The Human Rights Advisory Panel
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**OPINION**

**Date of adoption: 13 November 2015**

**Case No. 132/09**

**Zorka RISTIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 13 November 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 30 April 2009 and registered on the same date.

2. On 30 November 2009, the complaint was communicated to the Special Representative of the Secretary-General (SRSG)[1], for UNMIK's comments on the admissibility of the complaint. On 23 March 2010, the SRSG submitted UNMIK's response.

3. On 18 December 2009, the Panel requested from the European Union Rule of Law Mission in Kosovo (EULEX) information with regard to 43 complaints in relation to missing persons filed before the Panel, including the complaint of Mrs Zorka Ristić.

4. On 23 March 2010, EULEX provided a response to the Panel's request of 18 December 2009.

5. On 11 August 2011, the Panel declared the complaint partially admissible.

6. On 17 August 2011, the Panel forwarded its decision to the SRSG requesting UNMIK's comments on the merits of the complaint, as well as copies of the investigative files relevant to the case.

7. On 21 August 2015, the SRSG provided UNMIK's comments on the merits of the complaint, together with copies of the investigative files.

8. On 3 November 2015, the Panel requested UNMIK to confirm if the disclosure of files concerning the case could be considered final. On 4 November 2015, UNMIK provided its response.

## II. THE FACTS

### A. General background[2]

9. The events at issue took place in the territory of Kosovo shortly after the establishment in June 1999 of the United Nations Interim Administration Mission in Kosovo (UNMIK).

10. The armed conflict during 1998 and 1999 between the Serbian forces on one side and the Kosovo Liberation Army (KLA) and other Kosovo Albanian armed groups on the other is well documented. Following the failure of international efforts to resolve the conflict, on 23 March 1999, the Secretary General of the North Atlantic Treaty Organisation (NATO)

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[1] A list of abbreviations and acronyms contained in the text can be found in the attached Annex.

[2] The references drawn upon by the Panel in setting out this general background include: OSCE, "As Seen, as Told", Vol. 1 (October 1998 – June 1999) and Vol. II (14 June – 31 October 1999); quarterly reports of the UN Secretary-General on the United Nations Interim Administration in Kosovo; UNMIK Police Annual Reports (2000, 2001); Humanitarian Law Centre, "Abductions and Disappearances of non-Albanians in Kosovo" (2001); Humanitarian Law Centre, "Kosovo Memory Book" (htpp://www.kosovomemorybook.org); UNMIK Office on Missing Persons and Forensics, Activity Report 2002-2004; European Court of Human Rights, *Behrami and Behrami v. France* and *Saramati v. France, Germany and Norway*, nos. 71412/01 and 78166/01, decision of 2 May 2007; International Commission on Missing Persons, "The Situation in Kosovo: a Stock Taking" (2010); data issued by the United Nations High Commissioner for Refugees, (available at www.unhchr.org) and by the International Committee of the Red Cross (available at http://familylinks.icrc.org/kosovo/en).

announced the commencement of air strikes against the Federal Republic of Yugoslavia (FRY). The air strikes began on 24 March 1999 and ended on 8 June 1999 when the FRY agreed to withdraw its forces from Kosovo. On 9 June 1999, the International Security Force (KFOR), the FRY and the Republic of Serbia signed a "Military Technical Agreement" by which they agreed on FRY withdrawal from Kosovo and the presence of an international security force following an appropriate UN Security Council Resolution.

11. On 10 June 1999, the UN Security Council adopted Resolution 1244 (1999). Acting under Chapter VII of the UN Charter, the UN Security Council decided upon the deployment of international security and civil presences - KFOR and UNMIK respectively - in the territory of Kosovo. Pursuant to Security Council Resolution No. 1244 (1999), the UN was vested with full legislative and executive powers for the interim administration of Kosovo, including the administration of justice. KFOR was tasked with establishing "a secure environment in which refugees and displaced persons can return home in safety" and temporarily ensuring "public safety and order" until the international civil presence could take over responsibility for this task. UNMIK comprised four main components or pillars led by the United Nations (civil administration), United Nations High Commissioner for Refugees (humanitarian assistance, which was phased out in June 2000), the OSCE (institution building) and the EU (reconstruction and economic development). Each pillar was placed under the authority of the SRSG. UN Security Council Resolution 1244 (1999) mandated UNMIK to "promote and protect human rights" in Kosovo in accordance with internationally recognised human rights standards.

12. Estimates regarding the effect of the conflict on the displacement of the Kosovo Albanian population range from approximately 800,000 to 1.45 million. Following the adoption of Resolution 1244 (1999), the majority of Kosovo Albanians who had fled, or had been forcibly expelled from their houses by the Serbian forces during the conflict, returned to Kosovo.

13. Meanwhile, members of the non-Albanian community – mainly but not exclusively Serbs, Roma and Slavic Muslims – as well as Kosovo Albanians suspected of collaboration with the Serbian authorities, became the target of widespread attacks by Kosovo Albanian armed groups. Current estimates relating to the number of Kosovo Serbs displaced fall within the region of 200,000 to 210,000. Whereas most Kosovo Serbs and other non-Albanians fled to Serbia proper and the neighbouring countries, those remaining behind became victims of systematic killings, abductions, arbitrary detentions, sexual and gender based violence, beatings and harassment.

14. Although figures remain disputed, it is estimated that more than 15,000 deaths or disappearances occurred during and in the immediate aftermath of the Kosovo conflict (1998-2000). More than 3,000 ethnic Albanians, and about 800 Serbs, Roma and members of other minority communities went missing during this period. More than half of the missing persons had been located and their mortal remains identified by the end of 2010, while 1,653 are listed as still missing by the International Committee of the Red Cross (ICRC) as of May 2015.

15. As of July 1999, as part of the efforts to restore law enforcement in Kosovo within the framework of the rule of law, the SRSG urged UN member States to support the deployment within the civilian component of UNMIK of 4,718 international police personnel. UNMIK Police were tasked with advising KFOR on policing matters until they themselves had sufficient numbers to take full responsibility for law enforcement and to work towards the development of a Kosovo police service. By September 1999, approximately 1,100 international police officers had been deployed to UNMIK.

16. By December 2000, the deployment of UNMIK Police was almost complete with 4,400 personnel from 53 different countries, and UNMIK had assumed primacy in law enforcement responsibility in all regions of Kosovo except for Mitrovicë/Mitrovica. According to the 2000 Annual Report of UNMIK Police, 351 kidnappings, 675 murders and 115 rapes had been reported to them in the period between June 1999 and December 2000.

17. Due to the collapse of the administration of justice in Kosovo, UNMIK established in June 1999 an Emergency Justice System. This was composed of a limited number of local judges and prosecutors and was operational until a 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. As of October 2002, the local justice system comprised 341 local and 24 international judges and prosecutors. In January 2003, the UN Secretary-General reporting to the Security Council on the implementation of Resolution 1244 (1999) defined the police and justice system in Kosovo at that moment as being "well-functioning" and "sustainable".

18. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. On 5 November 2001, UNMIK signed the UNMIK-FRY Common Document, which among other things reiterated the commitment of solving the fate of missing persons from all communities and recognised that the exhumation and identification programme is only part of the activities related to missing persons. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a Memorandum of Understanding (MoU) between UNMIK and the Sarajevo-based International Commission of Missing Persons (ICMP), supplemented by a further agreement in 2003, the identification of mortal remains was carried out by the ICMP through DNA testing.

19. 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.

20. On the same date, UNMIK and EULEX signed a MoU on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK International Prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were supposed to be handed over to EULEX.

**B. Circumstances surrounding the abduction and killing of Mr Svetozar Ristić**

21. The complainant states that she, her husband Mr Svetozar Ristić, and her elderly parents were forcibly taken by American KFOR soldiers on the morning of 23 July 1999 from their home in Kamenicë/Kamenica village, Gjilan/Gnjilane municipality to the local post office, which had been organised as a detention centre. The complainant states that while in American KFOR custody, her, her mother and her blind and sickly father were mistreated, and prevented from even having water for many hours in forty degree temperatures. The complainant and her parents were eventually released that night, but her husband was taken to a prison in Gjilan/Gnjilane. The complainant states that on 24 July 1999, Mr Svetozar Ristić called her from the prison to let her know that he would be transferred the next day to the American base "Bondsteel" near Ferizaj/Uroševac. According to the complainant, her husband was kept there until 27 July 1999, when he was brought back to the prison in Gjilan/Gnjilane. He reportedly called the complainant that evening from the prison.

22. The complainant further states that on 29 July 1999 she learnt from Russian KFOR soldiers that Mr Svetozar Ristić and his brother Mr Svetomir Ristić had been abducted from the prison in Gjilan/Gnjilane. After this date, Mr Svetomir Ristić was not seen alive again.

23. The complainant informs the Panel that she reported the disappearance of her husband to the ICRC. She states that she also contacted KFOR and UNMIK, but did not receive any answer. She states that she later reported the disappearance to the Serbian Ministry of Internal Affairs, the Serbian Red Cross and the Association of Missing and Kidnapped Persons in Kosovo and Metohija.

24. The complainant adds that in 2000, Mr Svetozar Ristić's mortal remains were discovered in a container within the hospital compound in Gjilan/Gnjilane. In 2006, his mortal remains were identified by UNMIK OMPF and subsequently handed over to the family and buried in Niš, Serbia proper on 8 April 2006.

25. The name of Mr Svetozar Ristić is included in the list of missing persons, which was forwarded by the ICRC to UNMIK on 12 October 2001, for whom the ICRC had collected ante-mortem data in Serbia proper, between 1 July and 20 September 2001, as well as in the database compiled by the UNMIK OMPF[3]. The entry in relation to Mr Svetozar Ristić in the online database maintained by the ICMP[4] gives 29 August 1999 as his date of disappearance and reads in other relevant fields: "Sufficient Reference Samples Collected" and "ICMP has provided information on this missing person on 02-09-2006 to authorized institution."

**C. The investigation**

*Disclosure of relevant files*

26. On 21 August 2015, UNMIK provided to the Panel documents which were held previously by the UNMIK MPU and WCIU. On 4 November 2015, UNMIK confirmed to the Panel that all files in UNMIK's possession have been disclosed.

27. Concerning disclosure of information contained in the files, the Panel recalls that UNMIK has made available investigative files for the Panel's review under a pledge of confidentiality. In this regard, the Panel must clarify that although its assessment of the present case stems from a thorough examination of the available documentation, only limited information contained therein is disclosed. Hence a synopsis of relevant investigative steps taken by investigative authorities is provided in the paragraphs to follow.

*UNMIK MPU and OMPF file*

28. The first documents in the UNMIK MPU and OMPF file are two autopsy reports, the first dated 12 July 2000 and the second dated 9 December 2003, both affixed with the case no. ZZ 03/001B and cross-referenced with MPU file no. 2000-001616. Both autopsy reports give a summary of autopsies that had been performed on unidentified mortal remains, with the first autopsy report regarding mortal remains located at an "unknown origin grave site" and the second report regarding mortal remains located at "Gjilane cemetery grave site." Regarding the cause of death, the first report states "a blunt trauma to the head" while the second report states "unascertained".

29. The UNMIK OMPF file also contains an ICMP document entitled "DNA Report", dated 26 January 2006, which confirms the identity of Mr Svetozar Ristić. The file also contains an OMPF document dated 3 April 2006, entitled "Confirmation of Identity", affixed with the file no. ZZ03-001B and cross-referenced with MPU file no. 2000-001616, which states that the ICMP had provided results of matching bone and blood samples for Mr Svetozar Ristić through DNA analyses. Additionally, the report states that an examination of Mr Svetozar Ristić's mortal remains was carried out by an OMPF pathologist who had compared the ante-mortem and post-mortem information and that the results confirmed Mr Svetozar Ristić's identity. On 3 April 2006, the OMPF issued an Identification Certificate confirming that the

[3] The OMPF database is not open to public. The Panel accessed it with regard to this case on 3 November 2015.
[4] The ICMP database is available at: http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en (accessed on 3 November 2015).

mortal remains were those of Mr Svetozar Ristić, and the same day the OMPF issued a Death Certificate which lists his cause of death as "a blunt trauma to the head". On 7 April 2006, the mortal remains of Mr Svetozar Ristić were returned to his family and the file states that the MPU closed the case on the same day.

30. The file also contains an UNMIK MPU document entitled "Ante Mortem Investigation Report" initiated on 24 May 2004 and completed on 27 May 2004, affixed with the file no. 0425/INV/04 and cross-referenced with MPU file no. 2000-001619. The Report lists Mr Svetozar Ristić as the missing person and his son Mr D.R. as a witness; it also provides Mr D.R.'s phone number and address. Under the heading labelled "Summary of Information Received to Initiate the Investigation", the Report states "The Family Association Missing Persons Unit in Belgrade request for a meeting with MPU investigator. During the meeting the family members gave some information about [Mr Svetozar Ristić]." Under the heading labelled "Further Investigation", the Report states (original grammar preserved):

> "Interview of [Mr D.R.] in Belgrade on 24/05/04 at about 1600hrs…In the interview he revealed that on 23.07.19999 about 1000hrs [Mr Svetozar Ristić] and his wife Zorka together with her parents were taken in custody by American KFOR from the house in Kamenica. Everyone was handcuff. American KFOR searched their house and found some gold and DM 50,000. No documents were given to them after taken away their property. There was an Albanian male by the name of [R.] together with American KFOR while the searched was done. [Mrs Zorka Ristić] could recognize the Albanian man. Everyone was taken to the post office in Kamenica because it was a checkpoint for American KFOR. Later everyone was released but [Mr Svetozar Ristić] was taken into custody in Bondsteel. [Mr Svetozar Ristić] was kept in Bondsteel for 4 days and later [Mr Svetozar Ristić] was sent to prison in Gijlan. After 5th day at about 2200hrs [Mr Svetozar Ristić] was released but [he] was unable to go back home because it was late night. So [Mr Svetozar Ristić] stayed in the Prison until the next day. The next day [Mr Svetozar Ristić] went to his cousin [Mr Do.R.'s] house. The next day [Mr Svetozar Ristić] went to his cousin's shop and stayed there. The following day [Mr Svetozar Ristić's] younger brother [Mr Vitomir Ristić] went to Gijlan and looked for him. After a short conversation [Mr Svetozar Ristić] and [Mr Vitomir Ristić] went to the bus station in Gijlan. Since then there was no news about them. The witness got some information that [Mr Svetozar Ristić and Mr Vitomir Ristić] were towards Kamenica and they were taken away. According to the witness ICRC in Belgrade knew something about [Mr Svetozar Ristić's abduction]…The witness suspected that [Mr Svetozar Ristić and Mr Vitomir Ristić] were taken away by the UCK while [they] were on the way to Kamenica.

31. Under the heading labelled "Availability of Ante Mortem Data for Identification", the Report states "[i]n order to ascertain the availability of ante mortem data in respect of [Mr Svetozar Ristić], the database was checked and it was found that the MPU registration file number 2000-001619 corresponds to the MPU file [for Mr Vitomir Ristić] who went missing together with [Mr Svetozar Ristić] on the same date and place. As per the details in the file, the individual has been missing since 23 July 1999. Under the heading labelled "Conclusion", the Report states "[d]uring my investigation witness [Mr D.R.] was

interviewed and he mentioned [the potential suspect R.]. No information leading to a grave was obtained but in revenge the name of the suspect was mentioned and in my opinion this case should be handed over to CCIU for War Crime Investigation…This case should remain open pending with the MPU."

*UNMIK WCIU File*

32. The investigative file also contains a document labelled "War Crimes Investigation Unit-Case Report", dated 13 July 2005, affixed with the MPU file no. 2005-00072. Under the heading labelled "Summary", the Report states "[a]n unidentified group of armed persons near the bus station in Gnjilane kidnapped [Mr Svetozar Ristić]. Prior to that, on 23 July 1999 the named had been arrested by KFOR members and taken to the BONDSTEEL military base. After six days, i.e. on the critical day, when he disappeared, he was released. On the critical day [Mr Svetozar Ristić] was taken in an unknown direction." The Report also contains a section entitled "DOJ Criminal Division Comments" which contains a handwritten section dated 21 November 2007 that states "[t]his case should still be studied if it is under the War Crimes [authority] for the reason that the suspects are unknown and the date of incident doesn't fall on DOJ classification A-C of War Crimes and it needs for the approval of Chief of WCU."

33. The investigative file contains a copy of an undated request from the complainant to the International Public Prosecutor of the District Public Prosecutor's Office (DPPO) in Gjilan/Gnjilane, to file criminal charges against unidentified perpetrators concerning the abduction of Mr Svetozar Ristić. The document contains the handwritten file MPU file no. 2005/00072 written on the top. It is not clear from the file whether this request was filed with the DPPO in Gjilan/Gnjilane.

**D. EULEX clarification**

34. As mentioned above (§ 3), on 18 December 2009 the Panel requested EULEX to provide additional information in relation to 43 complaints before the Panel. In their response (see § 4 above), dated 23 March 2010, EULEX officers explained that they had searched the available sources, including the list of cases "found in July 2009 in the PTC building Archive room (not officially handed over from UNMIK to EULEX because no more "active" but dismissed, terminated or closed)."

35. In the same response, EULEX added that the search was not exhaustive, as the available sources did not provide information on the following:
    - cases, criminal reports or information that UNMIK Police never transferred to UNMIK prosecutors, or otherwise never reached UNMIK prosecutors;
    - cases which were handled by UNMIK Police and were then transferred to local police or prosecutors, without reporting to UNMIK or EULEX prosecutors;
    - many cases which were handled by UNMIK prosecutors prior to creation of a centralised case registry by UNMIK DOJ, in 2003.

36. However, the search in the EULEX files provided information on only two cases listed in the Panel's request of 18 December 2009. No files or other information in relation to the other 41 cases, including the case of Mr Svetozar Ristić, was found. EULEX were not able to confirm if the cases for which the files were not found "were ever investigated by UNMIK Police and/or Prosecutors."

## III. THE COMPLAINT

37. The complainant complains about UNMIK's alleged failure to properly investigate the abduction and killing of Mr Svetozar Ristić. In this regard, the Panel deems that the complainant invokes a violation of the procedural limb of Article 2 of the European Convention on Human Rights (ECHR).

## IV. THE LAW

### Alleged violation of the procedural obligation under Article 2 of the ECHR

### 1. The scope of the Panel's review

38. Before turning to the examination of the merits of the complaint, the Panel needs to clarify the scope of its review.

39. In determining whether it considers that there has been a violation of Article 2 (procedural limb) the Panel is mindful of the existing case-law, notably that of the European Court of Human Rights. However, the Panel is also aware that the complaints before it differ in some significant ways from those brought before that Court. First, the respondent is not a State but an interim international territorial administration mandated to exercise temporary responsibilities in Kosovo. No suspicion attaches to UNMIK with respect to the substantive obligations under Article 2 of the ECHR. Second, as in a limited number of cases before the European Court, those suspected of being responsible for the alleged killings and/or abductions are in all cases before the Panel non-state actors, mostly but not exclusively connected to the conflict. These are factors for the Panel to take into consideration as it assesses the procedural positive obligations of an intergovernmental organisation with respect to acts committed by third parties in a territory over which it has temporary legislative, executive and judicial control.

40. The Panel notes that with the adoption of the UNMIK Regulation No. 1999/1 on 25 July 1999 UNMIK undertook an obligation to observe internationally recognised human rights standards in exercising its functions. This undertaking was detailed in UNMIK Regulation No. 1999/24 of 12 December 1999, by which UNMIK assumed obligations under the following human rights instruments: the Universal Declaration of Human Rights, the European Convention on Human Rights and Protocols thereto, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial

Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child.

41. The Panel also notes that Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel provides that the Panel "shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of (their) human rights". It follows that only acts or omissions attributable to UNMIK fall within the jurisdiction *ratione personae* of the Panel. In this respect, it should be noted, as stated above, that as of 9 December 2008, UNMIK no longer exercises executive authority over the Kosovo judiciary and law enforcement machinery. Therefore UNMIK bears no responsibility for any violation of human rights allegedly committed by those bodies. Insofar as the complainants complain about acts that occurred after that date, they fall outside the jurisdiction *ratione personae* of the Panel.

42. Likewise, the Panel emphasises that, as far as its jurisdiction *ratione materiae* is concerned, as follows from Section 1.2 of UNMIK Regulation No. 2006/12, it can only examine complaints relating to an alleged violation of human rights. This means that it can only review acts or omissions complained of for their compatibility with the international human rights instruments referred to above (see § 40). In the particular case of killings and disappearances in life-threatening circumstances, it is not the Panel's role to replace the competent authorities in the investigation of the case. Its task is limited to examining the effectiveness of the criminal investigation into such killings and disappearances, in the light of the procedural obligations flowing from Article 2 of the ECHR.

43. The Panel further notes that Section 2 of UNMIK Regulation No. 2006/12 provides that the Panel shall have jurisdiction over complaints relating to alleged violations of human rights "that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights". It follows that events that took place before 23 April 2005 generally fall outside the jurisdiction *ratione temporis* of the Panel. However, to the extent that such events gave rise to a continuing situation, the Panel has jurisdiction to examine complaints relating to that situation (see European Court of Human Rights (ECtHR), Grand Chamber [GC], *Varnava and Others v. Turkey*, nos. 16064/90 and others, judgment of 18 September 2009, §§ 147-149; ECtHR, *Cyprus v. Turkey* [GC] no. 25781/94, judgment of 10 May 2001, § 136, ECHR 2001-IV).

**2. The Parties' submissions**

44. The complainant in substance alleges a violation concerning the lack of an adequate criminal investigation into the abduction and killing of Mr Svetozar Ristić.

45. In his comments on the merits of the complaint, the SRSG does not dispute that UNMIK had a responsibility to conduct an effective investigation into the disappearance and killing of Mr Svetozar Ristić, in line with its general obligation to secure the effective implementation of the domestic laws which protect the right to life, given to it by UN Security Council Resolution 1244 (1999) (see § 11 above) and further defined by UNMIK Regulation No.

1999/1 *On the Authority of the Interim Administration in Kosovo* and subsequently, UNMIK Regulation 1999/24 *On the Law Applicable in Kosovo,* and Article 2 of the ECHR.

46. Accepting that Mr Svetozar Ristić disappeared in life-threatening circumstances, the SRSG does not dispute UNMIK's responsibility to conduct an investigation into his case under Article 2 of the ECHR, procedural part. He argues that, in general, when considering whether UNMIK has satisfied its procedural obligations under Article 2 of the ECHR, the Panel must take into consideration the special circumstances in Kosovo at the time.

47. The SRSG considers that the obligation is two-fold, including an obligation to determine through investigation the fate and/or whereabouts of the dead person; and an obligation to conduct an investigation capable of determining whether the death was caused unlawfully and leading to the identification and punishment of those responsible for the disappearance and/or death of the missing person.

48. The SRSG adds that in June 1999, "the security situation in post-conflict Kosovo remained tense. KFOR was still in the process of reaching sufficient strength to maintain public safety and law and order and there were a number of serious criminal incidents targeting Kosovo-Serbs, including abductions and killings."

49. The SRSG argues that in its case-law on Article 2, the European Court of Human Rights has stated that due consideration shall be given to the difficulties inherent to post-conflict situations and the problems limiting the ability of investigating authorities when conducting investigations in such cases. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court in the case *Palić v. Bosnia and Herzegovina,* stating at paragraph 70:

> "The Court takes into account the complex situation in Bosnia and Herzegovina, notably in the first ten years following the war. In such a post-conflict situation, what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and context. In this connection, the Court notes that more than 100,000 people were killed, almost 30,000 people went missing and more than two million people were displaced during the war in Bosnia and Herzegovina. Inevitably choices had to be made in terms of post-war priorities and resources [...]."

50. In the view of the SRSG, in the aftermath of the Kosovo conflict, UNMIK was faced with a similar situation as the one in Bosnia. Many of those persons who were unaccounted for were abducted, killed and buried in unmarked graves inside or outside of Kosovo, which made very difficult locating and recovering their mortal remains.

51. In June 2002, UNMIK created the OMPF with the mandate to determine the fate of the missing; however its work was faced with many challenges at the beginning of its operations, due to the work previously done mostly by actors independent from UNMIK. In particular, the SRSG states that the collection of evidence of war crimes began with the arrival of NATO in 1999 with independent teams from several countries operating under the loose

coordination of the ICTY. A lack of standard operating procedures or centralisation led to problems with the evidence gathered in this phase. In 2000, ICTY launched a large, centralised forensic operation, based at the Rahovec/Orahovac mortuary, with standard operating procedures for all forensic teams except the British one, which operated independently out of Prishtinë/Priština. The SRSG states that, in the effort to demonstrate that crimes were systematic and widespread, the ICTY teams conducted autopsies on as many bodies as possible, carrying out little or no identification work; moreover, unidentified bodies exhumed in 1999 were reburied in locations still unknown to the OMPF. After the ICTY closed their operation in 2000, the UNMIK Police MPU continued small-scale investigations on missing persons "ex-officio, without any broader prosecutorial strategy". As a consequence, a large amount of unstructured information was collected.

52. The SRSG states that locating and identifying the missing in the context described above is a very difficult and time-consuming task. He further states that the number of missing persons recovered and identified by OMPF is "testament to the vigour of its work between 2002-2008" and that "[m]ore bodies have been located in burial sites and more identification and returns to family members are taking place, often based on information contained in OMPF files". The SRSG continues that "the process for establishing a system capable of dealing effectively with disappearances and other serious violations of international humanitarian law has been an incremental one" in Kosovo, as reflected in the *Palić* case referred to above. The SRSG further notes that this process was "reliant on a number of actors other than UNMIK, for example the International Commission on Missing Persons (ICMP), the ICRC, and local missing persons' organisations."

53. The SRSG further argues that fundamental to conducting effective investigations is a professional, well-trained and well-resourced police force and that such a force did not exist in Kosovo in the aftermath of the conflict. In the policing vacuum following the end of the conflict, UNMIK had to build a new Kosovo Police Service from scratch, a long and challenging task which, according to the SRSG, is still in progress. The SRSG also states that UNMIK Police faced numerous challenges in exercising law enforcement functions gradually transferred to it by KFOR in 1999-2000. In this regard, he refers to the UNMIK Police Annual Report of 2000 describing the situation as follows:

> "UNMIK Police had to deal with the aftermath of war, with dead bodies and the looted and burned houses. Ethnic violence flared through illegal evictions, forcible takeovers of properties, the burning of houses and physical violence against communities all over Kosovo. Tempers and tensions were running high amongst all ethnic groups, exacerbated by reports of missing and dead persons. It became imperative for UNMIK Police to establish order and to quickly construct a framework to register and investigate crimes.
>
> All of this had to be done, with limited physical and human resources. Being the first executive mission in the history of the UN, the concept, planning and implementation was being developed on the ground. With 20 different contributory nationalities at the beginning, it was very challenging task for police

managers to establish common practices for optimum results in a high-risk environment."

54. The SRSG states that UNMIK Police WCIU included both international UNMIK Police and local Kosovo Police Service officers and focused on the criminal investigation of cases of missing persons. Their responsibility included locating illicit graves, identifying the perpetrators and collecting evidence relating to crimes. UNMIK international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and cultures, with limited support from the still developing Kosovo Police.

55. The SRSG states that UNMIK international police officers had to adjust to conducting investigations in a foreign territory and cultures, with limited support from the still developing Kosovo Police. He further states that these investigators were often faced with situations where individuals holding relevant knowledge on the whereabouts and fate of missing persons did not want to disclose this information. According to the SRSG, "[s]uch constraints inhibited the ability of an institution such as UNMIK Police to conduct all investigations in a manner, when viewed systemically, that may be demonstrated, or at least expected, in other States with more established institutions and without the surge in cases of this nature associated with a post-conflict situation."

56. The SRSG notes that "[a]t the early stages of the UNMIK Mission, the location and identification of missing persons in post-conflict Kosovo was a difficult exercise often accomplished through traditional means. Until the year 2002, UNMIK had no capacity to conduct DNA tests on deceased bodies in order to identify the mortal remains." Even after 2002, the SRSG notes that "the OMPF did not have its own capacities to conduct DNA tests as it had to arrange for such professional tests with the ICMP based in Bosnia-Herzegovina." Notwithstanding, "[w]ith the establishment of the OMPF and the role it played in the identification of dead bodies, the number of missing persons recovered and identified by OMPF between the years 2002 and 2008 confirms the facts that UNMIK's efficiency in dealing with the challenging situation of war crimes, abductions and unlawful killings gradually improved with time."

57. With regard to this particular case, the SRSG asserts that "[t]he investigation into the disappearance of Mr. Ristić was opened by UNMIK Police under MPU File No. 2000-001616. The report further states that on 24 May 2004, the MPU interviewed Mr. Ristić's son [Mr D.R.]." The SRSG quotes from this interview the Report ( see § 30 above) and then states "[b]ased on the information provided by [Mr D.R.], the MPU Ante Mortem Investigation Report listed the case on the disappearance of Mr. Ristić as pending and forwarded it to the CCIU for further investigation."

58. The SRSG argues that "[f]aced with the likelihood that Mr. Ristić's whereabouts were still unknown and he could be dead, the investigation into his disappearance also involved attempts to make a positive identification from exhumed bodies. In this regard, the OMPF conducted an autopsy on a body at Gjilane cemetery grave site (case no. ZZ03/001B) as per autopsy report dated 9 December 2003 and amended on 5 April 2006...Following the positive identification of Mr. Ristic's remains by the ICMP DNA test, the OMPF, on 3 April

2006, issued a Confirmation of Identity, Identification Certificate and Death Certificate for Mr. Ristić." The SRSG explains that with the handover of Mr. Ristic's mortal remains, clothing and personal artifacts to his family on 7 April 2006, "the obligation to determine the fate of the missing person was met."

59. The SRSG also argues that "[t]he investigative activities of the UNMIK Police must be assessed by the Panel against the broader context of UNMIK's criminal investigations in post-conflict Kosovo... Within this difficult framework, it appears that UNMIK sought to comply with its obligation to determine, through an appropriate investigation, the circumstances surrounding the disappearance and death of Mr. Ristić. There was a lack of information concerning the case as there were no eye witnesses and no reliable evidence concerning the identity of the possible perpetrators. UNMIK asserts that the lack of any eyewitnesses and physical evidence all posed a real hurdle to the conclusion of any investigation by UNMIK. UNMIK has noted in other missing persons' cases that, without witnesses or physical evidence being discovered, police investigations inevitably stall because of lack of evidence."

60. He also argues that "it is evident that UNMIK Police and the OMPF did conduct an investigation in accordance with the procedural requirements of Article 2 of [the] ECHR, aimed at locating Mr. Ristić and bringing the perpetrators to justice. UNMIK notes that, although Mr. Ristić's mortal remains were eventually found and positively identified, the identity of possible perpetrator(s) had not been established by the time the file was transferred to EULEX."

61. The SRSG finally notes that "nothing in the available files indicates that UNMIK Police or the OMPF had any investigative leads through which they could concretely follow up and successfully arrest and prosecute the perpetrators...UNMIK therefore reserves its right to make further comments on the allegations related to the inadequacy of investigations to HRAP, should additional information be brought to its attention."

62. The SRSG concludes that there has been no violation of Article 2 of the ECHR "since all available steps were undertaken but hampered by a complete lack of evidence or leads concerning the death of Mr. Ristić."

### 3. The Panel's assessment

63. The Panel considers that the complainant invokes a violation of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the European Convention on Human Rights (ECHR) in that UNMIK did not conduct an effective investigation into the abduction and killing of Mr Svetozar Ristić.

*a) Submission of relevant files*

64. At the Panel's request, on 21 August 2015, the SRSG provided copies of the documents related to the investigations subject of the present complaint, which UNMIK was able to recover The SRSG suggests that there is the possibility that additional information may exist;

however on 4 November 2015, UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 8 above).

65. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative files. However, the Panel notes that UNMIK has not provided any explanation as to why the documentation may be incomplete, nor with respect to which parts.

66. The Panel notes that Section 15 of UNMIK Regulation No. 2006/12 states that the Panel may request the submission from UNMIK of any documents and that the SRSG shall cooperate with the Panel and provide the necessary assistance including, in particular, in the release of documents and information relevant to the complaint. The Panel in this regard refers to the case-law of the European Court of Human Rights that inferences shall be drawn from the conduct of the respondent party during the proceedings, including from its failure "to submit information in their hands without a satisfactory explanation" (see ECtHR, *Çelikbilek v. Turkey*, no. 27693/95, judgment of 31 May 2005, § 56).

67. Furthermore, the Panel notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigations to their handing over, is crucial to the continuation of such investigations and failure to do so could thus raise *per se* issues under Article 2 (see HRAP, *Bulatović*, no. 166/09, opinion of 13 November 2014, § 62).

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

*b) General principles concerning the obligation to conduct an effective investigation under Article 2*

69. First, the Panel considers that the limited content of the investigative files, in particular in the light of the SRSG's argument that additional information may exist (see § 61 above), raises issues of the burden of proof. In this regard, the Panel refers to the approach of the European Court on Human Rights as well as of the United Nations Human Rights Committee (HRC) on the matter. The general rule is that it is for the party who asserts a proposition of fact to prove it, but that this is not a rigid rule.

70. Following this general rule, at the admissibility stage an applicant must present facts, which are supportive of the allegations of the State's responsibility, that is, to establish a *prima facie* case against the authorities (see, *mutatis mutandis*, ECtHR, *Artico v. Italy*, no. 6694/74, judgment of 13 May 1980, §§ 29-30, Series A no. 37; ECtHR, *Toğcu v. Turkey*, no. 27601/95, judgment of 31 May 2005, § 95). However, the European Court further holds that "... where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities ... The burden of proof may then be regarded as resting on the authorities to provide a satisfactory and convincing explanation" (ECtHR [GC], *Varnava and Others v Turkey*, cited above in § 43, at §§ 183-184).

71. The European Court also states that "... it is for the Government either 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, failing which an issue under Article 2 and/or Article 3 of the Convention will arise" (ECtHR, *Akkum and Others v. Turkey*, no. 21894/93, judgment of 24 June 2005, § 211, ECHR 2005-II (extracts)). The Court adds that "... [i]f they [the authorities] then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn" (ECtHR, *Varnava and Others v Turkey* [GC], cited above in § 43, at § 184; see also, HRC, *Benaniza v Algeria,* Views of 26 July 2010, § 9.4, CCPR/C/99/D/1588/2007; HRC, *Bashasha v. Libyan Arab Jamahiriya*, Views of 20 October 2010, § 7.2, CCPR/C/100/D/1776/2008).

72. The Panel understands that the international jurisprudence has developed in a context where the Government in question may be involved in the substantive allegations, which is not the case with UNMIK. The Panel nevertheless considers that since the documentation was under the exclusive control of UNMIK authorities, at least until the handover to EULEX, the principle that "strong inferences" may be drawn from lack of documentation is applicable.

73. Second, the Panel notes that the positive obligation to investigate disappearances is widely accepted in international human rights law since at least the case of the Inter-American Court of Human Rights *Velásquez-Rodríguez* (see Inter-American Court of Human Rights (IACtHR), *Velásquez-Rodríguez v. Honduras*, judgment of 29 July 1988, Series C No. 4). The Panel also notes that the positive obligation to investigate has been stated by the HRC as stemming from Article 6 (right to life), Article 7 (prohibition of cruel and inhuman treatment) and Article 9 (right to liberty and security of person), read in conjunction with Articles 2 (3) (right to an effective remedy) of the ICCPR (see United Nations Human Rights Committee (HRC), General Comment No. 6, 30 April 1982, § 4; HRC, General Comment No. 31, 26 May 2004, §§ 8 and 18, CCPR/C/21/Rev.1/Add. 13; see also, among others, HRC, *Mohamed El Awani, v. Libyan Arab Jamahiriya*, communication no. 1295/2004, views of 11 July 2007, CCPR/C/90/D/1295/2004). The obligation to investigate disappearances and killings is also asserted in the UN Declaration on the Protection of all Persons from Enforced Disappearances (UN Document A/Res/47/133, 18 December 1992), and further detailed in UN guidelines such as the UN Manual on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions (1991) and the "Guidelines for the Conduct of United Nations Inquiries into Allegations of Massacres" (1995). The importance of the obligation is confirmed by the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in 2006, which entered into force on 23 December 2010.

74. In order to address the complainant's allegations, the Panel refers to the well-established case-law of the European Court of Human Rights on the procedural obligation under Article 2 of the ECHR. The Court has held that "[The] obligation to protect the right to life under Article 2, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] 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 (see, *mutatis mutandis*, ECtHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, § 161, Series A no. 324; and ECtHR, *Kaya v. Turkey*, judgment of 19 February 1998, § 86, Reports 1998-I; see also ECtHR, *Jasinskis v. Latvia*, no. 45744/08, judgment of 21 December 2010, § 71). The duty to conduct such an investigation arises in all cases of killing and other suspicious death, whether the perpetrators were private persons or State agents or are unknown (see ECtHR, *Kolevi v. Bulgaria*, no. 1108/02, judgment of 5 November 2009, § 191).

75. The European Court has also stated that the procedural obligation to provide some form of effective official investigation exists also when an individual has gone missing in life-threatening circumstances and is not confined to cases where it is apparent that the disappearance was caused by an agent of the State (see ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 43 above, at § 136, ECtHR [GC], *Mocanu and Others v. Romania*, nos 10865/09, 45886/07 and 32431/08, judgment of 17 September 2014, § 317).

76. The authorities must act of their own motion once the matter has come to their attention, and they cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedure (see ECtHR, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, judgment of 6 April 2004, § 310, see also ECtHR, *Isayeva v. Russia*, no. 57950/00, judgment of 24 February 2005, § 210, ECtHR [GC], *Mocanu and Others v. Romania*, cited above, § 321).

77. 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 and affording a sufficient element of public scrutiny of the investigation or its results, the investigation must also be effective in the sense that it 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, cited in § 43 above, at § 191; 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 or the person or persons responsible will risk falling foul of this standard (see ECtHR, *Ahmet Özkan and Others v. Turkey*, cited above, at § 312, and ECtHR, *Isayeva v. Russia*, cited above, at § 212).

78. 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 ability to establish the circumstances of the case and the identity of those responsible (see ECtHR, *Kolevi v. Bulgaria*, cited in § 74, at § 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 investigative 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"*, no. 39630/09, judgment of 13 December 2012, § 183; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 75 above, at § 322).

79. 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*, no. 46477/99, judgment of 14 March 2002, § 72, ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 75 above, at § 323).

80. Specifically with regard to persons disappeared and later found dead, the Court has stated that the procedures of exhuming and identifying mortal remains do not exhaust the obligation under Article 2 of the ECHR. The Court holds that "the procedural obligation arising from a disappearance will generally remain as long as the whereabouts and fate of the person are unaccounted for, and it is thus of a continuing nature" (ECtHR, *Palić v. Bosnia and Herzegovina*, cited in § 77 above, § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 43 above, § 148, *Aslakhanova and Others v. Russia*, nos. 2944/06 and others, judgment of 18 December 2012, § 122). However, the Court also stresses that this procedural obligation "does not come to an end even on discovery of the body .... This only casts light on one aspect of the fate of the missing person and the obligation to account for the disappearance and probable killing, as well as to identify and prosecute any perpetrator of unlawful acts in that connection, will generally remain" (ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited above, § 145). While the location and the subsequent identification of the mortal remains of the victim may in themselves be significant achievements, the procedural obligation under Article 2 continues to exist (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, § 64).

81. 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 § 76 above, at §§ 311-314; ECtHR, *Isayeva v. Russia*, cited in § 76 above, §§ 211-214 and the cases cited therein; ECtHR [GC], *Al-Skeini and Others v. United Kingdom*, no. 55721/07, judgment of 7 July 2011, § 167, ECHR 2011, ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 75 above, at § 324).

82. 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, *El-Masri v. "the former Yugoslav*

*Republic of Macedonia"*, cited in § 78 above, § 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" (Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5; see also HRC, *Schedko and Bondarenko v. Belarus*, Communication no. 886/1999, views of 3 April 2003, § 10.2, CCPR/C/77/D/886/1999; HRC, *Mariam, Philippe, Auguste and Thomas Sankara v. Burkina Faso*, Communication no. 1159/2003, views of 8 March 2006, § 10.2, CCPR/C/86/D/1159/2003; UN Human Rights Council, Resolutions 9/11 and 12/12: Right to the Truth, 24 September 2008 and 12 October 2009; Preamble and Article 24 (2) of the Convention for the Protection of All People from Enforced Disappearance, cited in § 106 above; see also Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Ben Emmerson, *Framework Principles for securing the accountability of public officials for gross and systematic human rights violations committed in the context of State counter-terrorist initiatives*, UN Document A/HRC/22/52, 1 March 2013, § 23-26).

*c) Applicability of Article 2 to the Kosovo context*

83. The Panel is conscious that Mr Svetozar Ristić was abducted shortly after the deployment of UNMIK in Kosovo, when crime, violence and insecurity were rife.

84. On his part, the SRSG does not contest that UNMIK had a duty to investigate the present case under ECHR Article 2. However, according to the SRSG, the unique circumstances pertaining to the Kosovo context and to UNMIK's deployment in the first phase of its mission shall be taken into account when assessing whether this investigation is in compliance with Article 2 of the ECHR. In substance, the SRSG argues that it is not possible to apply to UNMIK the same standards applicable to a State in a normal situation.

85. The Panel considers that this raises two main questions: first, whether the standards of Article 2 continue to apply in situation of conflict or generalised violence and, second, whether such standards shall be considered fully applicable to UNMIK.

86. As regards the applicability of Article 2 to UNMIK, the Panel recalls that with the adoption of the UNMIK Regulation No. 1999/1 on 25 July 1999 UNMIK undertook an obligation to observe internationally recognised human rights standards in exercising its functions. This undertaking was detailed in UNMIK Regulation No. 1999/24 of 12 December 1999, by which UNMIK assumed obligations under certain international human rights instruments, including the ECHR. In this respect, the Panel has already found that it is true that UNMIK's interim character and related difficulties must be duly taken into account with regard to a number of situations, but under no circumstances could these elements be taken as a justification for diminishing standards of respect for human rights, which were duly incorporated into UNMIK's mandate (see HRAP, *Milogorić and Others,* nos. 38/08 and others, opinion of 24 March 2011, § 44; *Berisha and Others,* nos. 27/08 and others, opinion

of 23 February 2011, § 25; *Lalić and Others*, nos. 09/08 and others, opinion of 9 June 2012, § 22).

87. Concerning the applicability of Article 2 to situations of conflict or generalised violence, the Panel recalls that the European Court of Human Rights has established the applicability of Article 2 to post-conflict situations, including in countries of the former Yugoslavia (see, among other examples, ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 77 above, and ECtHR, *Jularić v. Croatia*, no. 20106/06, judgment of 20 January 2011). The Court has further held that that the procedural obligation under Article 2 continues to apply in "difficult security conditions, including in a context of armed conflict" (see ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, cited in § 81 above, at § 164; see also ECtHR, *Güleç v. Turkey*, judgment of 27 July 1998, § 81, Reports 1998-IV; ECtHR, *Ergi v. Turkey*, judgment of 28 July 1998, §§ 79 and 82, Reports 1998-IV; ECtHR, *Ahmet Özkan and Others v. Turkey*, cited in § 76 above, at §§ 85-90, 309-320 and 326-330; ECtHR, *Isayeva v. Russia*, cited in § 76 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).

88. The Court has acknowledged that "where the death to be investigated under Article 2 occurs in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and [...] concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed" (see ECtHR [GC], *Al-Skeini and Others v. the United Kingdom,* cited above, at §164; ECtHR, *Bazorkina v. Russia*, no. 69481/01, judgment of 27 July 2006, § 121). Nonetheless, the Court has held 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 many other examples, ECtHR, *Kaya v. Turkey*, cited in § 74 above, at §§ 86-92; ECtHR, *Ergi v Turkey,* cited above, at §§ 82-85; ECtHR [GC], *Tanrıkulu v. Turkey*, no. 23763/94, judgment of 8 July 1999, §§ 101-110, ECHR 1999-IV; ECtHR, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, judgment of 24 February 2005, §§ 156-166; ECtHR, *Isayeva v. Russia*, cited above, at §§ 215-224; ECtHR, *Musayev and Others v. Russia*, nos. 57941/00 and others, judgment of 26 July 2007, §§ 158-165).

89. Similarly, the HRC has held that the right to life, including its procedural guarantees, shall be considered as the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (see HRC, General Comment No. 6, cited in § 69 above, at § 1; HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, communication no. 1447/2006, views of 22 April 2009, § 11.2, CCPR/C/95/D/1447/2006). Further, the HRC has stated the applicability of Article 2 (3), 6 and 7 of the ICCPR with specific reference to UNMIK's obligation to conduct proper investigations on disappearances and abductions in Kosovo (see HRC, Concluding Observations of the Human Rights Committee: Kosovo (Serbia), 14 August 2006, §§ 12-13, CCPR/C/UNK/CO/1).

90. The Panel appreciates the difficulties encountered by UNMIK during the first phase of its deployment. The Panel notes that the appropriate importance attached to the issue of missing persons in Kosovo meant that UNMIK had to take into account both the humanitarian and

criminal dimensions of the situation. In particular, the Panel considers that the importance attached to the criminal investigations and the difficulties in Kosovo that limited the abilities of investigating authorities to conduct such investigations, as described by the SRSG, made it crucial that UNMIK establish from the outset an environment conducive to the performance of meaningful investigations. This would involve putting in place a system that would include such elements as the allocation of overall responsibility for the supervision and monitoring of progress in investigations, provision for the regular review of the status of investigations, and a process for the proper handover of cases between different officers or units of UNMIK Police. Such a system should also take account of the protection needs of victims and witnesses (see, *mutatis mutandis*, ECtHR, *R.R. and Others v. Hungary*, no. 19400/11, judgment of 4 December 2012, §§ 28-32), as well as to consider the special vulnerability of displaced persons in post-conflict situations (see ECtHR [GC], *Sargsyan v. Azerbaijan,* no. 40167/06, decision of 14 December 2011, § 145; and ECtHR [GC], *Chiragov and Others v. Armenia*, no. 13216/05, decision of 14 December 2011, § 146). While understanding that the deployment and the organisation of the police and justice apparatus occurred gradually, the Panel deems that this process was completed in 2003 when the police and justice system in Kosovo was described as being "well-functioning" and "sustainable" by the UN Secretary-General (see § 17 above).

91. The Panel further notes that its task is not to review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the particular circumstances of a situation subject of a complaint before it (see ECtHR, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, § 53, Series A no. 145-B). The Panel thus agrees with the SRSG that the nature and degree of scrutiny to determine whether the effectiveness of the investigation satisfies the minimum threshold depends on the circumstances of the particular case. For these reasons, the Panel considers that it will establish with regard to each case if all reasonable steps were taken to conduct an effective investigation as prescribed by Article 2, having regard to the realities of the investigative work in Kosovo.

92. Lastly, in response to the SRSG's objection that Article 2 must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, either in the context of policing activities or that of priorities and resources, the Panel takes into account that the European Court has established that what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and contexts (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 77 above, at § 70; ECtHR, *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).

93. The Panel puts on record that it has already analysed the effectiveness under Article 2 of numerous investigations conducted by UNMIK with respect to killings, abductions and disappearances related to the conflict in Kosovo. The Panel has identified common shortcomings in these investigations such as delays in the registration of the cases and lengthy periods of inactivity from the outset and in the period within the Panel's jurisdiction; failure to take basic investigative steps and follow obvious lines of enquiry; lack of coordination among different units of UNMIK Police; lack of regular and meaningful reviews of cases; lack of prosecutorial oversight and failure to provide family members with

minimum necessary information on the status of the investigation (compare with ECtHR, *Aslakhanova and Others v. Russia*, cited in § 80 above, § 123). The Panel also records systemic failures such as a deficient system of setting investigative priorities and lack of proper handover. In the great majority of these cases the Panel has found that the investigations were not effective in the meaning of Article 2 and that UNMIK's failures, which persisted throughout the period of the Panel's jurisdiction, could not be justified in the light of difficulties encountered by UNMIK at the beginning of its mission.

*d) Compliance with Article 2 in the present case*

94. Turning to the particulars of this case, the Panel first addresses the issue of the burden of proof. At the admissibility stage, the Panel was satisfied that the complainant's allegations were not groundless, thus it accepted the existence of a *prima facie* case: that Mr Svetozar Ristić disappeared in life threatening circumstances and that UNMIK had become aware of his disappearance at the latest sometime in 2000.

95. Accordingly, applying the principles discussed above (see §§ 69-72), the Panel considers that the burden of proof has shifted to the respondent, so that it is for UNMIK to present the Panel with evidence of an adequate investigation as a defense against the allegations put forward by the complainant and accepted by the Panel as admissible. UNMIK has not discharged its obligation in this regard, as it has neither presented a complete investigative file, nor has it in a "satisfactory and convincing" way explained its failure to do so. Accordingly, the Panel will draw inferences from this situation.

96. The Panel infers from the limited content of the investigative file that one of the following situations occurred: no investigation was carried out; UNMIK deliberately opted not to present the file to the Panel, despite its obligation to cooperate with the Panel and to provide it with the necessary assistance, including the release of documents relevant to the complaints under Section 15 of UNMIK Regulation No. 2006/12 (cited in § 66 above); the file was not properly handed over to EULEX; or UNMIK failed to retrieve the file from the current custodian.

97. The Panel has already noted above that it has no reason to doubt UNMIK's good faith in seeking to provide the investigative file for the Panel's review. The Panel also notes that the SRSG in essence opines that, from the dearth of investigative information available regarding the investigation into the abduction and killing of Mr Svetozar Ristić, it is not possible to establish whether some apparent gaps in the investigation are attributable to a failure of the relevant offices to pass on and record the information, or rather to a mere lack of investigation. For this reason, he is not in a position to provide comments as to whether UNMIK conducted an effective investigation in this case.

98. However, the Panel considers that whichever of these potential explanations is applicable, it indicates a failure, which is directly attributable to UNMIK, either when it was exercising its executive functions, or in its current capacity.

99. The purpose of this investigation was to discover the truth about the circumstances of Mr Svetozar Ristić's abduction and killing, establish his fate and to find the perpetrators and bring them before a competent court established by law. To fulfil these purposes, those conducting the investigation were required to seek, collect and preserve all necessary evidence leading to identification of the perpetrator(s).

100. The Panel recalls that in order to be effective, the investigative actions must be conducted promptly and expeditiously, with the authorities 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 victim's family. 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. As the obligation to investigate is not an obligation of results but of means, in assessing the investigation's effectiveness, the circumstances of the particular case and the practical realities of the investigative work must be taken into consideration (see §§ 77 - 78 above).

101. The Panel notes in this regard that according to the 2000 Annual Report of UNMIK Police, the complete executive policing powers in the Gjilan/Gnjilane region, including criminal investigations, were under the full control of UNMIK Police from December 1999. Therefore, it was UNMIK's responsibility to ensure, *first*, that the investigation is conducted expeditiously and efficiently; *second*, that all relevant investigative material is properly handed over to the authority assuming responsibility for the investigation (EULEX); and *third*, that the investigative files could be traced and retrieved, should a need for that arise at any later stage.

102. The Panel notes that there were obvious shortcomings in the conduct of the investigation from its commencement. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 43 above), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the case at that date (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 80 above, at § 70). The period under review ends on 9 December 2008, with EULEX taking over responsibility in the area of administration of justice (see § 19 above).

103. With regard to the first part of the procedural obligation, that is, discovering the whereabouts or determining the fate of Mr Svetozar Ristić, the Panel notes that, as established above, UNMIK became aware of the abduction of Mr Svetozar Ristić at the latest sometime in 2000, as the UNMIK MPU had opened a missing person file for him by then (see § 30 above).

104. The Panel notes that the investigative file shows that the only action taken by the UNMIK Police at that time was the opening of the case under MPU case file no. 2000-001616. The Panel notes with concern that the file in its possession does not contain a Victim Identification Form with ante-mortem data for Mr Svetozar Ristić, which is normally present

in investigative files related to missing persons. Nevertheless, the Panel is satisfied that sufficient samples for DNA identification were collected by the ICRC, which is also confirmed by the ICMP online database (see §§ 25 and 29 above). In this respect, the Panel considers that the collection of the DNA samples is of itself an essential action that secures the necessary material for any future comparative examination and possible identification of located mortal remains (see HRAP, *Pejčinović*, no. 89/09, opinion of 13 March 2014, § 161).

105. The Panel considers that the responsibility to establish the fate of a missing person under the procedural obligation of Article 2 of the ECHR ends with the positive identification of mortal remains. To that end, the Panel considers that the two autopsy reports undertaken by UNMIK OMPF in 2000 and 2003 respectively, as well as the other OMPF documents in the file from 2006, specifically the "Confirmation of Identity", the Identification Certificate and Death Certificate, evidence that UNMIK located and positively identified the mortal remains of Mr Svetozar Ristić and returned them to his family on 7 April 2006.

106. The Panel has already stated on a number of occasions that location and identification of the mortal remains of a missing person is in itself an important achievement. Nevertheless, the Panel has also stressed that the procedural obligation under Article 2 did not come to an end with the discovery of Mr Svetozar Ristić's mortal remains, especially as they showed signs of a violent death (see e.g. HRAP, *Grujić*, no. 287/09, opinion of 19 March 2015, § 96).

107. Now the Panel will turn to the investigation carried out by UNMIK Police with the aim of identifying the perpetrator(s) and bringing them to justice, that is, the second element of the procedural obligation under Article 2 of the ECHR.

108. The Panel notes that by the end of 2000 UNMIK Police already possessed some information, including a very basic description of the disappearance and killing of Mr Svetozar Ristić, as the UNMIK MPU had opened a missing person file for him by that time (see § 30 above). However, there is no indication in the file that the UNMIK Police contacted, or made any effort to contact, the complainant or any other family member until the WCIU investigators finally interviewed Mr Svetozar Ristić's son, Mr D.R., in Belgrade on 24 May 2004 (see § 30 above).

109. The Panel also notes that although the investigative files show that the WCIU completed an "Ante Mortem Investigation Report" in May 2004 (see § 30 above), it does not appear that even then any basic investigative steps were taken by the UNMIK Police, such as visiting Mr Svetozar Ristić's home in Kamenicë/Kamenica village, Gjilan/Gnjilane municipality to try and better understand the circumstances of his disappearance, identifying and interviewing individuals residing at or located in the area near his cousin Mr Do. R's house and/or shop where he was apparently last seen alive ("canvassing" the area), attempting to locate and interview the possible witness Mr Do. R. or the suspect R., or interviewing those representatives from American KFOR who were involved in his arrest and detention and who may have had further information about the entire incident. The Panel notes that the documents do not show any further information about Mr Svetozar Ristić's abduction and killing than what UNMIK MPU probably knew about the case in 2000; except for

interviewing Mr D.R. (see § 30 above), it does not appear that the WCIU had undertaken any investigative action since that time.

110. Furthermore, the Panel notes with concern that although this "Ante Mortem Investigation Report" highlighted the links between the investigation into the abduction and killing of Mr Svetozar Ristić with another MPU investigation into the abduction of his brother, Mr Vitomir Ristić (see § 31 above), there is no evidence presented in the file that UNMIK Police used this information to investigate for other leads, including interviewing Mr Vitomir Ristić's family members or other relevant persons.

111. The Panel likewise recalls the SRSG's argument that "[t]here was a lack of information concerning the case as there were no eye witnesses and no reliable evidence concerning the identity of the possible perpetrators" (see § 59 above). In this regard, the Panel must note that almost any investigation at its initial stage lacks a significant amount of information. Finding the necessary information to fill those gaps is the main goal of any investigative activity. Therefore, a lack of information should not be used as an argument to defend inaction by the investigative authorities. Thus, it appears that, instead of actively searching for information and leads, UNMIK Police simply waited for further information to appear by itself. In this situation it may have led to the loss of potential evidence (see e.g. HRAP, *P.S.*, no. 48/09, opinion of 31 October 2013, § 107; HRAP, *Stevanović*, no. 289/09, opinion of 14 December 2014, § 111).

112. Coming to the period within its jurisdiction, starting from 23 April 2005, the Panel notes that after that critical date the failure to conduct the necessary investigative actions, including those at the initial stage, persisted. Accordingly, inadequacies existing up until that date were not addressed. Thus, in accordance with the continuing obligation to investigate (see § 80 above), the assessment of the whole investigation is brought within the period of the Panel's jurisdiction.

113. In addition, the Panel considers that, as the mortal remains of Mr Svetozar Ristić had not yet been identified and those responsible for the crime had not been identified, UNMIK was obliged to use the means at its disposal to regularly review the progress of the investigation to ensure that nothing had been overlooked and any new evidence had been considered, as well as to inform his relatives regarding any possible new leads of enquiry.

114. The Panel notes that the investigative file contains a document labelled "War Crimes Investigation Unit-Case Report", dated 13 July 2005 (see § 32 above), which indicates that the WCIU performed a review of the case. However, the Panel notes that the information in this Report only re-states the same basic information that had been known to UNMIK Police since at least 24 May 2004 as it had already been included in the UNMIK MPU document entitled "Ante Mortem Investigation Report" (see § 30 above).

115. Likewise, the Panel also notes that although the investigative file contains evidence of another review undertaken by UNMIK personnel in 2007 (see § 32 above), there is no evidence in the file that this review lead to any further investigative activity or other

meaningful action undertaken by UNMIK Police during the period within the Panel's temporal jurisdiction.

116. The apparent lack of an adequate reaction from UNMIK Police, and of any adequate action at later stages, may have suggested to the perpetrators that the authorities were either not able, or not willing to investigate such criminal acts. Moreover, the lack of a more assertive approach with obtaining a response from KFOR suggests to the community that the latter is above the law. Such an attitude of the authorities towards the gravest crimes in any society, and especially in post-conflict circumstances, inevitably creates a culture of impunity among the criminals and can only lead to a worsening of the situation. The problems that UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently.

117. The Panel notes with concern the SRSG's assertion that "[t]here was a lack of information concerning the case as there were no eye witnesses to the events surrounding his disappearance and UNMIK investigators were unable to find anyone able to give evidence concerning the identity of the possible perpetrators. UNMIK asserts that any lack of physical evidence also posed a real hurdle to the conclusion of any investigation by UNMIK" (see § 58 above).

118. The file indicates no involvement of a public prosecutor in this investigation during the period under UNMIK's administration. As the Panel has mentioned previously, a proper prosecutorial review of the investigative file might have resulted in additional recommendations, so that the case would not have remained inactive for years to come (see HRAP, *Stojković*, no. 87/09, opinion of 14 December 2013, § 160). Thus, in the Panel's view, the review of the investigative files was far from being adequate.

119. The Panel is also aware that the duty to investigate is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, such an investigation must be undertaken in a serious manner and not be a mere formality. The Panel considers that, having regard to all the circumstances of the particular case, not all reasonable steps were taken by UNMIK towards identifying the perpetrators and bringing them to justice. In this sense the Panel considers that the investigation was not adequate and did not comply with the requirements of promptness, expedition and effectiveness (see § 79 above), as required by Article 2 of the ECHR.

120. As concerns the requirement of public scrutiny, the Panel recalls that Article 2 also requires the victims' next-of-kin to be involved in the investigation to the extent necessary to safeguard his or her legitimate interests. The investigative file shows that the only contact attempted between UNMIK investigators and Mr Svetozar Ristić's family members was the interview conducted by WCIU investigators with the complainant's son, Mr D.R., which is detailed in the Ante Mortem Investigation Report completed on 27 May 2004 (see § 30 above). No further contact is documented in the file, including informing the complainant and her family about the status of the investigation. In this respect, the Panel also recalls the general need to take into account the special vulnerability of displaced persons in post-conflict situations (see § 90 above). Thus, in the Panel's view, it was for UNMIK to reach

out to them, and not for them to come back to Kosovo, from where they had left for security reasons, to try to find out what had happened to their relatives or to aid in the investigation (see HRAP, *Buljević,* no. 146/09, opinion of 13 December 2013, § 100).

121. The Panel therefore considers that the investigation was not open to any public scrutiny, as required by Article 2 of the ECHR (see, *a contrario*, ECtHR [GC], *Mustafa Tunç and Fecire Tunç v. Turkey*, no. 24014/05, judgment of 14 April 2015, §§ 210 - 216).

122. In light of the shortcomings and deficiencies in the investigation described above, the Panel considers that the case of Mr Svetozar Ristić, as well as other cases of killings, abductions and disappearances previously examined, well exemplify a pattern of perfunctory and unproductive investigations conducted by the UNMIK Police into killings and disappearances in Kosovo (see § 93 above; compare with HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, cited in § 89 above, at § 11.4, and ECtHR, *Aslakhanova and Others v. Russia*, cited in § 80 above § 123; HRAP, *Bulatović*, cited in § 67 above, at §§ 85 and 101).

123. The Panel concludes that UNMIK failed to carry out an effective investigation into the abduction and killing of Mr Svetozar Ristić. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.

## V. CONCLUDING COMMENTS AND RECOMMENDATIONS

124. In light of the Panel's findings in this case, the Panel is of the opinion that some form of reparation is necessary.

125. The Panel notes that enforced disappearances constitute serious violations of human rights which shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate the abduction and killing of Mr Svetozar Ristić, and that its failure to do so constitutes a further serious violation of the rights of the victim and his next-of-kin, in particular the right to have the truth of the matter determined.

126. The Panel notes the SRSG's own concerns that the inadequate resources, especially at the outset of UNMIK's mission, made compliance with UNMIK's human rights obligations difficult to achieve.

127. It would normally be for UNMIK to take the appropriate measures in order to put an end to the violation noted and to redress as far as possible the effects thereof. However, as the Panel noted above (see § 19 above), UNMIK's responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the unilateral declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008 and subsequently, the entry into force of the Kosovo Constitution on 15

June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.

128. 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.

**With respect to the complainant and the case the Panel considers appropriate that UNMIK:**

- In line with the case law of the European Court of Human Rights on situations of limited State jurisdiction (see ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, *ECHR*, 2004-VII, § 333; ECtHR, *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC], *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109), must endeavour, with all the means available to it *vis-à-vis* competent authorities in Kosovo, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the abduction and killing of Mr Svetozar Ristić will be established and that the possible perpetrators will be brought to justice. The complainant and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary;

- Publicly acknowledges, including through media, within a reasonable time, responsibility with respect to UNMIK's failure to adequately investigate the abduction and killing of Mr Svetozar Ristić, and makes a public apology to her and her family in this regard;

- Takes appropriate steps towards payment of adequate compensation to the complainant for the moral damage suffered due to UNMIK's failure to conduct an effective investigation.

**The Panel also considers appropriate that UNMIK:**

- In line with the UN General Assembly Resolution on "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (A/Res/60/147, 21 March 2006), takes appropriate steps, through other UN affiliated entities operating in Kosovo, local bodies and non-governmental organisations, for the realisation of a full and comprehensive reparation programme, including restitution compensation, rehabilitation, satisfaction and guarantees of non-repetition, for the victims from all communities of serious violations of human rights which occurred during and in the aftermath of the Kosovo conflict;

- Takes appropriate steps before competent bodies of the United Nations, including the UN Secretary-General, towards the allocation of adequate human and financial resources to ensure that international human rights standards are upheld at all times by the United Nations, including when performing administrative and executive functions over a territory, and to make provision for effective and independent monitoring;

**FOR THESE REASONS,**

The Panel, unanimously,

1. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE PROCEDURAL OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS;**

2. **RECOMMENDS THAT UNMIK:**

   a. **URGES THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE ABDUCTION AND KILLING OF MR SVETOZAR RISTIĆ IS CONTINUED IN COMPLIANCE WITH ARTICLE 2 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**

   b. **PUBLICLY ACKNOWLEDGES, INCLUDING THROUGH MEDIA, RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE ABDUCTION AND KILLING OF MR SVETOZAR RISTIĆ, AND MAKES A PUBLIC APOLOGY TO HER AND HER FAMILY;**

   c. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION TO THE COMPLAINANT FOR MORAL DAMAGE IN RELATION TO THE FINDING OF A VIOLATION OF ARTICLE 2 OF THE ECHR.**

   d. **TAKES APPROPRIATE STEPS TOWARDS THE REALISATION OF A FULL AND COMPREHENSIVE REPARATION PROGRAMME;**

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

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

Andrey Antonov
Executive Officer

Marek Nowicki
Presiding Member

*Annex*

## ABBREVIATIONS AND ACRONYMS

**CCPR** - International Covenant on Civil and Political Rights
**DOJ** - Department of Justice
**DPPO** - District Public Prosecutor's Office
**ECHR** - European Convention on Human Rights
**ECtHR**- European Court of Human Rights
**EU** – European Union
**EULEX** - European Union Rule of Law Mission in Kosovo
**FRY** - Federal Republic of Yugoslavia
**HRAP** - Human Rights Advisory Panel
**HRC** - United Nation Human Rights Committee
**IACtHR**– Inter-American Court of Human Rights
**ICMP** - International Commission of Missing Persons
**ICRC** - International Committee of the Red Cross
**ICTY** - International Criminal Tribunal for former Yugoslavia
**IP** - International Prosecutor
**KFOR** - International Security Force (commonly known as Kosovo Force)
**KLA** - Kosovo Liberation Army
**MPU** - Missing Persons Unit
**NATO** - North Atlantic Treaty Organization
**OMPF** - Office on Missing Persons and Forensics
**OSCE** - Organization for Security and Cooperation in Europe
**SRSG** - Special Representative of the Secretary-General
**UN** - United Nations
**UNHCR** - United Nations High Commissioner for Refugees
**UNMIK** - United Nations Interim Administration Mission in Kosovo
**VRIC** - Victim Recovery and Identification Commission
**WCIU** - War Crimes Investigation Unit