

**OPINION**

**Date of adoption: 18 September2014**

**Case No. 133/09**

**Slobodan PETKOVIć**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 18 September 2014,

with the following members taking part:

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, including through electronic means, in accordance with Rule 13 §

2 of its Rules of Procedure, makes the following findings and recommendations:

1. **PROCEEDINGS BEFORE THE PANEL**
2. The complaint was introduced on 24 December 2008 and registered on 30 April 2009.
3. On 9 December 2009, the Panel requested the complainant to submit additional information. The complainant’s response was received on 4 March 2010.
4. On 19 April 2011, the complaint was communicated to the Special Representative of the Secretary-General (SRSG)[[1]](#footnote-1), for UNMIK’s comments on the admissibility of the complaint. On 17 June 2011, the SRSG submitted UNMIK’s response.
5. On 16 December 2011, the Panel declared the complaint partially admissible.
6. On 19 December 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 5 March 2012, the SRSG provided UNMIK’s comments on the merits of the complaint, together with the relevant documentation.
8. On 14 August 2014, the Panel requested UNMIK to confirm if the disclosure of files concerning the case could be considered final. On15 August 2014, UNMIK provided its response.
9. **THE FACTS**
10. **General background[[2]](#footnote-2)**
11. 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).
12. 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) 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.
13. 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.
14. 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.
15. 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.
16. 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 1,766 are listed as still missing by the International Committee of the Red Cross (ICRC) as of October 2012.
17. 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.
18. 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.
19. 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”.
20. 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. 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 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.
21. 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.
22. On the same date, UNMIK and EULEX signed an agreement 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.
23. **Circumstances surrounding the disappearance and killing of Mr Nebojša Petković and the disappearance of Ms Dobrila Petković**

*Disappearance and killing of Mr Nebojša Petković*

1. The complainant is the father of Mr Nebojša Petković. He states that his son, an oral surgery specialist, was kidnapped by members of the KLA from his workplace at the Ambulance Service of the Health Centre of Prishtinë/Priština on 30 July 1999. He states that Mr G.S. from Gracanicë/Gracanica was the last person to see Mr Nebojša Petković before he disappeared. The complainant received the mortal remains of his son on 27 February 2007 at Merdare. The complainant relates that, according to the pathologist’s report, Mr Nebojša Petković was stabbed to death.
2. The complainant states that he reported his son’s abduction to KFOR, UNMIK, the ICRC, and the UN Office of the High Commissioner for Human Rights in August 1999. He also states that criminal complaints concerning his son’s disappearance were filed with the Ministry of Internal Affairs of the Republic of Serbia and the International Prosecutor of the District Prosecutor’s Office (DPPO) in Prishtinë/Priština.
3. The name of Mr Nebojša Petković appears in the database compiled by the UNMIK OMPF[[3]](#footnote-3) as well as in two lists of missing persons communicated by the ICRC to UNMIK Police on 12 October 2001 and 11 February 2002 respectively, for which ante-mortem data had been gathered. The entry in relation to Mr Nebojša Petković in the online database maintained by the ICMP reads in relevant fields: “Sufficient reference samples collected” and “ICMP has provided information on this missing person on 08-05-2011 to authorised institution.”[[4]](#footnote-4)

*Disappearance of Ms Dobrila Petković*

1. The complainant is also the brother of Ms Dobrila Petković. He states that his sister, a worker at the textile company “Kosovka”, Prishtinë/Priština, was kidnapped on 10 August 1999. He is not able to provide any further information on the circumstances surrounding her disappearance; however he states that a named neighbour of Ms Dobrila Petković, Ms N., heard her screaming for help the night she disappeared. Ms Petković’s whereabouts remain unknown to date.
2. The complainant does not specify if and when his sister’s kidnapping was reported to the authorities. An ICRC tracing request for Ms Dobrila Petković, which indicates 9 August 1999 as the date of her disappearance, remains open[[5]](#footnote-5). Likewise, her name appears in the database compiled by the UNMIK OMPF[[6]](#footnote-6) as well as in two lists of missing persons communicated by the ICRC to UNMIK Police on 12 October 2001 and 11 February 2002 respectively, for which ante-mortem data had been gathered. The entry in relation to Ms Dorbila Petković in the online database maintained by the ICMP[[7]](#footnote-7) reads in relevant fields: “Not enough reference samples collected” and “DNA match not found”.

**C. The investigation**

*Disclosure of relevant files*

1. On 5 March 2012, UNMIK presented to the Panel documents, which were held previously by the UNMIK OMPF, UNMIK Police (MPU and WCIU) and the EULEX Kosovo Special Prosecution Office (SPRK). On 15 August 2014, UNMIK confirmed to the Panel that all files in UNMIK’s possession have been disclosed.
2. 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.

*Investigative file on the disappearance and killing of Mr Nebojša Petković*

1. The investigative file contains an OSCE Incident Report Form, dated 20 September 1999, stating the details of the disappearance of Mr Nebojša Petković, as reported by his father, the complainant. The report states that Mr Nebojša Petković was last seen in the afternoon of 30 July 1999, when he visited a friend living in the same apartment building in Prishtinë/Priština. Mr Nebojša Petković told this friend, Mr G.S., that he was going to walk to his father’s flat and that he would spend the night there. He was not afraid of walking alone because he thought that being a doctor no one would harm him. His family realised that he had gone missing only two days later, when they immediately informed the UNMIK International Police; however, they had not received any feedback since. In the field “Comments” the report states: “Family is worried and frustrated because [the UN International Police] hasn’t contacted them for 2.5 months and they are desperate for news”. The report indicates the municipality of residence and telephone number of the complainant in Kosovo.
2. The file also contains an undated Victim Identification Form concerning Mr Nebojša Petković, affixed with case no. 1999-000108. The Form states that he went missing in the afternoon of 30 July 1999 after he had left his apartment to go to visit his father and provides the name and location of a potential witness, Mr G.S. (the same individual as in § 27 above). The Form includes the address and telephone number in Serbia proper of the complainant, as the next-of-kin. Attached to the Form is a picture of Mr Nebojša Petković.
3. The file also includes an undated document of the ICRC with the names of several persons who had gone missing in Kosovo. Concerning Mr Nebojša Petković the document states that he was arrested by three alleged members of the KLA in front of his apartment building in the neighbourhood of Ulpiana, Prishtinë/Priština, on 30 July 1999.
4. The file contains a memorandum dated 22 February 2000, from the Chief of the UNMIK MPU to the ICRC concerning the case of Mr Nebojša Petković. This document states that the MPU could not find any record on Mr Nebojša Petković, whose disappearance had been recorded under MPU case file no. 1999/000108. The file contains another memorandum dated 22 February 2000 and addressed from the MPU to the Chief of the UNMIK CCIU, the Chief Border Police, all UNMIK Police Regional Commanders in Kosovo and KFOR requesting them to check their records and sources in order to provide information on the case of Mr Nebojša Petković, which had been reported by the Centre for Peace and Tolerance. The file also includes the response memoranda of the Prishtinë/Priština RIU, the Prizren RIU and the Gjilan/Gnjilane RIU, dated 25 February, 29 February and 17 April 2000 respectively, stating that no information had been found on Mr Nebojša Petković in their records. Included in the file is also an undated Case Report of the CCIU, Prishtinë/Priština Region, concerning the case of Mr Nebojša Petković, affixed as CCIU case file no. 2000-00093. In the fields “Status” and “Investigator” the report reads “closed” and “missing files” respectively. The report further states “it is unknown who the real complainant is”.
5. The investigative file shows that, on 10 June 2000, the mortal remains of an unknown person, later identified as Mr Nebojša Petković, were discovered at the Dragodan cemetery of Prishtinë/Priština by the ICTY British Forensic Team. According to an ICTY Autopsy Report Form dated 25 June 2000, the autopsy determined that the death was caused by “stab wounds to the heart”.
6. A Case Continuation Report lists and summarises the investigative steps taken by the MPU in the case of MrNebojša Petković, no. 1999/000108. According to this report, on 3 January 2001, the MPU gathered information “from the internet” that the body of Mr Nebojša Petković had been found by KFOR soldiers in Prishtinë/Priština on 17 October 1999. The other investigative actions listed in the report are the acquisition into the file concerning Mr Nebojša Petković of information, including ante-mortem information, gathered from several sources, such as the OSCE and the ICRC, between 3 January 2001 and 17 June 2002.
7. Included in the file is an Ante Mortem Report of the UNMIK Police MPU concerning investigation no. 0346/INV/04 on the case of Mr Nebojša Petković, listed as MPU case file no. 1999/000108. The report, dated 12 April 2004, states that Mr Nebojša Petković had been missing since 30 July 1999 and that there was no information as to what had happened to him. His father, the complainant, reportedly living in a village in Fushë Kosovë/Kosovo Polje Municipality, had first reported the disappearance to the UNMIK Police. The report further states that, on 12 April 2004, two UNMIK investigators went to look for the complainant at this address in Kosovo; however a neighbour informed them that he had moved to Serbia proper. The investigators managed to speak to Mr Nebojša Petković’s cousin, who only told them that he was still missing at that time. The report states that, on that same day, the investigators sent an e-mail to the ICMP to ask if the family members of Mr Nebojša Petković had provided any blood samples for possible DNA identification. This e-mail is not included in the file, nor is any response from the ICMP. In the field “Conclusion” the report states “there is no new information regarding the MP. He is still missing, and this case should be pending”.
8. In the file is also the English translation, dated 14 February 2005, of an undated criminal complaint filed by the complainant with the International Prosecutor at the Prishtinë/Priština DPPO. The complaint states that Mr Nebojša Petković was abducted by “ethnic Albanians” from his work place at the emergency room of the Prishtinë/Priština Health Centre. A named individual from Graçanicë/Gračanica, Mr G.S., was the last person to have seen him.
9. The ICMP documents and the OMPF documents included in the file show that the mortal remains discovered by the ICTY in June 2000 (see § 31 above) were identified through DNA analysis as those of Mr Nebojša Petković on 20 November 2006. On 11 December 2006, based on the DNA results as well as on the comparison of ante-mortem and post-mortem information, the OMPF issued a Death Certificate, an Identification Certificate, and a Confirmation of Identity Certificate for Mr Nebojša Petković. On 23 February 2007, his mortal remains were handed over to the complainant.
10. The file contains two reports of the UNMIK WCIU concerning the case of Mr Nebojša Petković, both dated October 2007. The first one is a Case Analysis Report of the WCIU, dated 19 October 2007, affixed with case no. 2005-00108. In the field “Current status” the report reads “Inactive”. Under “Summary of the crime” the report states that “several armed ethnic Albanians kidnapped the victim”, Mr Nebojša Petković, “from his work place at emergency room of the Pristina Health Center” and provides the name and surname of Mr G.S., who was reportedly the last person that saw Mr Nebojša Petković before he disappeared. In the absence of any witnesses and evidence, the recommendation of the investigators was to close the case. A handwritten note on the report states that it was further reviewed in December 2007. The handwritten note continues “this file should be turned over to Ante Mortem. No evidence of a war crime exists at this time”. The second report is a Case Report of the UNMIK WCU, dated 23 October 2007, affixed with case no. 2000-00093, which states that Mr Nebojša Petković was at that time still missing. In the fields “Date in” and “Status” the report reads “3/5/2000” and “closed” respectively.
11. The last document in the file concerning UNMIK investigation is a printout of the MPU database of October 2007 (the exact date is not legible) concerning investigation no. 0346/INV/04 (see § 33 above), cross-referenced with MPU case no. 1999-000108, which states that the body of Mr Nebojša Petković had been identified and handed over to the family by the OMPF in February 2007. The missing person case on Mr Nebojša Petković had been therefore closed. The document also states that no information was available on the fate of the victim, that any trace of him since he left his house on the day of his disappearance was lost. The document further states “for this reason the case will be kept pending until further information are obtained”.
12. Also contained in the file is a decision of the EULEX SPRK dated 26 April 2009 concerning the case of Mr Nebojša Petković, here affixed with UNMIK Police no. 2000-00093. In the field “Decision” the document states “provisionally closing copy (pending the original file)”. The following boxes at the end of the document are marked:“Unknown suspect”, “Not a war crime”, “Missing file”.
13. Another EULEX SPRK document concerning the case of Mr Nebojša Petković, referred to as UNMIK Police no. 2005-00108, is in the file. The document provides the same details on the disappearance of Mr Nebojša Petković as described in §§ 36-37 above. In the field “Evidence”, the document states “more information might be available in KFOR since the incident was reported to them. Some eye-witnesses might exist, since the victim was taken from his work place. Most likely he did not work alone at the relevant time. Some forensic evidence should exist, since the remains of the victim have been returned to the family”. The document further states “no investigative measures have been taken regarding this case”. In the field “Recommendation” the document states “[G.S.] should be interviewed and an effort should be made trying to identify the co-workers in the same shift in Prishtina Health center in order to find more information of possible perpetrators. All available information should be obtained from KFOR … It is more than highly justified to suspect that Nebojša Petković is a victim of homicide. It is recommended not to consider the case as a war crime … The case may be transferred to another unit for homicide investigation”.

*Investigative file on the disappearance of Ms Dobrila Petković*

1. The earliest document in the file concerning Ms Dobrila Petković is an OSCE Incident Form dated 20 September 1999. This document states that Ms Dobrila Petković lived alone in a flat in the “Sunny Hill” neighbourhood of Prishtinë/Priština. While all other Kosovo Serbs living in the same apartment building had left fearing for their security, she had been reassured by her Albanian neighbours that she would be protected and had thus decided to stay. On 9 August 1999, the complainant had alerted the UNMIK Police that something could have happened to his sister, as he had not heard from her. The day after, on 10 August 1999, the police broke into Ms Dobrila Petković’s flat and found it looted. Ms Dobrila Petković was not there. The document further states that an Albanian neighbour of Ms Dobrila Petković told the police that they had heard her screaming, presumably while she was being abducted. The document also states that for two and half months there had been no contact between Ms Dobrila Petković’s family and the UNMIK Police, that the latter had provided no news about the investigation and that the family members of Ms Dobrila Petković were “worried, angry, disappointed”.
2. The file also contains an undated Victim Identification Form concerning Ms Dobrila Petković, affixed with case no. 1999-000034. The Form states the details surrounding the disappearance of Ms Dobrila Petković as described above and indicates the complainant, Mr Slobodan Petković, as her next of kin, providing also his address and telephone number in Serbia proper. A picture of Ms Dobrila Petković is included in the file.
3. The file contains a memorandum, dated 22 February 2000, from the Chief of the UNMIK MPU to the ICRC, concerning the case of Ms Dobrila Petković, MPU case file no. 1999/000034. This document states that no record had been found on Ms Dobrila Petković, whose disappearance occurred on 22 August 1999. The file also contains a memorandum of 22 February 2000, addressed from the MPU to the Chief of the UNMIK CCIU, the Chief Border Police, all UNMIK Police Regional Commanders in Kosovo and KFOR requesting them to check their records and sources in order to provide information on the case of Ms Dobrila Petković (MPU case file no. 1999-000034), which had been registered as a missing person “based on information received by the Centre for Peace and Tolerance”. The memo states that Ms Dobrila Petković had gone missing on 21 August 2000 at approximately 3:00 am from her flat in Prishtinë/Priština. The file also includes the response memoranda of the Prishtinë/Priština RIU, the Prizren RIU and the Gjilan/Gnjilane RIU, dated 23 February, 29 February and 17 April 2000 respectively, stating that no information had been found on the case. Included in the file is also an undated Case Report, of the CCIU, Prishtinë/Priština Region, concerning the case of Ms Dobrila Petković, listed as CCIU case file no. 2000-00090. In the fields “status” and “Investigator” the report reads “closed” and “missing files” respectively. The report further states “it is unknown who the real complainant is”.
4. An Ante Mortem Report of the UNMIK Police MPU on the case of Ms Dobrila Petković, investigation no. 0363/INV/04 cross-referencing MPU case file no. 1999/000034, bears the date of 12 April 2004 and states that Ms Dobrila Petković had been abducted on 21 August 1999. Her disappearance had been reported by her brother, the complainant, who was living in a village in Fushë Kosovë/Kosovo Polje Municipality. The report further states that, on 12 April 2004, two UNMIK investigators went to look for the complainant in the village mentioned above; however they were informed that he had moved to Serbia proper (see § 33 above). The investigators met with a named relative of Ms Dobrila Petković (the same as in § 33 above), who confirmed that she was still missing. According to the report, on that same day, the investigators sent an e-mail to the ICMP enquiring whether Ms Dobrila Petković’s family members had provided any blood samples. This e-mail is not included in the file, nor is any response from the ICMP. In the field “Conclusion” the report states “there is no new information regarding the MP. She is still missing, and this case should be pending”.
5. **THE COMPLAINT**

1. Insofar as the complaint has been declared admissible, the complainant complains about UNMIK’s alleged failure to properly investigate the disappearance and killing of his son and the disappearance of his sister. 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).
2. The complainant also complains about the fear, pain and anguish suffered by himself because of the situation surrounding the disappearance of his sister. In this regard, he relies on Article 3 of the ECHR.
3. **THE LAW**
4. **Alleged violation of the procedural obligation under Article 2 of the ECHR**
	1. **The scope of the Panel’s review**
5. Before turning to the examination of the merits of the complaint, the Panel needs to clarify the scope of its review.
6. In determining whether it considers that there has been a violation of Article 2 (procedural limb) and of Article 3 of the ECHR, 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.
7. 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](http://untreaty.un.org/English/TreatyEvent2001/pdf/07e.pdf), the Convention on the Rights of the Child.
8. 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.
9. 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 § 47). 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.
10. 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).
	1. **The Parties’ submissions**
11. The complainant in substance alleges a violation concerning the lack of an adequate criminal investigation into the disappearance and killing of Mr Nebojša Petković and the disappearance of Ms Dobrila Petković.
12. At the outset, the SRSG states that UNMIK has been able to obtain copies “of some of the documents which were held” by the former UNMIK OMPF and UNMIK Police or EULEX Police and that EULEX Police have provided a “copy of the decision” of the SPRK, “a case analysis report” and “case reports containing a summary of actions taken by UNMIK”.
13. 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 disappearances in 1999 of Mr Nebojša Petković and Ms Dobrila Petković**,** 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 §10 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.
14. In this regard, the SRSG stresses that this responsibility stems from the procedural obligation under Article 2 of the ECHR to conduct an effective investigation where a disappearance occurs in suspicious circumstances not imputable to State agents. 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.
15. The SRSG considers that such an 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.
16. The SRSG accepts that Mr Nebojša Petković and Ms Dobrila Petković disappeared in life-threatening circumstances. The SRSG adds that when Mr Nebojša Petković and Ms Dobrila Petković disappeared, “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.”
17. 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 in investigating 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 […].”

1. 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 “from 1995”. 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.
2. The SRSG explains that 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 the 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, the 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. The SRSG states that, taking into account the difficulties described above, the process “for establishing a system capable of dealing effectively with disappearances and other serious violations of international humanitarian law has been an understandably incremental one in the Kosovo context, and this principle has been reflected in the *Palić* case abovementioned.” The SRSG concludes that the process was reliant upon a number of actors other than just UNMIK, for example the ICMP, the ICRC and local missing persons organisations.
3. 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.”

1. The SRSG states that UNMIK international police officers had to adjust to conducting investigations in a foreign territory and country, 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, “such constraints inhibited the ability of […] UNMIK Police to conduct all investigations in a manner […] 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.”
2. The SRSG states that, given the number of missing persons cases that had been resolved, it must be recognised that the work of the OMPF had contributed greatly to determining the fate and whereabouts of many of the missing persons in Kosovo. However “it was simply not possible to locate all those missing within the timeframe with the resources available at the time”.
3. With respect to the investigation aimed into the case of Mr Nebojša Petković the SRSG submits that the UNMIK Police did open and pursue an investigation into the whereabouts of Mr Nebojša Petković and the possibility of identifying the perpetrators, which resulted in locating Mr Nebojša Petković’s mortal remains. The SRSG states that the “notations” in the MPU Case Continuation Report included in the file (see § 32 above) reveals “some of the investigative actions taken” by the UNMIK Police. However, by the time the file was transferred to EULEX, the perpetrators of Mr Nebojša Petković’s killing had not been identified.
4. The SRSG states that Mr Nebojša Petković’s disappearance was reported by the Centre for Peace and Tolerance and that a missing person file was opened by the UNMIK MPU in 1999 and recorded under case file no. 1999-000108. The case was investigated by the Central Criminal Investigation Unit under case file no. 2000-00093 and by the UNMIK Police WCIU.
5. The SRSG states that “protracted investigations” were carried out into the case of Mr Nebojša Petković. As a result, on 16 June 2000, the mortal remains later identified as those of Mr Nebojša Petković were exhumed from the Dragodan cemetery in Prishtinë/Priština. On 3 January 2001, the investigators noted that, based on information found on the internet, the mortal remains of Mr Nebojša Petković had been found by KFOR on 17 October 1999. The SRSG states that on 12 April 2004 the investigators went to the complainant’s house where they were informed that the latter was living in Serbia proper and that Mr Nebojša Petković was still missing. According to the SRSG, at this time, UNMIK Police gathered the ante-mortem data that was used in December 2006 to confirm the identity of Mr Nebojša Petković. As his mortal remains were returned to the family on 23 February 2007, the missing person file concerning Mr Nebojša Petković was closed.
6. The SRSG states that in October 2007 the UNMIK Police investigators recommended that the case be closed for lack of evidence and, in December 2007, “the UNMIK War Crimes Unit recommended that the file be handed over to the OMPF as there was no evidence of a war crime at that time”.
7. The SRSG further states that on 26 April 2009 the SPRK issued a decision to “interview the reporting party and check with the ICRC, OMPF and KFOR for follow-up”. On 22 July 2010, the EULEX WCIU recommended that all the available information be obtained from KFOR, that the last person to see the victim as well as his co-workers be interviewed and that the matter be transferred to another unit for investigation as a homicide.
8. With respect to the case of Ms Dobrila Petković, the SRSG states that it is evident that, from 1999, “protracted investigations were carried out” by UNMIK in order to establish her fate and to identify and bring the perpetrators to justice. However, the investigation had not achieved any results by the time her file was transferred to EULEX.
9. The SRSG states that, based on the investigative documents, a missing person file concerning Ms Dobrila Petković was opened by the UNIMK MPU in 1999. On 22 February 2000, the MPU contacted “other entities within the UN system and KFOR, requesting that the records be checked and any investigative leads followed”, receiving negative results from some of them (Regional Investigation Units of Pejë/Peć and Gjilan/Gnjilane). On 14 April 2004, the investigators recommended that the case be kept open and pending until new information was obtained. In the view of the SRSG, “it is most probable” that the investigation stopped at this point “due to a lack of information or leads that would enable further meaningful investigation”.
	1. **The Panel’s assessment**
10. 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 disappearance and killing of Mr Nebojša Petković and the disappearance of Ms Dobrila Petković.
11. The Panel considers that concerning the case of Ms Dobrila Petković, who is still missing, the complainant invokes, in substance, a violation of the right to be free from inhumane or degrading treatment arising out of the continued disappearance of his sister, as guaranteed by Article 3 of the ECHR.
12. *Submission of relevant files*
13. At the Panel’s request, on 5 March 2012, the SRSG provided copies of the documents related to this investigation, which UNMIK was able to recover. The SRSG also suggested that there is a possibility more information, not contained in the presented documents, exists (see § 53 above) but provided no further details. On 5 August 2014, UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 7 above).
14. 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).
15. 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
16. 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 of15 March 2011, § 146).
17. *General principles concerning the obligation to conduct an effective investigation under Article 2*
18. 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 (IACtHR) *Velásquez-Rodríguez* (see IACtHR, *Velásquez-Rodríguez v. Honduras*, judgment of 29 July 1988, Series C No. 4). The positive obligation has also been stated by the United Nations Human Rights Committee (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.
19. 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).
20. 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 § 51 above, at § 136).
21. 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).
22. 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 § 51 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).
23. 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 § 78, 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).
24. 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, ECHR 2002‑II).
25. 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 § 81 above, § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 50 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 death, 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, § 55; 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).
26. 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 *Ahmet Özkan and Others v. Turkey*, cited in § 80 above, at §§ 311‑314; *Isayeva v. Russia*, cited in § 80 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).
27. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired thereby satisfying the right to truth not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri v. The Former Yugoslav Republic of Macedonia*, no. 39630/09, judgment of 13 December 2012, § 191; ECtHR, *Al Nashiri v. Poland*, no. 28761/11, judgment of 24 July 2014, §§ 495-496). United Nations bodies also recognise the importance of the right to truth. In the words of the United Nations Secretary-General, “the right to truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the case of missing persons … it also implies the right to know the fate and whereabouts of the victim” (see Report of the UN Secretary-General, Missing Persons, UN Document A/67/267, 8 August 2012, § 5;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).
28. *Applicability of Article 2 to the Kosovo context*
29. The Panel is conscious that Ms Dobrila Petković disappeared and Mr Nebojša Petković disappeared and was killed shortly after the deployment of UNMIK in Kosovo in the aftermath of the armed conflict, when crime, violence and insecurity were rife.
30. 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.
31. 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.
32. 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).
33. 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 § 81 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 § 85 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 § 80 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 80 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
34. 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 § 78 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).
35. 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 § 76above, 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).
36. 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 § 16 above).
37. 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.
38. 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 policingg 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 § 81 above, at § 70; *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
39. *Compliance with Article 2 in the present case*
40. The Panel notes that there were obvious shortcomings in the conduct of both investigations from their commencement. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 51 above), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigations with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the cases at that date (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 81 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 § 18 above).
41. The Panel notes that, as shown in the investigative documents UNMIK became aware of Mr Nebojša Petković and Ms Dobrila Petković’s cases soon after their disappearance in 1999 (in August 1999 according to the OSCE Incident Forms mentioned in §§ 27 and 40 above). As acknowledged by the SRSG, missing persons cases were subsequently opened by the UNMIK MPU under MPU case file no. 1999-000108 and case file no. 1999-000034 respectively.
42. The Panel notes that, on 22 February 2000, the Chief of the UNMIK Police MPU sent a memorandum to the ICRC, UNMIK Police Regional Commanders and the KFOR stating that no record could be found at the UNMIK Police concerning the cases of either Mr Nebojša Petković or Ms Dobrila Petković, including about the identity of the reporting party, probably because their files had gone missing (see §§ 30 and 42 above). The responses received by the UNMIK Police were all negative and there is no indication that any response was received from the KFOR. As for the ICRC, no response is included in the file; however the Panel considers that UNMIK had received from the ICRC ante-mortem information concerning both Mr Nebojša Petković and Ms Dobrila Petković at the latest by October 2001 (see §§ 22 and 24 above). Probably following the enquiry from the MPU, the cases of Mr Nebojša Petković and Ms Dobrila Petković were also recorded by the UNMIK Police CCIU, under case file 2000-00093 and 2000-00090 respectively. However, there is no indication in the file of any investigative step being undertaken by the CCIU, apart from registering the cases.
43. The Panel notes that no investigative action was taken by the UNMIK MPU in the years to follow (2001-2003), apart from gathering the available ante-mortem information on Mr Nebojša Petković and inputting it into the MPU database, as stated in the MPU Case Continuation Report mentioned in § 32 above. The Panel also notes that, as indicated in the Victim Identification Forms included in the file (see §§ 28 and 41 above), UNMIK was in possession at this time of the complainant’s address and telephone number in Serbia proper. However, no effort was made to contact the complainant and take a statement from him. In particular concerning the case of Mr Nebojša Petković, the Panel notes with concern that, according to the Case Continuation Report mentioned above, on 3 January 2001, the UNMIK MPU had gathered information from the internet that his mortal remains had been discovered by KFOR, yet there is no indication in the file that any action was taken to confirm this information and notify the complainant accordingly.
44. The Panel further notes that the only documented investigative step subsequently taken by the investigators in this period was a one day ante-mortem investigation conducted in April 2004 by the UNMIK Police for both the cases of Mr Nebojša Petković and Ms Dobrila Petković. The Panel notes that the investigators looked for the complainant at his previous address in Kosovo and that, even when informed that he had moved to Serbia proper, they did not take any step to reach him at his address there (the address had been already recorded in Mr Nebojša Petković and Ms Dobrila Petković’s Victim Identification Form and, for unexplained reasons, was ignored by the investigators). During this ante-mortem investigation the investigators reported that they would contact the ICMP to verify if Mr Nebojša Petković and Ms Dobrila Petković’s family members had provided blood samples for the purpose of DNA identification; however, contrary to what stated by the SRSG in his comments, there is no indication in the file that this was actually done at this time. The Panel also notes that there is no further mention in the Ante-Mortem Investigation Report of April 2004 to the fact that the mortal remains of Mr Nebojša Petković had been found.
45. The Panel further notes that some investigative leads were available to the UNMIK Police from the beginning of the investigation. Concerning the case of Mr Nebojša Petković, the investigators were informed of the existence of a potential witness, Mr G.S. (who last saw the victim, see §§ 20, 27 and 34 above) and that Mr Nebojša Petković could have gone missing from his work place at the Health centre of Pristhinë/Priština. However there is no indication in the file that UNMIK Police made any efforts to locate and interview G.S. or Mr Nebojša Petković’s co-workers, or any other potential witnesses. Concerning the case of Ms Dobrila Petković, the investigators were informed that a neighbour alleged to have heard her screaming while she was being abducted from her flat (see §§ 23 and 40 above), but the file shows no attempt made by the Police to identify and locate this neighbour or any other potential witnesses at the apartment building where Ms Dobrila Petković was living. The Panel also notes that no genuine effort was made to reach the complainant at his address in Serbia proper in order to take his statement.
46. 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 § 51 above), the assessment of the whole investigation is brought within the period of the Panel’s jurisdiction.
47. Concerning the case of Mr Nebojša Petković, the Panel notes that no investigative action was taken during this period until the mortal remains discovered by the ICTY in 2000 were identified, based on DNA analysis as well as on the comparison of ante-mortem and post-mortem information, as those of Mr Nebojša Petković in November-December 2006. They were returned to the complainant in February 2007.
48. The Panel first notes that no justification has been put forward by the SRSG to explain why the identification of Mr Nebojša Petković took place around six years after his mortal remains had been originally located. Secondly, the Panel recalls that, although the identification of Mr Nebojša Petković and the handover of his mortal remains to the family must be considered in itself an achievement, the procedural obligation under Article 2 did not come to an end with the discovery and identification of his mortal remains, especially as they showed signs of a violent death. As those responsible for the abduction and killing had not been located, UNMIK was obligated to use the means at its disposal to regularly review the progress of the investigation to ensure that nothing had been overlooked and that any new evidence had been considered, as well as to inform the relatives of Mr Nebojša Petković regarding the progress of the investigation.
49. In this respect, the Panel notes that in October 2007 the case was reviewed several times by UNMIK Police; however these reviews were far from being adequate. The case was reviewed by the UNMIK WCIU on 19 October 2007 and in December 2007, under case file no. 2005-00108 (this new case file was most likely opened after the complainant filed a criminal complaint with the Prishtinë/Priština DPPO in 2005, as stated in § 34 above) and again few days later, on 23 October 2007, under case file no. 2000-00093. The Panel notes that at the end of these reviews, the investigators did not realise that the mortal remains of Nebojša Petković had been in the meantime identified. The case was also reviewed on an unspecified date in October 2007 by the MPU under case no. 1999-000108. This time the reviewing investigators noted that that the mortal remains of Mr Nebojša Petković had been identified and returned to his family. However, the Panel also notes that, no follow-up action was recommended to continue the investigation with the view at identifying the perpetrators.
50. Concerning the case of Ms Dobrila Petković, the Panel notes that no action whatsoever, and no review of the case, took place during the period under the Panel’s jurisdiction. The Panel also notes that no document can be found in the file stating that the investigation was officially closed. In this respect, the Panel likewise recalls the SRSG’s argument that it is most probable that the investigation “was ceased” due to “a lack of information or leads that would enable further meaningful investigation” (see § 70 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. The file, as made available to the Panel, does not show any such activity. 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).
51. In light of the above, the Panel cannot agree with the SRSG that “protracted investigations” were conducted into the cases of Mr Nebojša Petković and Ms Dobrila Petković.
52. In both cases, the apparent lack of any immediate 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. 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.
53. 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 § 81 above), as required by Article 2 of the ECHR.
54. 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.
55. As was shown above, the investigative file does not indicate any attempts made by UNMIK Police to contact the complainant with regard to the disappearance and killing of his son and the disappearance of his sister. The Panel has already noted that the investigative file shows that, in April 2004, the UNMIK MPU tried to locate the complainant at his former address in Kosovo. A relative informed them that the complainant had moved to Serbia proper. The Panel has previously noted that this information had been already recorded in the Victim Identification Form for both Mr Nebojša Petković and Ms Dobrila Petković, which contained the complainant’s address and phone number in Serbia proper. Nonetheless, there is no indication in the file that any further effort was made by the UNMIK Police to reach the complainant, including to update him on the status of the investigation. The Panel therefore considers that the investigation was not open to any public scrutiny, as required by Article 2 of the ECHR.
56. In light of the deficiencies and shortcomings described above, the Panel concludes that UNMIK failed to carry out an effective investigation into the disappearance and killing of Mr Nebojša Petković and the disappearance of Ms Dobrila Petković. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.
57. **Alleged violation of Article 3 of the ECHR**
58. Concerning Ms Dobrila Petković, who is still missing, the Panel considers that the complainant invokes, in substance, a violation of the right to be free from inhumane or degrading treatment, guaranteed by Article 3 of the ECHR.
59. **The scope of the Panel’s review**
60. The Panel will consider the allegations under Article 3 of the ECHR, applying the same scope of review as was set out with regard to Article 2 (see §§ 46 - 51 above).
61. The Panel recalls that the European Court of Human Rights has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 in respect of close relatives of the victim. It emphasises that, concerning Article 3, “the essence of such a violation does not so much lie in the fact of the ‘disappearance’ of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention” (see, e.g., ECtHR [GC], *Çakici v. Turkey*, no. 23657/94, judgment of 8 July 1999, § 98, *ECHR*, 1999-IV; ECtHR [GC], *Cyprus v. Turkey*, no. 25781/94, judgment of 10 May 2001, § 156, *ECHR*, 2001-IV; ECtHR, *Orhan v. Turkey*, no. 25656/94, judgment of 18 June 2002, § 358; ECtHR, *Bazorkina v. Russia*, cited in § 91 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 81 above, at § 74; ECtHR, *Alpatu Israilova v. Russia*, no. 15438/05, judgment of 14 March 2013, § 69; see also HRAP, *Zdravković*, no. 46/08, decision of 17 April 2009, § 41). “It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct” (see, among others, ECtHR, *Er and Others v. Turkey*, no. 23016/04, judgment of 31 July 2012, § 94).
62. Lastly, where mental suffering caused by the authorities’ reactions to the disappearance is at stake, the alleged violation is contrary to the substantive element of Article 3 of the ECHR, not its procedural element, as is the case with regard to Article 2 (ECtHR, *Gelayevy v. Russia*, no. 20216/07, judgment of 15 July 2010, §§ 147-148).
63. **The Parties’ submissions**
64. The complainant alleges that the lack of information and certainty surrounding the disappearance of Ms Dobrila Petković, particularly because of UNMIK’s failure to properly investigate her disappearance, caused mental suffering to himself and his family.
65. Commenting on this part of the complaint, the SRSG rejects the allegations. The SRSG states that the mental pain and anguish suffered by the complainant “is stated to be the result of the alleged human rights violation suffered by Ms Dobrila Petković”, while there is no express allegation that this fear and anguish was a result of UNMIK’s response to her disappearance.
66. The SRSG therefore argues that the complaint under Article 3 is “manifestly unfounded”.
67. **The Panel’s assessment**
68. *General principles concerning the obligation under Article 3*
69. Like Article 2, Article 3 of the ECHR enshrines one of the most fundamental values in democratic societies (ECtHR, *Talat Tepe v. Turkey*, no. 31247/96, 21 December 2004, § 47; ECtHR [GC], *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, ECHR, 2004-VII, § 424). As confirmed by the absolute nature conferred on it by Article 15 § 2 of the ECHR, the prohibition of torture and inhuman and degrading treatment still applies even in most difficult circumstances.
70. Setting out the general principles applicable to situations where violations of the obligation under Article 3 of the ECHR are alleged, the Panel notes that the phenomenon of disappearance constitutes a complex form of human rights violation that must be understood and confronted in an integral fashion (see IACtHR, *Velásquez-Rodríguez v. Honduras*, cited in § 77 above, at § 150).
71. The Panel observes that the obligation under Article 3 of the ECHR differs from the procedural obligation on the authorities under Article 2. Whereas the latter requires the authorities to take specific legal action capable of leading to identification and punishment of those responsible, the former is more general and humanitarian and relates to their reaction to the plight of the relatives of those who have disappeared or died.
72. The HRC has also recognised disappearances as a serious violation of human rights. In its decision of 21 July 1983, in the case *Quinteros v. Urugay*, it stated that disappearances constitute serious violations of the rights of the disappeared person’s relatives, who suffer from deep anguish which persists for as long as the uncertainty concerning the fate of their loved one continues, often for many years (see HRC, Communication No. 107/1981, U.N. Doc. CCPR/C/OP/2 at 138 (1990), § 14). Moreover, in its decision of 15 July 1994 in the case *Mojica v. Dominican Republic*, the HRC has deemed that “the disappearance of persons is inseparably linked to treatment that amounts to a violation of article 7 [of the Covenant]”, also prohibiting torture, inhumane or degrading treatment and punishment (see HRC, Communication No. 449/1991, U.N. Doc. CCPR/C/51/D/449/1991 (1994), § 5.7).
73. With respect to the question whether a member of the family of a disappeared person can be considered the victim of a treatment contrary to Article 3 of the ECHR, the Panel refers to the case law of the European Court of Human Rights and to its own case law. The European Court accepts that this may be the case, depending on the existence of “special factors which give the suffering of the [family member] a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation”. The Court further holds that “relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries” (see ECtHR, *Basayeva and Others v. Russia*, nos. 15441/05 and 20731/04, judgment of 28 May 2009, § 159; ECtHR, *Er and Others v. Turkey*, cited in § 116 above, at § 94).
74. The Panel takes note that, when assessing the emotional suffering of the victims, the European Court also considers the following circumstances: the length of the disappearance itself and of the period with no information on the fate of the missing person and on the investigation undertaken by the authorities; the delay in initiation of criminal investigation into the disappearance; the absence of any “meaningful” action by the authorities, despite the fact that the complainants approached them to report the disappearance of their relative and to share with them the information they had; lack of any plausible explanation or information as to the fate of their missing relatives despite personal or written inquiries with official bodies (see, among others, ECtHR, *Er and Others v. Turkey,* cited above, § 96; ECtHR, *Osmanoğlu v. Turkey,* no. 48804/99, judgment of 24 January 2008, § 97). Another factor leading to a finding of violation of Article 3 of the ECHR is the continuous nature of the psychological suffering of relatives of a victim of a disappearance (ECtHR, *Salakhov and Islyamova v. Ukraine,* no. 28005/08, judgment of 14 March 2013, § 201).
75. The HRC has also considered the issue and recognised family members of disappeared or missing persons as victims of a violation of Article 7 of the Covenant: parents (*Boucherf v. Algeria*, Communication No. 1196/2003, views of 30 March 2006, § 9.7, CCPR/C/86/D/1196/2003), children (*Zarzi v. Algeria*, Communication No. 1780/2008, views of 22 March 2011, § 7.6, CCPR/C/101/D/1780/2008), siblings (*El Abani v. Libyan Arab Jamahiriya,* Communication No. 1640/2007, views of 26 July 2010, § 7.5, CCPR/C/99/D/1640/2007), spouses (*Bousroual v. Algeria*, Communication No. 992/2001, views of 30 March 2006, § 9.8, CCPR/C/86/D/992/2001), aunts and uncles (*Benaniza v Algeria,* views of 26 July 2010, § 9.4, CCPR/C/99/D/1588/2007) (*Bashasha v. Libyan Arab Jamahiriya*, views of 20 October 2010, § 7.2, CCPR/C/100/D/1776/2008). It justifies this broad understanding of victim status by the suffering and distress that is caused to family members by the disappearance of an individual, which is often exacerbated by the authorities’ insufficient efforts to investigate the disappearance in order to establish the fate of the victim and to bring perpetrators to justice (*Aboussedra v. Libyan Arab Jamahiriya*, Communication No. 1751/2008, views of 25 October 2010, § 7.5, CCPR/C/100/D/1751/2008). In the case *Amirov v. Russian Federation* the Committee observed that “[w]ithout wishing to spell out all the circumstances of indirect victimisation, the Committee considers that the failure of a State party responsibly to discharge its obligations to investigate and clarify the circumstances of the harm suffered by the direct victim will be usually be a factor. Additional factors may be necessary. In the present case, the Committee notes the horrific conditions in which the author came to find his wife's mutilated remains (…), followed by the dilatory, sporadic measures undertaken to investigate the circumstances that have led to the above findings of violations of articles 6 and 7, read together with article 2, paragraph 3. The Committee considers that, taken together, the circumstances require the Committee to conclude that the author's own rights under article 7 have also been violated” (HRC, *Amirov v. Russian Federation*, cited in § 93 above, at § 11.7).
76. The Panel also takes into account that according to the European Court, the analysis of the authorities’ reaction should not be confined to any specific manifestation of the authorities’ attitudes, isolated incidents or procedural acts; on the contrary, in the Court’s view, an assessment of the way in which the authorities of the respondent State reacted to the applicants’ enquiries should be global and continuous (see ECtHR, *Açiș v. Turkey*, no. 7050/05, judgment of 1 February 2011, § 45).
77. In this respect, it is the position of the European Court that findings under the procedural limb of Article 2 would also be of direct relevance in considering the existence of a violation of Article 3 (see ECtHR, *Basayeva and Others v. Russia*, cited in § 125 above, at § 109; ECtHR, *Gelayevy v. Russia*, cited in § 117 above, at § 147; ECtHR, *Bazorkina v. Russia*, cited in § 92 above, at § 140).
78. The Panel observes that the European Court has already found violations of Article 3 of the ECHR in relation to disappearances in which the State itself was found to be responsible for the abduction (see ECtHR, *Luluyev and Others v. Russia*, no. 69480/01, judgment of 9 November 2006, §§ 117 - 118; ECtHR, *Kukayev v. Russia*, no. 29361/02, judgment of 15 November 2007, §§ 107 - 110). However, in contrast, in the case under the Panel’s consideration, in no way is UNMIK implicated in the actual disappearance and UNMIK cannot be held responsible for the applicant’s mental distress caused by the commission of the crime itself.
79. The Panel is mindful that in the absence of a finding of State responsibility for the disappearance, the European Court has ruled that it is not persuaded that the authorities’ conduct, albeit negligent to the extent that it has breached Article 2 in its procedural aspect, could have in itself caused the applicant mental distress in excess of the minimum level of severity, which is necessary in order to consider treatment as falling within the scope of Article 3 (see, among others, ECtHR, *Tovsultanova v. Russia*, no. 26974/06, judgment of 17 June 2010, § 104; ECtHR, *Shafiyeva v. Russia*, no. 49379/09, judgment of 3 May 2012, § 103).
80. *Applicability of Article 3 to the Kosovo context*
81. With regard to the applicability of the above standards to the Kosovo context, the Panel first refers to its view on the same issue with regard to Article 2, developed above (see §§ 87 - 96 above).
82. The Panel reiterates that a normally functioning law enforcement system should take into account the protection needs of victims and witnesses, as well as to consider the special vulnerability of displaced persons in post-conflict situations. The Panel has already considered the fact that by 2003 the police and justice system in Kosovo was described by the UN Secretary-General as being “well-functioning” and “sustainable” (see § 16 above).
83. The Panel again notes that it will not review relevant practices or alleged obstacles to the conduct of effective investigations *in abstracto*, but only in relation to their specific application to the complaint before it, considering the particular circumstances of the case.
84. For these reasons, the Panel considers that it has to establish with regard to each case whether the attitude and reactions of UNMIK authorities to the disappearance itself and to the complainants’ quest for information with regard to the fate of their relatives and the criminal investigation, would amount to a violation of the obligation under Article 3, having regard to the realities in Kosovo at the relevant time.
85. *Compliance with Article 3 in the present case*
86. Against this background, the Panel discerns a number of factors in the present case which, taken together, raise the question of violation of Article 3 of the ECHR.
87. The Panel notes the proximity of the family ties between the complainant and Ms Dobrila Petković, as she is his sister.
88. The Panel recalls the failure established above in relation to the procedural obligation under Article 2, despite the fact that UNMIK Police had the minimum necessary information to pursue investigation from the outset. In this respect, the Panel reiterates that from the standpoint of Article 3 it may examine UNMIK’s reactions and attitudes to the complainant in their entirety.
89. The Panel recalls that, according to the file provided by UNMIK, there was no contact between the complainant and UNMIK Police, after the case of Ms Dobrila Petković was reported to them (see § 112 above).It appears that no witness statement was ever taken from the complainant or other family members throughout the investigation and there is no evidence in the file that they were contacted in order to receive updates on the progress of the investigation. The Panel notes that, after two months from the disappearance of Ms Dobrila Petković, the complainant had already expressed to OSCE officials his anger and frustration at receiving no feed-back on the investigation from the UNMIK Police (see § 40 above).
90. Drawing inferences from UNMIK’s failure to provide a plausible explanation for the failure to keep the complainant properly informed, the Panel considers that this situation, which continued into the period of the Panel’s temporal jurisdiction, caused grave uncertainty to the complainant and his family about Ms Dobrila Petković’s fate and the status of the investigation. Additional weight must also be attached to the fact that Ms Dobrila Petković’s whereaboutswere never located.
91. In view of the above, the Panel concludes that the complainant has suffered severe distress and anguish for a prolonged and continuing period of time on account of the way the authorities of UNMIK have dealt with the case and as a result of her inability to find out what happened to his sister. In this respect, it is obvious that, in any situation, the pain of a brother who has to live in uncertainty about the fate of a close member of the family must be unbearable.
92. For the aforementioned reasons, the Panel concludes that, by its behaviour, UNMIK contributed to the complainant’s distress and mental suffering in violation of Article 3 of the ECHR.

**V. CONCLUDING COMMENTS AND RECOMMENDATIONS**

1. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
2. The Panel notes that enforced disappearances and arbitrary executions constitute serious violations of human rights which, shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate and prosecute those responsible for killings, abductions or disappearances in life threatening circumstances. Its failure to do so constitutes a further serious violation of the rights of the victims and their next-of-kin, in particular the right to have the truth of the matter determined.
3. The Panel notes the SRSG’s own concerns that the inadequate resources, especially at the outset of UNMIK’s submission, made compliance with UNMIK’s human rights obligations difficult to achieve.
4. 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 § 18), 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 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.
5. 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*, cited in § 121 above, at § 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 disappearance and killing of Mr Nebojša Petković and the disappearance of Ms Dobrila Petković will be established and that 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, within a reasonable time, responsibility with respect to UNMIK’s failure to adequately investigate the disappearance and killing of Mr Nebojša Petković and the disappearance of Ms Dobrila Petković, as well as the distress and mental suffering subsequently incurred by the complainant as a result of the continued disappearance of Ms Dobrila Petković, and makes a public apology to the complainant and his 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, as well as for distress and mental suffering incurred by the complainant as a consequence of UNMIK’s behaviour with respect to the case of Ms Dobrila Petković.

**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. **FINDS THAT THERE HAS BEEN A VIOLATION OF THE SUBSTANTIVE OBLIGATION UNDER ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS WITH RESPECT TO THE COMPLAINT CONCERNING MS DOBRILA PETKOVIĆ;**
3. **RECOMMENDS THAT UNMIK:**
4. **URGES COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE DISAPPEARANCE AND KILLING OF MR NEBOJŠA PETKOVIĆ AND THE DISAPPEARANCE OF MS DOBRILA PETKOVIĆ IS CONTINUED IN COMPLIANCE WITH ARTICLE 2 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**
5. **PUBLICLY ACKNOWLEDGES RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE DISAPPEARANCE AND KILLING OF MR NEBOJŠA PETKOVIĆ AND THE DISAPPEARANCE OF MS DOBRILA PETKOVIĆ, AS WELL AS FOR DISTRESS AND MENTAL SUFFERING INCURRED WITH RESPECT TO MS DOBRILA PETKOVIĆ’S DISAPPEARANCE BY THE COMPLAINANT, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANT;**
6. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2 AND ARTICLE 3 OF THE ECHR TO THE COMPLAINANT;**
7. **TAKES APPROPRIATE STEPS TOWARDS THE REALISATION OF A FULL AND COMPREHENSIVE REPARATION PROGRAMME;**
8. **TAKES APPROPRIATE STEPS AT THE UNITED NATIONS AS A GUARANTEE OF NON REPETITION;**
9. **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 Marek Nowicki

 Executive Officer Presiding Member

*Annex*

**ABBREVIATIONS AND ACRONYMS**

**CCIU** - Central Criminal Investigation Unit

**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

**FYROM** - Former Yugoslav Republic of Macedonia

**HRAP** - Human Rights Advisory Panel

**HRC** - United Nation Human Rights Committee

**HQ** - Headquarters

**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

**IPO –** International Police Officer

**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

**RIU** - Regional Investigation Unit

**SIU –** Special Investigations Unit of the UNMIK Security

**SPRK** – Kosovo Special Prosecution Office

**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

1. A list of abbreviations and acronyms contained in the text can be found in the attached Annex. [↑](#footnote-ref-1)
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 and78166/01, 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](http://www.unhchr.org)) and by the International Committee of the Red Cross (available at <http://familylinks.icrc.org/kosovo/en>). [↑](#footnote-ref-2)
3. The OMPF database is not open to public. The Panel accessed it with regard to this case on 10 September 2014. [↑](#footnote-ref-3)
4. The ICMP database is available at: http://www.ic mp.org/fdmsweb/index.php?w=mp\_details&l=en (accessed on 17 September 2014). [↑](#footnote-ref-4)
5. The ICRC database is available at: http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx (accessed on 17 September 2014). [↑](#footnote-ref-5)
6. See footnote № 3 above. [↑](#footnote-ref-6)
7. See footnote № 4 above. [↑](#footnote-ref-7)