Article 8), Extreme necessity (Article 9), and Superior order (Article 10).

122. The rules governing the conduct of criminal proceedings were at the relevant time those in the PCPCK, enacted by UNMIK Regulation no. 2003/26, which had also entered into force on 6 April 2004.

123. With regard to the injured party's right to undertake a subsidiary prosecution, the PCPCK states:

Article 62
(1) … [W]hen the public prosecutor finds that there are no grounds to undertake an investigation or prosecution of a criminal offence which is prosecuted *ex officio* … the public prosecutor must notify the injured party of this within a period of eight days and instruct him or her that he or she may undertake prosecution as a subsidiary prosecutor…
(2) The injured party has the right to undertake or to continue prosecution within eight days of the date of receipt of the notification under paragraph 1 of the present article.

Article 64
(1) If within the period of time prescribed by law the injured party does not initiate or continue prosecution … it shall be assumed that he or she has withdrawn from prosecution, unless it is otherwise provided for by the present Code.

5. Law on Public Prosecutor

124. *The Law on Public Prosecutor's Office*, published in the Official Gazette no. 32/76 (as amended last by the *Law on Amendments to the Law on Public Prosecutor's Office*, no. 18/88), contains the following relevant provisions:

> **Article 8**
>
> The higher public prosecutor, according to the law, can give the lower public prosecutor obligatory instructions for his/her work, and can take over tasks from competence of the lower public prosecutor.
>
> **Article 12**
>
> In prosecution of perpetrators of crimes and other punishable acts prescribed by the law, the public prosecutor with investigative organs determinates and takes necessary measures for discovering perpetrators and crimes. According to authorizations settled by the law, the public prosecutor conducts preliminary procedure.
>
> **Article 14**
>
> When the public prosecutor establishes that because of [a] violation … there are grounds for using legal remedy against an executive decision of the court or … another procedure, he can require delay or a stay of execution of that decision, if with execution of that decision is deemed to inevitably cause harmful consequences.
>
> **Article 17a**
>
> If the public prosecutor … does not present a request for … investigations …, the court should inform the higher public prosecutor …
>
> When public prosecutor accepts information from paragraph 1of this article he/she shall take actions and measures to eliminate all irregularities in work and to prevent all the consequences which may have been caused.

6. Appointment and assignment of International Prosecutors

125. At the material time, the international public prosecutors in Kosovo were appointed in accordance with the Section 1.3 of the UNMIK Regulation no. 2000/6 *On the Appointment and Removal From Office of International Judges and International Prosecutors* (as amended by UNMIK Regulations nos. 2000/34 and 2001/2), which reads in relevant parts:

> <u>Section 1</u>
> <u>Appointment and Removal from Office of International Judges and International Prosecutors</u>
>
> 1.1 The Special Representative of the Secretary-General may appoint and remove from office international judges and international prosecutors, taking into account the criteria set forth under sections 2 and 4 of the present regulation. Such appointments shall be made to any court or public prosecutor's office in the territory of Kosovo.

1.2 International judges shall have the authority and responsibility to perform the functions of their office, including the authority to select and take responsibility for new and pending criminal cases within the jurisdiction of the court to which he or she is appointed.

1.3 International prosecutors shall have the authority and responsibility to perform the functions of their office, including the authority and responsibility to conduct criminal investigations and to select and take responsibility for new and pending criminal investigations or proceedings within the jurisdiction of the office of the prosecutor to which he or she is appointed.

1.4 An international prosecutor may undertake, resume or continue prosecution of a case, utilizing the procedures applicable to an injured party prosecution as set forth in Articles 60, 61 and related articles of the applicable Yugoslav Criminal Procedure Code. In exercising such a power, a international prosecutor shall:

(a) Have full rights as a public prosecutor acting as an officer of the government;

Section 5
Applicable law

The present regulation shall supersede any provision in the applicable law which is inconsistent with it.

126. The assignment of cases to the international prosecutors is done in accordance with UNMIK Regulation no. 2000/64 *On the Assignment of International Judges/Prosecutors and/or Change of Venue* (as amended by UNMIK Regulations nos. 2001/34, 2005/50, 2006/60 and 2007/21), which reads in its relevant parts:

Preamble
…

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo and UNMIK Regulation No. 2000/6 of 15 February 2000, as amended, on the Appointment and Removal from Office of International Judges and International Prosecutors,

Recognizing that the presence of security threats may undermine the independence and impartiality of the judiciary and impede the ability of the judiciary to properly prosecute crimes which gravely undermine the peace process and the full establishment of the rule of law in Kosovo,

For the purpose of ensuring the independence and impartiality of the judiciary and the proper administration of justice, …

Section 1
Recommendation for Assignment of International Judges/Prosecutors and/or Change of Venue

1.1 At any stage in the criminal proceedings, the competent prosecutor, the accused or the defence counsel may submit to the Department of Judicial Affairs a petition for an assignment of international judges/prosecutors and/or a change of venue where this is considered necessary to ensure the independence and impartiality of the judiciary or the proper administration of justice.

1.2 At any stage in the criminal proceedings, the Department of Judicial Affairs, on the basis of the petition referred to in section 1.1 above or on its own motion, may submit a recommendation to the Special Representative of the Secretary-General for the assignment of international judges/prosecutors and/or a change of venue if it determines that this is necessary to ensure the independence and impartiality of the judiciary or the proper administration of justice.

1.3 The Special Representative of the Secretary-General shall review a recommendation submitted by the Department of Judicial Affairs and signify his approval or rejection thereof. Such a review shall not stay the ongoing criminal proceedings.

Section 2
Designation of International Judges/Prosecutors and/or New Venue

2.1 Upon approval of the Special Representative of the Secretary-General in accordance with section 1 above, the Department of Judicial Affairs shall expeditiously designate:

(a) an international prosecutor, …

Section 3
Applicable Law

3.1 The present regulation shall supersede any other provision in the applicable law which is inconsistent with it.

7. Legal provisions in the field of public safety

127. *The Law on Public Peace and Order* of the Socialist Autonomous Province (SAP) of Kosovo (published in the Official Gazette of the SAP of Kosovo, no. 13/81) reads in the following parts:

Article 2

In the public place, everybody is obliged to behave in a manner that with his behavior, execution or non-execution of actions, don't effect normal life of citizens, don't endanger their safety, don't effect free movement of persons, don't upset the citizens, don't disturb the use of public buildings, apartments and other houses and don't disturb the official persons and state agencies, as well as the organizations of associated labor and other organizations, which are performing the public authorizations and their officials, and don't disturb public order …

Article 4

The organiser of public performance or holder of the right of use of means of public transportation shall provide public peace at the performance, as well as in the means of public transportation, and to determine persons for keeping the order at the performance, as well as in the means of public transportation.

…

Upon a request of the organiser of public event … competent agencies for internal affairs [should] give help in re-establishing of the disturbed peace and order.

128. *The Law on Public Gatherings* (published in the Official Gazette of the SAP of Kosovo no. 8/81 - 184) reads in the following parts:

Article 2

The freedom to call together and hold public gatherings may be restricted only in those cases anticipated by this Law.

Article 3

The [organiser of a public assembly] is bound to report holding a public gathering at the latest 48 hours prior to the time arranged for the public gathering, and is bound to state in his report the time, place and the purpose of holding a public gathering.

The [organiser] reports the holding of the public gathering to the body of internal affairs the … municipality on the territory of which the [organiser] intends to hold the public gathering.

Article 6

The authorised municipal body of internal affairs is bound to enable undisturbed holding of the public gathering and to take care about the safety of the people and the property at the public gathering.

Article 7

Holding of a public gathering is forbidden when this is requested by the body of a department authorised for the health protection, within the authorisation limits determined by a Law.

Article 8

Holding of a public gathering may also be forbidden when the [organiser or] the municipal body of internal affairs, is not in a state to timely ensure order and peace and normal public traffic, and it is reasonably expected that the public peace and order would be disturbed or the safety would be threatened at the public gathering, or that the holding of the public gathering would disable the normal public traffic.

Article 9

…

The authorised body of internal affairs is bound to inform the [organiser] about the prohibition to hold the reported public gathering at the latest 24 hours prior to the time arranged for the gathering.

8. Rules governing the use of force by UNMIK Police

129. The use of force by UNMIK Police is governed by Section 1 of the Policy and Procedures Manual (referred to in § 30 above), "Use of Force and Firearms". It reads in its relevant parts:

> **1.1 Application of Force**
>
> 1. The UNMIK Police Officers will use force only when necessary, and then only the amount of force necessary to achieve legitimate law enforcement objectives.
>
> 2. Facts or circumstances unknown to the Officer/s at the time of the incident shall not be used in determining whether the force was justified.
>
> 3. UNMIK Officers will use the continuum of force in determining which level of force to apply to any given situation.
>
> **1.2 Continuum of Force**
>
> 1. Level One: Officer presence and use of verbal commands…
>
> 2. Level Two: Passive Resistance. Where the subject is not actively resisting the Officer/s. He/she is just being non compliant and not following the commands of the Officer/s. This level may require the combination of verbal commands as well as the application of soft hand control.
>
> 3. Level Three: Active Resistance. Where the subject is actively resisting the officers. This level may require the application of hard hand (strikes, kicks, pepper spray etc.) technique and/or baton strikes...
>
> 4. Level Four: Armed resistance. Where the subject(s) are armed with a dangerous instrument or deadly weapon and actively resisting or threatening the use of dangerous instruments or deadly weapon…
>
> The continuum of force is a guideline. Officers may escalate from level one to any higher level immediately, depending on the circumstances. If the subject(s) involved in the incident de-escalate their resistance the Officer must use only the level of force necessary to successfully conclude the incident.
>
> **6.5 Crowd Management**
>
> 1. UNMIK Police will make every effort to contain a crowd/roadblock or demonstration and determine whether or not Special Police Forces are required. An assessment of the seriousness of the situation and the impact on the community must be made in order to determine the appropriate level of response.
>
> Assessment Levels:
>
> Level One: Minor impediments, small number of participants in the crowd (20-30 people), willing to negotiate with Police.
>
> Level Two: More vocal crowd (50-100 people), greater impediment to flow of traffic/pedestrians, potential for escalation, less negotiations with leader(s) of the crowd, appearance of objects/projectiles.

Level Three: Full escalation of violence in the crowd, major impediments to traffic and pedestrians, no apparent coordination or leadership in the crowd, projectiles being thrown, danger to life.

2. The UNMIK Police Supervisor at the scene will decide on the resources need to handle the situation (Special Police, KFOR, etc.). In addition the Supervisor will attempt to identify the leaders of the incident and begin to negotiate…

Final Approval for Demonstration Requests:

… The regional Commander has the authority to grant requests for planned demonstrations or protests to take place.

Final approval [of a decision] to deny a permit for a demonstration or protest shall be the responsibility of the Police Commissioner.

B. Relevant international principles and norms

130. The *Code of Conduct for Law Enforcement Officials* (adopted by UN General Assembly Resolution no. 34/169 of 17 December 1979) reads in the following parts:

> **Article 3**
> Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

131. Commentary on this article by the UN Office of the High Commissioner for Human Rights (OHCHR)[8] says:

> (a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.
>
> (b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.
>
> (c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

[8] The text of this Code, and the Commentary to it are available at OHCHR website [electronic source]: www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx (accessed on 21 January 2015).

132. The *United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders) provides in Article 9 that "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life". Other relevant provisions read as follows:

General Provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

(b) Minimize damage and injury, and respect and preserve human life;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Policing unlawful assemblies

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary. …

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. …

22. ... Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

133. The *United Nations Criminal Justice Standards for Peacekeeping Police* (1994) read in its relevant parts:

ESSENTIAL PRINCIPLES

Force to be used only when strictly necessary and not excessively.

2. FORCE AND FIREARMS

2.3 Law enforcement officials shall neither use physical force or violence unless other methods will not work, nor use more force than is absolutely necessary to achieve the legitimate law enforcement objective.

2.7 Whenever the lawful use of force or firearms is unavoidable, law enforcement officials shall:

1. Act with restraint and only use the amount of force necessary to achieve the legitimate law enforcement objective;

2. Respect human life and cause the minimum amount of injury to people; …

2.9 Anyone affected by the use of force or firearms is entitled to ask the authorities for a formal investigation or review (including a review by a judge or similar authority).

…

134. The *United Nations Civilian Police Handbook* (1995) was designed to assist United Nations Civilian Police (CIVPOL) in the performance of their duties in the field; it provides general information on UN peacekeeping and covers the guiding principles of United Nations CIVPOL missions and the common concept of operations. It contains the following relevant provisions:

> **Minimum Use of Force**. In peace-keeping operations, force will not be used to carry out the mandate. Minimum use of force does not exclude self-defence of United Nations personnel and property. The use of force must be clearly defined in the rules of engagement.
> **Arms**. The Security Council may, in exceptional cases, authorize a United Nations Civilian Police operation to carry arms. In such cases, an instruction for the use of arms will be established for this purpose.

135. The Panel notes that some of the international instruments referred to above are in the form of resolutions, codes of conduct and guidelines and, as such, are not legally binding. Nevertheless it considers that their language is normative and that they are widely accepted as denoting the appropriate international standards of behaviour for law enforcement officials and, as such, may be regarded as authoritative.

C. Alleged violation of Article 2 of the ECHR

136. The complainants Mr Kadri Balaj and Mr Shaban Xheladini complain that their relatives had suffered and died as a result of the actions of UNMIK Police to disperse the demonstration on 10 February 2007, contrary to Article 2 of the ECHR. Under the same Article, the complainants Mr Zenel Zeneli and Mr Mustafë Nerjovaj allege that their lives had been put at risk and that they had been injured by those actions and subsequently suffered. All the complainants also claim that the criminal investigation conducted by UNMIK authorities had been ineffective. They rely, among others, on Articles 2 and 3 of the ECHR.

137. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see ECtHR, *Powell and Rayner v. the United Kingdom*, no. 9310/81, judgment of 21 February 1990, § 29, Series A no. 172; ECtHR [GC], *Scoppola v. Italy* (no. 2), no. 10249/03, 17 September 2009, § 54). Since the Panel determines the qualification to be given in law to the facts of the case, it does not consider itself bound by the characterisation given by the complainants (see ECtHR, *Anzhelo Georgiev and Others v. Bulgaria*, judgment of 30 September 2014, § 46; ECtHR [GC], *Tarakhel v. Switzerland*, no. 29217/12, judgment of 4 November 2014, § 55). In the present case, the Panel finds that the complaint is most appropriately examined under the protection of the right to life. The relevant article of the ECHR, Article 2, reads as follows:

> 1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Admissibility

138. In his comments on the merits of the complaint, the SRSG reiterated that the Panel's decision to re-open the proceedings did not have any legal ground and was not provided for by UNMIK Regulation 2006/12 and UNMIK Administrative Direction 2009/1.

139. The Panel has already analysed and dismissed the same objection of the SRSG in its admissibility decision on the matter of 11 May 2012 (§§ 47 - 54).

140. The Panel does not see any reason to depart from its previous conclusion on the issue and rejects this objection of the SRSG.

Merits

1. The Parties' submissions

a. On the substantive obligation of Article 2

141. The complainants in substance argue that there is no evidence that Mr Mon Balaj, Mr Arben Xheladini, Mr Zenel Zeneli and Mr Mustafë Nerjovaj were involved in any unlawful activity that threatened the life of any individual during the demonstration in February 2007, thus there was no reason for UNMIK Police to use rubber bullets. In addition, the bullets were improperly used and were beyond their expiry date, which heightened the risk of lethality.

142. It is also argued that prior to the use of lethal force, no attempt was made to prevent the demonstration from going ahead. The complainants stress that it was UNMIK Police officers' actions (use of tear gas and rubber bullets) that provoked the minor displays of disorder, not the contrary.

143. With regard to the issue of the conformity of the demonstration of 10 February 2007 with the relevant provisions of the applicable law (see §§ 253 below), the complainants add that "[i]n any event, is not strictly relevant to the issues that the Panel is invited to determine that … because the relevant international standards (as summarized at principles 12-14 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27th August to 7th

September 1990) and the jurisprudence of the European Court of Human Rights, apply equally to lawful and unlawful assemblies."

144. In his comments on the merits of this part of the complaint, the SRSG informs the Panel that he "took note" of the allegations and refers the Panel to the conclusions of the Special Prosecutor presented in his Reports on the matter, which UNMIK fully accepts, and which are to be considered in lieu of the SRSG's response.

b. On the procedural obligation under Article 2

145. The complainants in substance complain that the investigation into the event was not conducted in accordance with the procedural requirements of Article 2 of the ECHR, nor in accordance with the requirements of the applicable law, that it was full of irregularities and that it included Romanian police officers as investigators, in a clear conflict of interest.

146. In particular, the complainants argue that the investigation was not prompt, as "it was not even set up until 4 days after the events in question, during which valuable evidence might have been lost"; there was also a delay in securing the cooperation of the Romanian SPU contingent, which "rendered the investigation unable to identify and punish those responsible".

147. The complainants further allege that the investigation was not independent, as both the Special Prosecutor and UNMIK Police reported to the SRSG. The complainants also claim in this respect that Romanian UNMIK Police officers participated in the investigation "despite it being clear that the suspects included Romanian UNMIK Police Officers"; these "links between the individuals who conducted the investigation and those being investigated compromise the independence of the investigation."

148. The complainants also allege that "the investigation did not appear to be a genuine attempt to seek to hold somebody responsible"; the large amount of evidence collected was "not considered with sufficient rigour", it was full of inconsistencies, which were not properly addressed. They specify in this respect that:

- the Romanian SPU members "produced identical English statements, despite none of them were even speaking this language";
- when the SPU officers were properly interviewed, "weeks later", they "got their story straight", to cover any possible illegal action on their side;
- eyewitnesses were not asked to describe the shooters;
- "none of the Romanian UNMIK Police Officers were questioned as suspects in accordance with the PCPCK, rendering any evidence against them inadmissible";
- "the English transcript / translations of the interviews of the Romanian UNMIK Police Officers contained information that was not contained in the original handwritten Romanian notes of the interviews"; and
- "despite the fact that much of the evidence submitted by Romanian FPU shooters was contradictory and/or untrue, no account was taken of this and their stories were taken at face value".

149. Finally, the complainants state that they were not "actively involved in the procedure either adequately or at all. It is of great concern that Mon Balaj's uncle felt so aggrieved by the family's lack of involvement in the investigation that he attended at the office of Robert Dean, and refused to leave until he obtained a meeting with him."

150. At the Panel's request, the complainants' representatives clarified that in their understanding, the criminal procedures undertaken by the responsible organs of the Republic of Romania had never reached a court stage. The said proceedings were terminated by a decision not to proceed with the investigation taken by the Military Prosecutor's Office Section of the Prosecutor's Office within the High Court of Cassation and Justice, which cannot be considered either a first or a second-instance decision of the Romanian criminal courts.

151. In his comments, the SRSG agrees in general that there was a responsibility on UNMIK to conduct an effective investigation into the events leading to deaths and injuries of the protestors, in order to ensure that those found responsible for them are held accountable. He adds that such an investigation entails an obligation to determine, first, whether the use of force was justified and whether the deaths and injuries were caused unlawfully and, second, where those were unlawful, that those responsible are brought to justice.

152. The SRSG opines that UNMIK's response to the events of 10 February 2007 was prompt, as the police investigation was launched by UNMIK Police immediately after the events through the establishment of the Task Force and the appointment of the Special Prosecutor to oversee the inquiry and head the investigative team (see §§ 63-64 above).

153. The SRSG further submits that the Task Force was independent and impartial, both in law and in practice. It consisted of international police officers of different nationalities, including two KPS officers. The SRSG stresses that according to the organisational chart, there were no UNMIK Police officers of Romanian nationality, although the investigators were required to use Romanian interpreters. The SRSG stresses in this respect that "investigation by police officers of the same nationality as a suspect may not warrant, by itself, the conclusion that the investigation was partial."

154. The SRSG adds that investigation itself was likewise prompt and complete, as it had secured the necessary forensic evidence and statements. The two Reports submitted by the Task Force to the Special Prosecutor specify all actions taken, including an overview of the evidence collection process. The conclusions of the two Special Prosecutor's Reports were thorough, objective and impartial. The victims and victims' families were kept apprised of the progress of the investigation at all material times; they and their lawyers were granted access to the special prosecutor's files.

155. In the SRSG's view, the criticism levelled by the complainants does not affect the overall effectiveness of the investigation and the value of the Reports of the Task Force and the Special Prosecutor, regardless of the fact that no one was identified to bear individual criminal responsibility for the deaths/injuries. The Report of Special Prosecutor clearly explains the means and methods used to enable such identification and the reasons why no identification eventually occurred. In particular, there were no eyewitnesses able to identify the police officer who fired the lethal shot(s) and the collected physical evidence was insufficient for a conclusive identification.

156. In addition, at UNMIK's request, the Romanian judicial authorities conducted an investigation into the events of 10 February 2007. However, the criminal proceedings in Romania were closed on 15 December 2009 by the competent Military Prosecutor of the Military Prosecutor's Section within the Prosecutor's Office attached to the Romanian High Court of Cassation and Justice. In his decision, the prosecutor concluded that because the individual(s) responsible for shooting the protestors and causing deaths and injuries to the protestors could not be identified, it would be against the requirements of the Romanian Criminal Procedure Code, Article 10(1)(c), to proceed with the criminal investigation opened by the Romanian judicial authorities and he dismissed the proceedings.

157. Concluding his comments on this element of the complaint, the SRSG submits that UNMIK did conduct an effective investigation in accordance with the procedural limb of Article 2 of the ECHR to establish the fate of the deceased persons and, to the extent possible, to identify the perpetrators and bring them to justice. Although the responsible individual could not be identified, the SRSG considers that this was not because of the deficiencies in the investigation but rather from the lack of eyewitness evidence. There are no indications of any specific failures in the process of the investigation.

158. In addition, the SRSG states that if sufficient evidence for an individual criminal responsibility had been collected, in accordance with the existing UN policy, the immunity of the suspect(s) could have been lifted by the UN Secretary-General, in order to ensure that the justice would be delivered.

159. Finally, with regard to the disciplinary or any other investigation into the possible responsibility of one or several persons (such as officers in command of the operation), the SRSG, on the admissibility stage (see § 2 above), in his response on 1 July 2009 to the Panel's questions whether such had occurred, states:

> "No criminal investigation was undertaken in the context of Article 129 of the Provisional Criminal Code of Kosovo. Command responsibility can only lead to criminal liability in the context of war crimes, but not persons commanding the operations in a civilian context. Notwithstanding this, the Special Prosecutor's Interim Report of 16 April 2007 alludes in footnote at p. 2 to a "separate investigative efforts … taken regarding possible criminal activity by those planning, leading and involved in the protest".

2. The Panel's assessment

160. The Panel is called on to determine whether the facts of the instant case disclose a failure by UNMIK to protect the complainants' right to life and to comply with the procedural obligation imposed by Article 2 of the ECHR to carry out an adequate and effective investigation into the deaths of the complainants' relatives and injuries to the complainants.

a. Submission of relevant files

161. As mentioned above, on 30 October 2013, the Panel received from UNMIK the file, previously held by the UNMIK Special Prosecutor and the Task Force (see §§ 61-62 above).

162. The Panel notes that the investigative file includes only one DVD with the video footage from the demonstration. However, the file suggests that there were at least three KPS officers and a number of international police officers and KFOR members, who were also filming the events. The file further suggests that "video footage and still photographs (over 1.800 photos) of the demonstration and encounter were collected and analysed." None of this additional video material was presented to the Panel, while the number of still photographs made available to it was also significantly lower than the number indicated by the Special Prosecutor.

163. Nevertheless, the Panel is not in the position to verify the completeness of the investigative files received. The Panel will therefore assess the merits of the complaints on the basis of materials made available (in this sense, see ECtHR, Tsechoyev v. Russia, no. 39358/05, judgment of 15 March 2011, § 146).

b. Applicability of Article 2 of the Convention

164. As far as Mr Mon Balaj and Mr Arben Xheladini are concerned, who both died as the result of the action of the UNMIK Police, the complaint comes within the scope of Article 2 of the ECHR.

165. The question whether Article 2 is applicable arises, in the instant case, only with respect to complainants Mr Zenel Zeneli and Mr Mustafë Nerjovaj, who escaped death but were wounded.

166. In this regard the Panel recalls the position of the European Court of Human Rights, expressed in the *Makaratzis v. Greece* judgment of 20 December 2004. In that case, in which the force used against the applicant was not lethal, the Court decided that this:

> "does not exclude in principle an examination of the applicant's complaints under Article 2, the text of which, read as a whole, demonstrates that it covers not only intentional killing but also situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life …. In fact, the Court has already examined complaints under this provision where the alleged victim had not died as a result of the impugned conduct. In this connection, it may be observed, on the one hand, that the Court has already recognised that there may be a positive obligation on the State under the first sentence of Article 2 § 1 to protect the life of the individual from third parties or from the risk of life-endangering illness …. On the other hand, the case-law establishes that it is only in exceptional circumstances that physical ill-treatment by State agents which does not result in death may disclose a violation of Article 2 of the Convention. It is correct that in the proceedings brought under the Convention the criminal responsibility of those concerned in the use of the impugned force is not in issue. Nonetheless, the degree and type of force used and the intention or aim behind the use of force may, among other factors, be relevant in assessing whether in a particular case the State agents' actions in inflicting injury short of death are such as to bring the facts within the scope of

the safeguard afforded by Article 2 of the Convention, having regard to the object and purpose pursued by that Article" (ECtHR, *Makaratzis v. Greece* [GC], no. 50385/99, judgment of 20 December 2004, §§ 49 - 50, ECHR 2004-XI).

167. In the *Evrim Öktem v. Turkey* judgment of 4 November 2008, concerning a serious injury caused by a stray bullet fired from a police officer's gun during an operation to break up a demonstration, the Court recalls that where state agents are implicated in the applicant's wounding, it has to determine whether the force used against him was potentially lethal and what kind of impact the conduct of the officers concerned had, not only on his physical integrity but also on the interest the right to life is intended to protect (see ECtHR, *Evrim Öktem v. Turkey*, no. 9207/03, judgment of 4 November 2008, § 40).

168. Similarly, in the *Trévalec v. Belgium* judgment of 14 June 2011, the Court considered that, "in the light of the importance of the protection afforded by Article 2, [it] must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents, but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (…). This also applies where no life was lost in the case where, as in the present, the Court found that the force used by law enforcement officials against a person put his or her life at risk." (see ECtHR, *Trévalec v. Belgium*, no. 30812/07, judgment of 14 June 2011, § 74).

169. The Panel notes that for Article 2 to be applicable, the wounding must occur in a life-threatening situation. In this respect, the Panel finds it established that rubber bullets, although non-lethal by their design, may present serious danger to life, for example when they are deployed at close range, fired directly towards the target or are obsolete. The Panel recalls that in this case it was uncontested that the bullets were beyond their expiry date, while the possibility that the bullets were shot at close range directly towards the victims was not ruled out.

170. Therefore, in the Panel's view, this case is clearly about a response potentially dangerous to life by the authorities during the crowd control operation aimed at the protection of public peace and order and which resulted in deaths and injuries. Therefore, it is the Panel's opinion that this situation concerning the serious injuries to Mr Zenel Zeneli and Mr Mustafë Nerjovaj is fully covered by Article 2 of the ECHR, which is applicable in the present case (see also ECtHR, *Sašo Gorgiev v. "The former Yugoslav Republic of Macedonia"*, no. 49382/06, judgment of 19 April 2012, § 38; ECtHR, *Kitanovski v. "The former Yugoslav Republic of Macedonia"*, no. 15191/12, judgment of 22 January 2015, § 57).

c. Alleged violation of the substantive obligation of Article 2

i. General Principles

171. The substantive obligations under Article 2 of the ECHR are similarly found in the parallel obligations under Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights.

172. As the UN Human Rights Committee (HRC) has recalled in its *General Comment No. 6*, "The right to life enunciated in article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (art. 4). However, the Committee has noted that quite often the information given concerning article 6 was limited to only one or other aspect of this right. It is a right which should not be interpreted narrowly" (HRC, General Comment No. 6: Article 6 (Right to life), 16th Session, adopted 30 April 1982, § 1, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), p. 176).

173. The HRC has stated that the deprivation of life by the authorities of the State is a matter of the utmost gravity. Accordingly, States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces (see ibid., at § 3; see also HRC, *Baboeram et al. v. Suriname*, Communication No. 146/1983 and 148-154/1983, 4 April 1985, § 14.3). The use of firearms by the police should be closely regulated in order to prevent violations of the right to life and personal security. It is of note that the Romanian police force has been specifically warned by the Human Rights Committee in this regard (see HRC, *Concluding observations on Romania* (1998), CCPR/C/79/Add. 97, at § 12).

174. As many times reiterated by the European Court, Article 2 ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, §§ 146-147, Series A no. 324; ECtHR, *Perevedentsevy v. Russia*, no. 39583/05, judgment of 24 April 2014, § 90).

175. The exceptions delineated in paragraph 2 of Article 2 indicate that it extends to, but is not concerned exclusively with, intentional killing. The text of Article 2, read as a whole, demonstrates that paragraph 2 does not primarily define instances where it is permitted intentionally to kill an individual, but describes the situations where it is permitted to "use force" which may result, as an unintended outcome, in the deprivation of life. The use of force, however, must be no more than "absolutely necessary" for the achievement of one of the purposes set out in sub-paragraphs (a), (b) or (c) (see ECtHR, *McCann and Others v. the United Kingdom*, cited in § 174 above, at § 148, and ECtHR, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, judgment of 24 May 2011, § 175).

176. In the view of the European Court, the term "absolutely necessary" is used to indicate that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is "necessary in a democratic society" under paragraphs 2 of Articles 8 to 11 of the Convention. In particular, the force used must be strictly proportionate to the achievement of the aims set out in sub-paragraphs 2 (a), (b) and (c) of Article 2.

177. Furthermore, it is accepted that deprivations of life must be subjected to the most careful scrutiny, particularly where deliberate lethal force is used. Having underlined that Article 2 "not only safeguards the right to life but sets out the circumstances when the deprivation of life may be justified", the Court has stressed that not only the actions of the agents of the State who actually administered the force but also all the surrounding

circumstances, "including such matters as the planning and control of the actions under examination", should be considered (see ECtHR [GC], *Giuliani and Gaggio v. Italy*, cited in § 175 above, at § 176, and ECtHR, *McCann and Others*, cited in § 174 above, at §§ 147 - 150).

178. When lethal force is used by the authorities (within a "policing operation"), in the European Court's view it is difficult to separate the State's negative obligations under the Convention from its positive obligations. Assessing such a situation, one should examine whether the police operation was planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force and human losses and whether all feasible precautions in the choice of means and methods of a security operation were taken (see e.g. ECtHR, *Finogenov and Others v. Russia*, nos. 18299/03 and 27311/03, judgment of 20 December 2011, § 208).

179. The European Court is especially vigilant in cases where violations of Article 2 of the Convention are alleged. When there have been criminal proceedings in the domestic courts concerning such allegations, it bears in mind that individual criminal liability is distinct from the State's responsibility under the Convention. In this regard, the Court has stated that its competence is confined to the latter only: "Responsibility under the Convention is based on its own provisions which are to be interpreted in the light of the object and purpose of the Convention, taking into account any relevant rules or principles of international law. The responsibility of a State under the Convention, arising for the acts of its organs, agents and servants, is not to be confused with the domestic legal issues of individual criminal responsibility under examination in the national criminal courts. The Court is not concerned with reaching any findings as to guilt or innocence in that sense" (see ECtHR, *Tanli v. Turkey*, no. 26129/95, judgment of 10 April 2001, § 111, ECHR 2001-III, and ECtHR [GC], *Giuliani and Gaggio v. Italy*, cited in § 175 above, at § 182). The Panel's competence is likewise limited to the assessment of UNMIK's responsibility under the above-mentioned human rights instruments.

ii. Compliance with the substantive obligation under Article 2

180. Turning to the particulars of this case, the Panel first notes that neither the complainants nor UNMIK contest the conclusions of the Special Prosecutor that the deployment of rubber bullets was not justified and that the deaths of Mr Mon Balaj and Mr Arben Xheladini, as well as the injuries to Mr Zenel Zeneli and Mr Mustafë Nerjovaj, were unnecessary and avoidable (see § 91 "A" above).

181. In particular, in his comments on the merits on the complaint concerning the alleged violation of Article 2 of the ECHR, the SRSG informed the Panel that he "took note" of the allegations and referred the Panel to the conclusions of the Special Prosecutor presented in his Reports on the matter, which UNMIK fully accepted, and which are to be considered in lieu of his response (see § 144 above).

182. Furthermore, in assessing evidence, the European Court of Human Rights has adopted the standard of proof of "beyond reasonable doubt"; however this standard should not be applied strictly. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of facts (ECtHR [GC], *Nachova and Others v. Bulgaria*,

judgment of 6 July 2005, § 147; ECtHR, *Finogenov and Others v. Russia*, cited in 178 above, at § 199; ECtHR [GC*], El-Masri v. "The former Yugoslav Republic of Macedonia"*, judgment of 13 December 2012, §§ 151 et seq.; ECtHR, *Al Nashiri v. Poland*, judgment of 24 July 2014, §§ 394 et seq.). The European Court of Human Rights has also noted the difficulties for applicants to obtain the necessary evidence in support of allegations in cases where the respondent State is in possession of the relevant documentation and fails to submit it. Where the applicant makes out a prima facie case, it is for the State to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the State and if it fails in its arguments, issues will arise under Article 2 (see ECtHR, *Toğcu v. Turkey*, no. 27601/95, judgment of 31 May 2005, § 95; ECtHR, *Musayev and Others v. Russia*, judgment of 26 July 2007, § 144).

183. In these circumstances, the Panel sees no grounds to doubt the Special Prosecutor's findings and conclusions. Moreover, in the absence of any indications of any irregularities or mistakes in his Reports, the Panel finds no reason to re-assess the collected evidence and the Special Prosecutor's conclusions.

184. In this case, the conclusions of the Special Prosecutor, not disputed by the parties and accepted by the Panel, confirm that none of the requirements of Article 2 related to legitimate deprivation of life seem to be satisfied in the situation on the ground in Prishtinë/Priština on 10 February 2007, when the victims were shot by UNMIK Police during the demonstration.

185. In accordance with Article 2 (2) of the ECHR, deprivation of life is only legitimate when it results from the use of force in situations when it was absolutely necessary, in order to defend a person from unlawful violence, effect an arrest or prevent escape of a detainee or quell a riot or insurrection. None of these is the situation in the case at hand.

186. When considering whether the actions of the State can be justified under Article 2 (2), the circumstances are subject to the most careful scrutiny, examining such details as the relevant legal or regulatory framework in place and the issue of whether the operation was planned and controlled so as to minimise the risk to life (see ECtHR, *Isayeva, Yusupova and Bazayeva v. Russia*, nos. 57947/00, 57948/00 and 57949/00, judgment of 24 February 2005, § 171; ECtHR, *McCann v. the United Kingdom*, cited in § 174 above, at § 194; ECtHR, *Bubbins v. the United Kingdom*, no. 50196/99, judgment of 17 March 2005, § 136; ECtHR, *Ergi v. Turkey*, no. 23818/94, judgment of 28 July 1998, § 79). The scrutiny should be stricter still where State Bodies use force to quell disorder which "could have been expected" (see ECtHR, *Güleç v. Turkey*, no. 21593/93, judgment of 27 July 1998, § 71, *Reports* 1998-IV). All feasible precautions to avoid or minimize incidental loss of civilian life must be taken (see ECtHR, *Ergi v. Turkey*, cited above).

187. The regulatory framework requires a number of safeguards, which should be in place in order to prevent excessive use of force and loss of life. In this case, a number of such safeguards seem to have existed in principle, such as training of police on anti-riot operations, especially on the standards for the use of force and the use of special equipment, issuing of UNMIK Police standard procedures and rules of engagement, the system of controls over the weapons and ammunition used by the police, advance planning, briefings etc. However, this obligation is not fulfilled simply by the

establishment of an adequate framework of safeguards, but only when it becomes a properly coordinated and functioning system (compare with HRAP, *Stojković*, no. 87/09, opinion of 14 December 2013, § 164).

188. It was not disputed in this particular case that UNMIK Police used excessive force to disperse the demonstration, failed to exercise proper control over ammunition and also failed to ensure that the officers were adequately trained and had received clear orders. Therefore, in the Panel's view, the totality of these failures amount to a violation of Article 2.

189. In particular, the Panel notes that there was no clear understanding as to who was in overall command of the operation and, for instance, many officers noted that the UNMIK Police Commissioner himself contributed to the confusion. Likewise, the lack of clear chain of command and insufficient communication means made it more difficult to have timely updates on the situation on the ground and to provide adequate guidance to the units engaging with the protesters.

190. In the view of all the aforementioned, the Panel finds that in the circumstances of this case the force used to disperse the demonstrators, which caused the deaths of Mr Mon Balaj and Mr Arben Xheladini and injuries to Mr Zenel Zeneli and Mr Mustafë Nerjovaj, was not absolutely necessary within the meaning of Article 2(2) of the ECHR. Therefore, the Panel finds that there was a violation of the substantive limb of Article 2 of the ECHR.

d. Alleged violation of the procedural obligation under Article 2

i. General Principles

191. The Panel recalls that the European Court on numerous occasions has reiterated that Article 2 contains a positive obligation of a procedural character. "The obligation to protect the right to life under this provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alia, agents of the State" (see ECtHR, *McCann and Others*, cited in § 174 above, at § 161; ECtHR, Kaya v. Turkey, no. 22729/93, judgment of 19 February 1998, § 105, Reports 1998-I; ECtHR [GC], *Giuliani and Gaggio v. Italy*, cited in § 175 above, at § 298 – 306; ECtHR, *Myhailova and Malinova v. Bulgaria*, no. 36613/08, judgment of 24 February 2015, § 60).

192. At the same time, the Court considers that not every investigation should necessarily be successful nor come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and, possibly, the punishment of those responsible (see ECtHR, *Mahmut Kaya v. Turkey*, no. 22535/93, judgment of 28 March 2000, § 124, ECHR 2000-III; see also ECtHR, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, judgment of 14 March 2002, § 71, ECHR 2002-II).

193. Setting out the standards of an effective investigation, the Court has stated that besides being independent, accessible to the victim's family, carried out with reasonable promptness and expedition, affording a sufficient element of public scrutiny of the investigation and its results, the investigation must also be effective in the sense that is capable of leading to a determination of whether the death was caused unlawfully and if so, to the identification and punishment of those responsible (see ECtHR [GC], *Varnava and Others v. Turkey*, nos. 16064/90 and Others, judgment of 18 September 2009, § 191; ECtHR [GC], *Giuliani and Gaggio v. Italy*, cited in § 175 above, at § 301; ECtHR [GC], *Jaloud v. the Netherlands*, no. 47708/08, judgment of 20 November 2014, § 200; see also ECtHR, *Palić v. Bosnia and Herzegovina*, no. 4704/04, judgment of 15 February 2011, § 63). This is not an obligation of results but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death and injuries or the identity of the person or persons responsible will risk falling short of this standard (see ECtHR, Ahmet *Özkan and Others v. Turkey*, no. 21689/93, judgment of 6 April 2004, § 312; ECHR *Isayeva v. Russia*, no. 57950/00, judgment of 24 February 2005, § 212; ECtHR, no. 52404/08, *Uzeyir Jafarov v. Azerbaijan*, judgment of 29 January 2015, § 46).

194. In particular, the investigation's conclusion must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of enquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible (see ECtHR, *Kolevi v. Bulgaria*, no. 1108/02, judgment of 5 November 2009, § 201). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of the investigation work (see ECtHR, *Velcea and Mazăre v. Romania*, no. 64301/01, judgment of 1 December 2009, § 105). At the same time, the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see ECtHR [GC], *El-Masri v. "The former Yugoslav Republic of Macedonia"*, cited in § 182 above, at § 183; ECtHR [GC], *Mocanu and Others v. Romania*, nos. 10865/09, 45886/07 and 32431/08, judgment of 17 September 2014, § 322). They must take all steps reasonably available to them to secure the evidence.

195. A requirement of promptness and reasonable expedition is implicit in this context. Even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see ECtHR, *Paul and Audrey Edwards v. the United Kingdom*, cited in § 192 above, at § 72; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 194 above, at § 323).

196. On the requirement of public scrutiny, the Court has further stated that there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next-of-kin must be

involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited in § 193 above, at §§ 311-314; ECtHR, *Isayeva v. Russia*, also cited in § 193 above, at §§ 211-214 and the cases cited therein; ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, judgment of 7 July 2011, no. 55721/07, § 167, ECHR 2011; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 194 above, at § 324).

197. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired thereby satisfying the right to truth not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri v. "The former Yugoslav Republic of Macedonia"*, cited in § 182 above, at § 191; ECtHR, *Al Nashiri v. Poland*, no. 28761/11, judgment of 24 July 2014, §§ 495-496). United Nations bodies also recognise the importance of the right to truth. In the words of the United Nations Secretary-General, "the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons … it also implies the right to know the fate and whereabouts of the victim" (see Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5). The Panel believes that the right to truth similarly applies to situation such as that in the present case.

198. Before assessing this particular case, the Panel recalls the jurisprudence of the European Court, that has already held that the general legal prohibition of arbitrary killing by agents of the State laid down in Article 2 would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of force by State authorities (see ECtHR, Güleç v. Turkey, cited in § 186 above, at § 77). The Court has also held that the procedural protection for the right to life means that actions of the State must be subjected to some form of independent and public scrutiny capable of determining whether the force used was or was not justified in a particular set of circumstances (*ibid*., § 78).

199. The Court has also ruled that the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (see, amongst other examples: ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, cited in § 196 above, at § 164; ECtHR, *Güleç v. Turkey*, cited in § 186 above, at § 81; ECtHR, *Isayeva v. Russia*, cited in § 193 above, at §§ 180 and 210; ECtHR; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 194 above, at § 319).

ii. Compliance with the procedural obligation under Article 2

200. In summary, the Panel recalls that in order to be effective, the investigative actions must be conducted promptly and expeditiously, by a body with the necessary level of independence, taking all reasonable steps and following obvious lines of enquiry to secure the evidence concerning the incident, including, *inter alia*, eye-witness testimony, forensic evidence etc. The investigation must also ensure a sufficient element of public scrutiny and be reasonably accessible to the injured parties. The investigation's conclusion must be based on thorough, objective and impartial analysis of all relevant elements. In addition, the investigation should be periodically reviewed, in order to ensure that all available information is considered (see §§ 193 - 196 above).

Promptness of the investigation

201. With regard to the promptness of the investigative action by the UNMIK Police and the Special Prosecutor, the Panel first reiterates that "it is crucial in cases of deaths in contentious situations for the investigation to be prompt. The passage of time will inevitably erode the amount and quality of the evidence available and the appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts, as well as drag out the ordeal for the members of the family" (ECtHR, *Paul and Audrey Edwards v. the United Kingdom*, cited in § 192 above, at § 86; ECtHR, *Perevedentsevy v. Russia*, cited in § 174 above, at § 108).

202. Turning to the circumstances of the case, the Panel notes that the investigation was launched immediately, the crime scene examination was completed in the hours after the demonstration and other relevant initiatives were undertaken on 10 February 2007 (see §§ 63-67 above). A number of important actions to locate and secure the evidence, including autopsies of the deceased victims, were conducted on 11 February 2007 (see §§ 68-73 above). Furthermore, the special investigative Task Force was established on 12 February 2007 and on 14 February 2007 the SRSG appointed the Special Prosecutor to lead this investigation (see §§ 74 and 78 above). The findings of the investigation were communicated in the two Special Prosecutor's Reports of 16 April 2007 and 29 June 2007 (see § 89 above). These Reports were based on the Interim Report on Enquiries (13 March 2007) and on the first (16 April 2007) and second Reports (11 June 2007) of the Task Force (see § 88 above).

203. Finally, the Panel observes that the interrogations of the FPU officers who participated in the operation, started some days after the events. The Polish officers were interrogated on 13 and 14 February, the Romanian officers on 15 and 16 February and the Ukrainian officers on 20 February 2007 (see §§ 80 - 81 and 83 above). In the Panel's view, such a lapse of time would have allowed the officers sufficient opportunity to collude with each other and to ensure that no information in relation to the deployment of rubber bullets was released to the investigators and so to distort the truth, had they been minded to do so. Moreover, no precautions seem to have been taken to prevent this from happening (see ECtHR [GC], *Jaloud v. the Netherlands*, cited in § 193 above, at § 207). Indeed, the FPU officers returned to their compounds and there appears to have been no restrictions placed on any of them either by their commanders or by UNMIK authorities.

204. The Panel finds that the actions of UNMIK police and the Special Prosecutor in relation to the opening of the investigation and the conduct of initial investigative actions were sufficiently prompt to satisfy the requirements of Article 2 of the ECHR. However, the delay for interrogating the FPU officers for which no explanation was provided by the Special Prosecutor in his Reports and the fact that appropriate steps were not taken to reduce the risk of such collusion amount, in the Panel's view, to a shortcoming in the adequacy of the investigation (see ECtHR [GC], *Jaloud v. the Netherlands*, cited in § 193 above, at § 208).

Independence of the investigation

205. Concerning the independence of the investigation, the complainants claim that the investigation conducted by the Task Force under the supervision of the Special

Prosecutor appointed by the SRSG was not independent. In addition, they allege lack of independence in that some Romanian UNMIK Police officers took part in the investigation.

206. In this respect, the Panel refers to the case law of the European Court that for an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence (see ECtHR, *Hugh Jordan v. the United Kingdom*, judgment of 4 May 2001, § 105; ECtHR [GC], *Giuliani and Gaggio v. Italy*, cited in § 175 above, at § 300; ECtHR [GC], *Ramsahai and Others v. the Netherlands*, no. 52391/99, judgment of 15 May 2007, § 325, ECHR 2007-II).

207. The fact that the investigation is to be performed "by an appropriate and impartial body" is also emphasised in the case-law of the UN HRC, especially in cases on disappearances (HRC, *Joaquín David Herrera Rubio et al. v. Colombia*, § 10.3, Communication No. 161/1983, U.N. Doc. CCPR/C/OP/2 (1990); HRC, *Basilio Laureano Atachahua v. Peru*, § 8.3, Communication No. 540/1993, U.N. Doc. CCPR/C/56/D/540/1993 (1996)).

208. The Panel notes that, in the present case, the investigation was initially conducted by the Prishtinë/Priština RIU, with the necessary support provided by the Prishtinë/Priština DPPO and the District Court. All three institutions opened cases, a local public prosecutor and a pre-trial judge were assigned and they performed a number of acts in accordance with the provisions of the PCPCK (see §§ 65-69).

209. On 11 February 2007, an UNMIK International Prosecutor requested UNMIK Police to provide all collected information in relation to this investigation to International Prosecutors, thus indicating that the investigation was being taken over by them. The appointment of Mr Robert L. Dean as Special Prosecutor by the SRSG was announced three days later, on 14 February 2007.

210. As mentioned above, the assignment of international prosecutors to a particular investigation is governed by UNMIK Regulation 2000/64 (see § 126 above). Accordingly, there should have been a recommendation of the UNMIK DOJ to the SRSG to have this case assigned to an International Prosecutor. Such a recommendation should have provided grounds for this move, explaining why the ongoing investigation was not considered to be reaching the sufficient level of "impartiality of the judiciary or the proper administration of justice" to warrant assignment of an International Prosecutor.

211. This might explain the complainants' claim that the investigation was not independent in light of the fact that it was conducted by the Task Force under the Special Prosecutor's supervision.

212. However, having examined the investigative file in its possession, the Panel finds that it could not discern any flaw in the investigation by the Special Prosecutor which would indicate a lack of independence (see, *mutatis mutandis*, ECtHR [GC], *Kleyn and Others v. the Netherlands*, judgment of 6 May 2003, § 190, ECHR 2003-VI). Therefore, without providing evidence of any serious failings in the investigation, the complainants cannot

reasonably claim to have objectively justified doubts about the independence of the Special Prosecutor (see, mutatis mutandis, ECtHR, *Morris v. the United Kingdom*, judgment of 26 February 2002, ECHR 2002-I). On the contrary, the complainants base part of their submissions on the Special Prosecutor's findings that UNMIK police failed to protect the lives of the victims.

213. The Panel finally notes that pursuant to Article 62 (2) of the PCPCK, the complainants, as the affected parties, had the right to resort to subsidiary prosecution. However, there is no indication that this was done.

214. An element of serious concern is the participation of Romanian UNMIK Police officers in the investigation. The complainants argue that the "links between the individuals who conducted the investigation and those being investigated compromises the independence of the investigation".

215. In this respect, the Panel notes that the investigative Task Force did not formally include any Romanian officers, nor did the Special Prosecutor mention their participation in his Reports (see § 75 above). The SRSG confirmed that no UNMIK Police officers of Romanian nationality were members of the Task Force but that "the investigators were required to use Romanian interpreters". However, the SRSG also argues that the "investigation by police officers of the same nationality as a suspect may not warrant, by itself, the conclusion that the investigation was partial" (see § 153 above).

216. The Panel has already observed that the file contains evidence of the Romanian UNMIK Police officers participating in the investigation. In particular, the Panel notes that, contrary to the SRSG's submission, a large number of interrogations of Polish, Romanian and Ukrainian SPU officers, carried out respectively on 13 and 14, 15 and 16, and 20 February 2007, including the interrogations of those Romanian SPU officers who shot the rubber bullets and also their commanders, were conducted by Romanian UNMIK Police investigators. However, it seems that the fact of their participation in the investigation was never made public.

217. The Panel can accept that there might have been reasons for the involvement of Romanian UNMIK Police Officers in the investigation. Indeed, in the immediate aftermath of the events of 10 February 2007, there was a need to interrogate Romanian UNMIK SPU officers who did not speak English. However, the interrogations only started three days later, and not even of the Romanian officers but of the Polish, where there was no reason to have Romanians among the investigative officers. Therefore, the situation did not offer sufficient guarantees to exclude any legitimate doubt concerning independence and impartiality of the investigation (see, mutatis mutandis, ECtHR [GC], *Kleyn and Others v. the Netherlands*, cited in § 212 above, at § 191).

218. The Panel notes that the Romanian SPU officers, who were first interrogated by Romanian UNMIK Police investigators, were later re-interrogated by two other UNMIK Police officers of different nationalities, with the assistance of sworn-in professional interpreters. However, it is accepted that the fair-trial guarantees must apply from the early stages of criminal proceedings, in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with them (see ECtHR, *Imbrioscia v. Switzerland*, no. 13972/88, judgment of 24 November 1993, § 36, Series A no. 275). In this case, in the Panel's view, the lack of independence and impartiality of the initial

interrogations, which could have seriously affected the evidence, cannot be compensated for by subsequent re-interrogations.

219. Finally, as to the inquiry carried out by the PIK, the Panel notes that the Chief Inspector of the PIK was invited to "undertake an independent overview of the investigations surrounding the deaths of persons during the disturbances of 10 February 2007 in Pristina" (see § 101 above). However, the Report on the PIK's investigation, dated 1 March 2007, only "ascertain[ed] and assess[ed] the performance of those senior KPS officers who were responsible for the conduct of KPS officers" who participated in the police operation of 10 February 2007 (see § 102 above).

220. In the same report, the PIK clarified that an additional report in relation to the results of "an independent overview of the UNMIK investigations" would be "published after the completion of the UNMIK investigation". However, the Panel does not have any information as to whether or not this additional report was ever released. Furthermore, the Panel recalls the information available in the file indicating that the PIK's report of 1 March 2007 was "co-drafted behind the scenes by OSCE [and] pre-cleared by [the Special Prosecutor]" (see § 105 above). In light of all of the above, the Panel considers that this inquiry cannot be considered an independent review of the investigation.

221. Taking into consideration the flaws mentioned above, the Panel finds that the investigation did not display sufficient guarantees of independence and impartiality, as prescribed by Article 2 of the ECHR.

Thoroughness of the investigation

222. The investigation established that Mr Mon Balaj was fatally wounded while running from the Hotel Iliria, after a small group of international police officers entered the lobby of that hotel and chased out the protesters who were hiding there. Considering the fact that Mr Mon Balaj was shot in the back of the head and in light of the statements from two eyewitnesses, it can be assumed that he was shot by one of these officers.

223. The investigation was also able to establish that the Romanian FPU platoon "Charlie" was the one positioned closest to the hotel. However, the investigators made no attempt to narrow down the list of suspects through identification of the officers who entered the hotel; apparently none of the interviewed police officers was asked any questions in this regard. The investigators were not able to interrogate the members of the French and Italian MSU under KFOR command, which also participated in the anti-riot operation (see § 86 above), as their command refused to cooperate. Only more than a month later, the investigators obtained formal "officers' reports" from the MSU participants.

224. The Panel further notes that there was an unsuccessful attempt to identify the Romanian SPU officers who shot at the victims. However, the eyewitnesses were shown photographs in ID card format, only depicting the officers' faces. The Panel finds no explanation as to why there was no live identification parade with the officers, who were all in Kosovo (see ECtHR, *Uzeyir Jafarov v. Azerbaijan*, cited in § 193 above, at § 50).

225. It is not disputed that in the absence of any identification of the suspects, the forensic evidence became especially important as a source of information. In the Panel's view, the bullets extracted from the victims' bodies could have been examined for "ricochet"

traces as SPU officers claimed they did not shoot directly at protesters. Also, a forensic chemical examination of the clothes of the victims, for the gunpowder residue on them, could have established the approximate distance from which they were shot. However, no such examinations were conducted.

226. The Panel notes that with respect to the deployment of the rubber bullets there are two possibilities: either that the shooters deployed the rubber bullets improperly or that they in fact did follow all the instructions on the use of force, but the bullets caused much more extensive injuries because they were beyond their expiry date. In this situation the most relevant question would be how those "lethal" rubber bullets ended up being loaded in the shotguns of Romanian SPU officers.

227. The Panel recalls that the Special Prosecutor acknowledged in his Report that the rubber ammunition was beyond its expiry date and should not have been used (see § 96 above). However, no inquiry was conducted as to how this occurred and no conclusion as to the possible individual criminal responsibility of those who, by their inaction, allowed this to happen was made.

228. Having regard to the above, the Panel considers that the investigation conducted in this case did not satisfy the requirement of thoroughness, as required by Article 2 of the ECHR.

229. Finally, the Panel recalls that the investigation into possible violations of administrative issuances and applicable standards is an inherent part of the procedural obligation in order to avoid impunity (see, *mutatis mutandis*, ECtHR, *Khashiyev and Akayeva v. Russia*, judgment of 24 February 2005; ECtHR, Okkali v. Turkey, judgment of 17 October 2006; ECtHR, *Ould Dah v. France*, decision of 17 March 2009). This element becomes especially important in the situation, when, as in present case, the investigation was not able to establish individual criminal responsibility.

230. In this regard, the European Court has decided that "an effective judicial system, as required by Article 2, may, and under certain circumstances must, include recourse to the criminal law. However, [and especially] if the infringement of the right to life or to personal integrity is not caused intentionally, the positive obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case … Disciplinary measures may also be envisaged" (see e.g. ECtHR, *Byrzykowski v. Poland*, no. 11562/05, judgment of 27 June 2006, § 105).

231. Thus, the Panel expresses its concern about the lack of information of any disciplinary proceedings against those responsible for the major administrative and organisational failures (see § 110 above) as identified by the Special Prosecutor.

232. In sum, the deficiencies and shortcomings described above raise serious reasons to doubt whether the investigation was capable of finding those responsible and bringing them to justice. Therefore, the Panel concludes that UNMIK failed to carry out an effective investigation into the killing of Mr Mon Balaj and Mr Arben Xhaladini and into the grave injuries to Mr Zenel Zeneli and Mr Mustafë Nerjovaj. Accordingly there has been a violation of Article 2, procedural limb, of the ECHR.

D. Alleged violation of Articles 6 and 13 of the ECHR

233. Insofar as the complainants complain under Article 6 and Article 13 of the ECHR that no remedies were available to them as the Special Prosecutor's Reports did not lead to the identification and prosecution of those responsible for the killing of Mr Mon Balaj and Mr Arben Xheladini and the wounding of Mr Zenel Zeneli and Mr Mustafë Nerjovaj, the Panel, in light of its findings concerning the complaint under Article 2, procedural aspect of the ECHR, finds it unnecessary to examine this part of the complaint separately.

234. Insofar as the complainants complain under Article 6 and 13 that they did not have any other means of redress with respect to the killing of Mr Mon Balaj and Mr Arben Xheladini and the wounding of Zenel Zeneli and Mustafë Nerjovaj, the Panel, having considered that the complainants did avail themselves of the UN Third Party Claims Process and in light of the outcome of this process, finds also unnecessary to examine this part of the complaint separately.

E. Alleged violation of Article 11 of the ECHR

235. The complainants complain that the UNMIK authorities' refusal to allow the demonstration of 10 February 2007 to proceed as planned and the violent dispersal of the demonstration, resulting in the deaths of two protesters and injuries to a number of others, including two of the complainants, breached their right to peaceful assembly, guaranteed by Article 11 of the ECHR.

236. Article 11 reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

1. The Parties' submissions

237. The complainants submit that, on 10 February 2007, the Vetëvendosje movement was seeking to uphold its right to peaceful assembly; that the demonstration was organised and planned "in the public eye several weeks before it took place". The complainants also stress that UNMIK was fully aware of the route that the demonstration would take, and that UNMIK had had sufficient time to prepare and put in place adequate peaceful response measures. According to the complainants, the demonstration was peaceful in character until UNMIK Police used tear gas and rubber bullets to disperse the demonstration. The complainants accept that, after that, some "rogue elements in the crowd responded by throwing objects back at the police".

238. In the complainants' view, "it cannot be sensibly suggested that UNMIK authorities did not interfere" with their right to freedom of assembly because:

- the demonstration was prevented from following its planned route;
- life-threatening force was used to disperse those who participated in the demonstration;
- one of the principal organisers of the demonstration was prosecuted for his role in the demonstration.

239. The complainants further claim that this interference was unjustified and disproportionate, because:

- the organisers of the demonstration had complied with the requirements laid down by the domestic law in terms of organising and preparing the demonstration;
- the demonstration had lawful aims and there were no special grounds, such as a major danger to property or danger to life or limb, which could justify the serious interference with the demonstration;
- there was no clear order to the police to use rubber bullets, therefore the use of this force to disperse the protestors was unlawful;
- the police did not attempt or even consider any "less serious interference with the demonstration", but rather "almost immediately stopped the demonstration and used life-threatening force against its participants".

240. Therefore, in the complainants' view, UNMIK authorities breached their rights under Article 11 of the ECHR through their actions on 10 February 2007 that "struck at the very heart of the concept of freedom of assembly".

241. On his part, the SRSG considers at the outset that the complainants make no specific allegations of a violation of this Article and that "the Panel's preliminary assessment does not specify any particulars of a potential violation". The SRSG however also states that "UNMIK did not place any restrictions on the right of members of Vetëvendosje to associate with others and protest on the day in question", and that "UNMIK Police were present to support Kosovo Police and protect buildings and provide crowd control."

2. The Panel's assessment

a. Applicability of Article 11 of the Convention

242. The right to freedom of assembly and association guaranteed under Article 11 of the ECHR constitutes an essential pillar for a pluralistic and tolerant society to exist, since it serves the purpose of allowing the expression of political, cultural and religious opinions, beliefs or practices, including the expression of minority and/or dissenting views (see ECtHR, *Çiloğlu and Others v. Turkey*, no. 7333/01, judgment of 6 March 2007, § 51).

243. The Panel reiterates that this Article only protects the right to "peaceful assembly"; it does not cover situations where the organisers and participants of any public gathering have violent intentions (see ECtHR, *G. v. Germany*, no. 13079/87, decision of the European Commission of Human Rights of 6 March 1989, *Decisions and Reports* 60, p. 256; ECtHR, *Christians against Racism and Fascism v. the United Kingdom*, Commission decision of 16 July 1998, no. 8440/78, *Decisions and Reports* 21, p. 138) or

where the assembly will very likely result in violence (see ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, judgment of 2 October 2001, § 77, ECHR 2001-IX).

244. However, as the right to freedom of peaceful assembly is one of the foundations of a democratic society, it should not be interpreted restrictively (see e.g. ECtHR, Éva Molnár v. Hungary, no. 10346/05, judgment of 7 October 2008). In this respect, the Panel recalls that the term "peaceful" should be construed to include conduct that may annoy or cause offence to persons (see ECtHR, *Fáber v. Hungary*, no. 40721/08, judgment of 24 July 2012, § 37), and even conduct that temporarily hinders, impedes or obstructs the activities of third parties (see *Guidelines on Freedom of Peaceful Assembly. Second edition*, prepared by the OSCE/ODIHR Panel of Experts on the Freedom of Assembly and by the Council of Europe's European Commission for Democracy through Law (Venice Commission), Warsaw/Strasbourg, OSCE/ODIHR, 2010, 1.3)[9].

245. The Panel also recalls the position of the European Court, which has stated that "an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration if the individual in question remains peaceful in his or her own intentions or behaviour (see ECtHR, *Ziliberberg v. Moldova*, no. 61821/00, decision of 4 May 2004, § 2; ECtHR, *Primov and Others v. Russia*, no. 17391/06, judgment of 12 June 2014, § 155). The Panel further recalls that "[T]he possibility of extremists with violent intentions, not members of the organising association, joining the demonstration cannot as such take away [the right under Article 11]. Even if there is a real risk of a public procession resulting in disorder by developments outside the control of those organising it, such procession does not for this reason alone fall outside the scope of Article 11 (1) of the Convention" (see *Christians against Racism and Fascism v. the United Kingdom*, cited in § 243 above, at p. 148).

246. Applying the above principles and having reviewed the file, the Panel considers that there is no indication that those involved in the organisation of the demonstration had from the very beginning planned to resort to any serious violence. Therefore, even if the UNMIK authorities had grounds for believing that violence and provocations against police might appear, in the absence of any evidence to the contrary, the demonstration organised by Vetëvendosje in the centre of Priština/Prishtinë, on 10 February 2007, should be considered a peaceful assembly. Thus, Article 11 is fully applicable to this case.

b. Existence of an interference with the complainants' rights

247. UNMIK maintains that it "did not place any restrictions on the right of members of Vetëvendosje to associate with others and protest on the day in question". The complainants disagree and state that their rights were interfered with, and that the interference was unjustifiable and clearly disproportionate.

248. First, the Panel recalls in this respect the SRSG's statement in relation to the substantive part of Article 2 of the ECHR, confirming that the Mission fully accepts and stands

[9] Available at OSCE website [electronic source]: http://www.osce.org/odihr/73405 (accessed on 25 February 2015).

behind the conclusions of the Special Prosecutor presented in his Reports on the matter (see § 144 above). The First Special Prosecutor's Report states in this regard:

> "During the course of the demonstration protestors threw objects at police and rushed the KPS units blocking Mother Theresa Street as it approached the Government building. Police discharged tear gas canisters and then advanced down Mother Teresa Street where further encounters took place. Injuries were sustained by police and protestors."

249. Further, the Panel notes that the complainants took part in demonstrations with a view to protesting against the Ahtisaari Plan, a proposal accepted by the Provisional Government of Kosovo and UNMIK, which was significant for the future of the province. Their aim was apparently to draw public attention to this document and encourage people to resist it. However, their meeting was forcibly ended by the police forces, after a small group of activists tried to break through the police line and approach the Government building, apparently because of a threat of a major public disorder.

250. In the Panel's view, the intention that UNMIK authorities had towards the public events organised by the Vetëvendosje movement, which materialized through interference with the demonstration and the force used by the police to disperse the participants, was designed to have a "chilling effect" and discourage the applicants from taking part in similar meetings (compare with ECtHR, *Bączkowski and Others v. Poland*, no. 1543/06, judgment of 3 May 2007, §§ 67 - 68).

251. Therefore, the Panel considers that the complainants were negatively affected by the police intervention and that there has undoubtedly been an interference with the exercise of their right to freedom of peaceful assembly.

c. Justification for the interference

252. The Panel reiterates that an interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" for the achievement of those aims.

253. In this connection, the Panel observes that the interference in the present case had a legal basis in the General Law on Public Peace and Order and the *lex specialis* Law on Public Assembly. Even assuming that the interference was "prescribed by law" within the meaning of Article 11 (2) of the Convention and that it pursued a legitimate aim, the Panel considers it necessary to examine whether it was in fact "necessary in a democratic society".

254. The Panel first recalls that the authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens (see ECtHR, *Oya Ataman v. Turkey*, no. 74552/01, judgment of 5 December 2006, § 35). The Panel also notes that the authorities must not only safeguard freedom of peaceful assembly, but must also refrain from applying unreasonable indirect restrictions upon that right. In this respect, the measures taken must be proportionate and constitute the least restrictive and burdensome means among those reasonably available to serve the same purpose.

255. The Panel observes that at the material time the applicable legislation did not require an official authorisation from the authorities for the holding of public demonstrations; but the organisers were obliged to notify the authorities (police and municipality) 48 hours prior to the event (Article 3, Law on Public Assembly). In this respect, the Panel recalls the position of the European Court, which confirms that it is important that associations and others organising demonstrations, as actors in the democratic process, respect the rules governing that process by complying with the regulations in force (see ECtHR, *Oya Ataman v. Turkey*, cited in § 254 above, § 38). In this particular case, no official notification was submitted. However, Vetëvendosje on several occasions publicly announced the demonstration; on 29 January 2007, a newsletter in that regard was also published by the movement.

256. It transpires that the demonstrators, including the complainants, wished to draw attention to a sensitive proposal related to the future of Kosovo and that their rally was initially peaceful. Nevertheless, it was likely that they would have caused disorder in front of the Government building in the centre of Prishtinë/Priština. Therefore, the police did not allow the demonstration to proceed to the Government building, blocking the road with the police cordon.

257. The complainants maintain that it was the police barriers preventing them from proceeding to the Government building that made the protesters resort to a physical confrontation with the police officers, while attempting to push their way through the cordon. The Panel does not accept this point of view.

258. In this respect, the Panel recalls that negotiation and/or mediation could be helpful to de-escalate conflict: "If a stand-off or other dispute arises during the course of an assembly, negotiation or mediated dialogue may be an appropriate means of trying to reach an acceptable resolution. Such dialogue – although not always successful – can serve as a preventive tool to help avoid the escalation of conflict, the imposition of arbitrary or unnecessary restrictions, or recourse to the use of force" (see the OSCE/ODIHR and Venice Commission Guidelines, cited in § 244 above, at 5.4). However, in this case, the Panel does not see any indication of an attempt by the Vetëvendosje's leadership to enter into a discussion with UNMIK Police.

259. Nevertheless, the Panel observes that there is no evidence to suggest that the demonstration in general, and particularly the deceased Mr Mon Balaj and Mr Arben Xhaladini and the injured Mr Zenel Zeneli and Mr Mustafë Nerjovaj, presented a serious danger to public order either before the attempted break through the police cordon, or after it. Although the demonstration gradually became more violent, there is no indication that they themselves were involved in any violence or that they had any violent intentions.

260. The Panel considers that, even if some danger arose, particularly when physical confrontation between the police officers and the demonstrators began, the police reaction should have been selective and gradual. It is generally accepted that, when confronted with an aggressive demonstration, the police action must target those specific demonstrators who act violently (see ECtHR, *Ziliberberg v. Moldova*, cited in § 245 above, and ECtHR, *Ezelin v. France*, judgment of 26 April 1991, Series A no. 202; see also the OSCE/ODIHR and Venice Commission Guidelines, cited in § 244 above, at §§ 25, 71, 111, 159, 164 and 167).

261. In addition, the police must only use more dangerous means of response when less dangerous ones have proved ineffective, following a scale of continuum of force that must be set out in the law and include verbal commands, use of hands and bodily force, water cannon, tear gas and other chemical agents, batons or other impact weapons, dogs, plastic or rubber bullets and other non-lethal projectiles, and only finally deadly force. In this regard, the Panel recalls that the European Court has consistently emphasized the necessity of first having recourse to other, less life-threatening means of force, such as tear gas or water cannons, before using life-threatening force (see ECtHR, *Simşek and Others v. Turkey*, nos. 35072/97 and 37194/97, judgment of 26 October 2005, § 108, see also the OSCE/ODIHR and Venice Commission Guidelines, cited in § 244 above, at 5.5 and §§ 171-172). Furthermore, especially dangerous means, such as gas grenades, must be used in strict accordance with the applicable technical instructions to avoid unnecessary harm, and in particular must not be fired "directly at humans".

262. This was not the situation on the ground on 10 February 2007, where some police officers did the opposite. On that day, immediately after a very small group of unarmed protesters (around 10 people) tried to push through the police cordon, the authorities intervened swiftly with considerable force in order to disperse the whole demonstration, thereby causing tensions to rise, followed by sporadic clashes. It appears to the Panel that the appropriate response to that particular act could have been pushing the protesters back, holding the police line and taking individualised action directly against this group of protesters.

263. On the contrary, gas grenades and rubber bullets were indiscriminately fired into the crowd, hitting and injuring the protestors without regard for their lives and safety; most of those protesters were not trying anything violent against the police. As a result, the participants in the demonstration became more agitated and responded by throwing hard objects at the police. Instead of attempting to calm the situation, the police reacted by deployment of more gas and rubber bullets. In addition, some participants in the demonstration were deliberately targeted with rubber bullets, even when they did not present any danger.

264. This situation claimed the lives of two demonstrators, and caused various, including serious and life-threatening, injuries to a large number of other protesters, including two of the complainants. As to the other party to the clashes, the injuries to the police officers were insignificant, as most of them were wearing "full CRC equipment" (see §§ 40 and 46 above). In the Panel's view, this supports the proposition that even though there was some violence, the level of danger to the officers was low.

265. The Panel also recalls a conclusion of the UNMIK Special Prosecutor investigating the matter, where he confirmed that "the deaths of Mon Balaj and Arben Xheladini were unnecessary and avoidable. There appears to be no justification for shooting to the head of Mon Balaj and to the head of Arben Xhelladini or to the chest of Zenel Zeneli." In the same Report, the Special Prosecutor also stated that "The goals of the operational plan were to protect the buildings and crowd control [but] [t]he infliction of the fatal and near fatal injuries took place at considerable distance from the government buildings to be protected."

266. In this respect the Panel reiterates the position of the European Court, which underlines that where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see ECtHR, *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02 et al., judgment of 18 December 2007, § 46; ECtHR, *Primov and Others v. Russia*, cited in § 245 above, at §§ 118 and 145).

267. Accordingly, the Panel considers that in the instant case the forceful intervention of the police officers was disproportionate and not necessary in a democratic society for the prevention of disorder within the meaning of the second paragraph of Article 11 of the European Convention.

268. In view of the above, the Panel finds that there has been a violation of Article 11 of the ECHR.

V. COSTS AND EXPENSES

269. The complainants have requested the Panel to decide on the issue of compensation and payment of costs and expenses (submission of 17 February 2009, §§ 291.3 and 291.4; submission of 3 July 2009, § 70.2). It was also indicated that "[t]he Applicants legal representatives will make more detailed submissions in relation to this aspect of the claim when appropriate" (submission of 17 February 2009, § 292). However, no such submission has been received by the Panel.

VI. CONCLUDING COMMENTS AND RECOMMENDATIONS

270. The Panel notes that failure to protect lives constitutes serious violation of human rights. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility for such protection.

271. It would normally be for UNMIK to take the appropriate measures in order to redress as far as possible the effects thereof. However, following the unilateral declaration of independence by the Kosovo PISG on 17 February 2008 and, subsequently, the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo. This fact limits its ability to provide full and effective reparation for the violations committed, as required by established principles of international human rights law.

272. Nevertheless, the Panel considers that this factual situation does not relieve UNMIK from its obligation to redress as far as possible the effects of the violations for which it is responsible.

273. In relation to finding a violation of the procedural limb of Article 2, the Panel notes that the persons who are directly or indirectly responsible for the deaths of Mr Mon Balaj and Mr Arben Xhaladini and causing serious bodily injuries to Mr Zenel Zeneli and Mr Mustafë Nerjovaj remain until now unidentified.

274. The Panel also considers the fact that the material damage caused to the complainants by the killing of Mr Mon Balaj and Mr Arben Xheladini and injuries caused to Mr Zenel Zeneli and Mr Mustafë Nerjovaj were adequately compensated by the UN through a third-party claims process (see § 8 above). Therefore, no additional compensation in this regard is required. However, compensation for moral damage in relation to the violation of their rights under Articles 2 and 11 of the ECHR is still needed.

With respect to the complainants and the case, the Panel considers appropriate that UNMIK:

- publicly acknowledges, within a reasonable time, responsibility with respect to UNMIK's excessive use of force resulting in the killing of Mr Mon Balaj and Mr Arben Xheladini and injuries to of Mr Zenel Zeneli and Mr Mustafë Nerjovaj and makes a public apology to the complainants in this regard;

- takes appropriate steps towards payment of adequate compensation to the complainants for the moral damage suffered due to UNMIK's violation of Articles 2 and 11 of the ECHR;

- in case the investigation into this matter is reopened, ensures that all necessary assistance is provided to any body with the authority to investigate this matter, in line with the Resolution of the UN General Assembly 66/93, adopted on 9 December 2011, on the *Criminal Accountability of the United Nations Officials and Experts on Mission*.

The Panel also considers appropriate that UNMIK:

- takes appropriate steps before competent bodies of the United Nations, including the UN Secretary-General, to ensure that in all instances of use of force in UN peacekeeping operations, all members of UN Civilian Police fully comply with international standards and that the general international human rights standards are upheld at all times by the United Nations, including when performing administrative and executive functions over a territory.

FOR THESE REASONS,

The Panel, unanimously,

1. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE SUBSTANTIVE OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS BY UNMIK WHICH RESULTED IN THE KILLING OF MR MON BALAJ AND MR ARBEN XHELADINI, AS WELL AS THE CAUSING OF INJURIES TO MR ZENEL ZENELI AND MR MUSTAFË NERJOVAJ;**

2. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE PROCEDURAL OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS WITH REGARD TO UNMIK'S OBLIGATION TO CARRY**

OUT AN EFFECTIVE INVESTIGATION INTO THE KILLING OF MR MON BALAJ AND MR ARBEN XHELADINI AND THE GRAVE INJURIES TO MR ZENEL ZENELI AND MR MUSTAFË NERJOVAJ;

3. **FINDS THAT THERE HAS BEEN A VIOLATION BY UNMIK WITH REGARD TO THE RIGHT TO PEACEFUL ASSEMBLY GUARANTEED BY ARTICLE 11 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**

4. **FINDS THAT THERE IS NO NEED TO EXAMINE SEPARATELY THE COMPLAINTS UNDER ARTICLES 3, 6 AND 13 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**

5. **RECOMMENDS THAT UNMIK:**

   a. **PUBLICLY ACKNOWLEDGES, INCLUDING THROUGH MEDIA, THE RESPONSIBILITY FOR ITS FAILURE TO PROTECT THE LIVES OF MR MON BALAJ AND MR ARBEN XHELADINI, AS WELL AS FOR CAUSING INJURIES TO MR ZENEL ZENELI AND MR MUSTAFË NERJOVAJ, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANTS IN THIS REGARD;**

   b. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION TO THE COMPLAINANTS FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLES 2 AND 11 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**

   c. **IN CASE THE INVESTIGATION INTO THIS MATTER IS REOPENED, ENSURES THAT ALL NECESSARY ASSISTANCE IS PROVIDED TO ANY BODY WITH THE AUTHORITY TO INVESTIGATE THIS MATTER, IN LINE WITH THE RESOLUTION OF THE UN GENERAL ASSEMBLY 66/93, ADOPTED ON 9 DECEMBER 2011, ON THE CRIMINAL ACCOUNTABILITY OF THE UNITED NATIONS OFFICIALS AND EXPERTS ON MISSIONS;**

   d. **TAKES APPROPRIATE STEPS AT THE UNITED NATIONS AS A GUARANTEE OF NON REPETITION;**

   e. **TAKES IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND TO INFORM THE COMPLAINANTS AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

Andrey Antonov
Executive Officer

Marek Nowicki
Presiding Member

Annex

ABBREVIATIONS AND ACRONYMS

Ahtisaari Plan - Comprehensive Proposal for the Kosovo Status Settlement, prepared by the UN Secretary-General's Special Envoy, Mr Martti Ahtisaari
BBP - Border and Boundary Police
CRC - Crowd and Riot Control
DOJ - Department of Justice
DPKO - UN Department of Peacekeeping Operations
ECHR - European Convention on Human Rights
ECtHR - European Court of Human Rights
FPU - Formed Police Unit
FRY - Federal Republic of Yugoslavia
GC - Grand Chamber of the ECtHR
HRAP - Human Rights Advisory Panel
HRC - UN Human Rights Committee
IPO - International Police Officer
KFOR - International Security Force (commonly known as Kosovo Force)
KPS - Kosovo Police Service
MHQ - Main Headquarters
MSD - Movement for Self-Determination
MSU - Multinational Support Unit
ODIHR - OSCE's Office of Democratic Institutions and Human Rights
OHCHR - UN Office of the High Commissioner for Human Rights
Ops Plan - Operations Plan called "Operational Order MSD Demonstration on 10th February 2007" prepared by UNMIK Police
OSCE - Organisation for Security and Cooperation in Europe
PCCK - Provisional Criminal Code of Kosovo
PCPCK - Provisional Criminal Procedure Code of Kosovo
PIK - Police Inspectorate of Kosovo
PISG - Provisional Institutions for Self-Governance
RIU - Regional Investigation Unit
ROSU - Regional Operations Support Unit
SPU - Special Police Unit
SAP - Socialist Autonomous Province
SRSG - Special Representative of the Secretary-General (of the United Nations)
UN - United Nations
UNMIK - United Nations Interim Administration Mission in Kosovo