

**OPINION**

**Date of adoption: 4 February 2016**

**Cases Nos 148/09, 150/09, 151/09 and 161/09**

**Gordana BUCALO, Žaklina OMASTA-JOVANOVIĆ, Sofija BIJELIĆ, Vladislav BIJELIĆ and Milica RADUNOVIĆ**

**against**

**UNMIK**

The Human Rights Advisory Panel, on 04 February 2016,

with the following members taking part:

Marek Nowicki, Presiding Member

Christine Chinkin

Françoise Tulkens

Assisted by

Anna Maria Cesano, Acting 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 complaints of Mrs Gordana Bucalo (case no. 148/09), Mrs Žaklina Omasta-Jovanović (case no. 150/09), Mrs Sofija Bijelić and Mr Vladislav Bijelić (case no. 151/09) were introduced on 1 April 2009 and registered on 30 April 2009. The complaint of Mrs Milica Radunović (case no. 161/09) was introduced on 7 April 2009 and registered on 30 April 2009.
3. On 23 December 2009, the Panel requested Mrs Milica Radunović, Mrs Sofija Bijelić and Mr Vladislav Bijelić to provide additional information. No response was received.
4. On 9 September 2010, the Panel decided to join the cases pursuant to Rule 20 of the Panel’s Rules of Procedure.
5. On 13 January 2010, the Panel requested additional information from Mrs Gordana Bucalo and Mrs Žaklina Omasta-Jovanović. No response was received.
6. On 19 April 2012, the complaints were communicated to the Special Representative of the Secretary-General (SRSG) [[1]](#footnote-1), for UNMIK’s comments on the admissibility of the complaints. On 25 May 2012, the SRSG provided UNMIK’s response.
7. On 23 August 2012, the Panel declared the complaints admissible.
8. On 7 September 2012, the Panel forwarded its decision to the SRSG requesting UNMIK’s comments on the merits of the complaints, as well as copies of the investigative files relevant to the cases.
9. On 21 July 2015, the SRSG provided UNMIK’s comments on the merits of the complaints, together with copies of the investigative files.
10. On 29 October 2015, the Panel requested UNMIK to confirm whether the disclosure of the investigative files concerning the case could be considered final.
11. On 4 November 2015, UNMIK provided its response.
12. THE FACTS
13. **General background[[2]](#footnote-2)**
14. 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).
15. 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.
16. 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.
17. 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.
18. Meanwhile, members of the non-Albanian community – mainly but not exclusively Serbians, 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 Serbians displaced fall within the region of 200,000 to 210,000. Whereas most Kosovo Serbians 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.
19. 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 Serbians, Roma and members of other minority communities went missing during this period. More than half of the missing persons had been located and their mortal remains identified by the end of 2010, while 1,653 are listed as still missing by the International Committee of the Red Cross (ICRC) as of May 2015.
20. 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.
21. 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.
22. 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”.
23. In July 1999, the UN Secretary-General reported to the Security Council that UNMIK already considered the issue of missing persons as a particularly acute human rights concern in Kosovo. In November 1999, a Missing Persons Unit (MPU) was established within UNMIK Police, mandated to investigate with respect to either the possible location of missing persons and/or gravesites. The MPU, jointly with the Central Criminal Investigation Unit (CCIU) of UNMIK Police, and later a dedicated War Crimes Investigation Unit (WCIU), were responsible for the criminal aspects of missing persons cases in Kosovo. In May 2000, a Victim Recovery and Identification Commission (VRIC) chaired by UNMIK was created for the recovery, identification and disposition of mortal remains. On 5 November 2001, UNMIK signed the UNMIK-FRY Common Document reiterating, among other things, its commitment to solving the fate of missing persons from all communities, and recognizing that the exhumation and identification programme is only a part of the activities related to missing persons. As of June 2002, the newly established Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ) became the sole authority mandated to determine the whereabouts of missing persons, identify their mortal remains and return them to the family of the missing. Starting from 2001, based on a Memorandum of Understanding (MoU) between UNMIK and the Sarajevo-based International Commission of Missing Persons (ICMP), supplemented by a further agreement in 2003, the identification of mortal remains was carried out by the ICMP through DNA testing.
24. 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.
25. On the same date, UNMIK and EULEX signed a MoU on the modalities, and the respective rights and obligations arising from the transfer from UNMIK to EULEX of cases and the related files which involved on-going investigations, prosecutions and other activities undertaken by UNMIK International Prosecutors. Shortly thereafter, similar agreements were signed with regard to the files handled by international judges and UNMIK Police. All agreements obliged EULEX to provide to UNMIK access to the documents related to the actions previously undertaken by UNMIK authorities. Between 9 December 2008 and 30 March 2009, all criminal case files held by the UNMIK DOJ and UNMIK Police were supposed to be handed over to EULEX.
26. **Circumstances surrounding the abduction and disappearance of Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić.**
27. Mrs Gordana Bucalo is the wife of Mr Dragan Bucalo. Mrs Žaklina Omasta-Jovanović is the wife of Mr Ivica Jovanović. Mrs Sofija Bijelić and Mr Vladislav Bijelić are the parents of Mr Mirko Bijelić. Mrs Milica Radunović is the sister of Mr Dragoljub Bojić.
28. The complainants state that on 13 June 1999 at around 18:00 near the town of Suharekë/Suva Reka, municipality of Suharekë/Suva Reka, Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić were abducted whilst serving in the Yugoslav army. Since that time their whereabouts have remained unknown.
29. Mrs Gordana Bucalo states that the abduction of Mr Dragan Bucalo was reported to the ICRC, the Yugoslav Red Cross, the Serbian Ministry of Internal Affairs (MUP) and to an International Public Prosecutor (IPP). According to the complainants, Mrs Sofija Bijelić and Mr Vladislav Bijelić, the abduction of Mr Mirko Bijelić was reported to the Yugoslav Red Cross. The complainant, Mrs Milica Radunović, states that the abduction of Mr Dragoljub Bojić was reported to an IPP. Finally, the complainant, Mrs Žaklina Omasta-Jovanović, does not refer to any reporting activity following the abduction of Mr Ivica Jovanović.
30. The names of Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić appear in a list of missing persons, communicated by the ICRC to UNMIK Police on 10 September 2001 and 11 February 2002.In addition, all four names appear in the database compiled by the UNMIK OMPF. [[3]](#footnote-3)
31. ICRC tracing requests for Mr Dragan Bucalo, Mr Ivica Jovanović and Mr Dragoljub Bojić remain open.[[4]](#footnote-4) Regarding Mr Mirko Bijelić, the complainants submitted a copy of a tracing request issued by the Yugoslav Red Cross, Federal Tracing Service, dated 30 June 1999. However, his name does not appear on the ICRC database.
32. The entries in relation to Mr Dragan Bucalo and Mr Ivica Jovanović in the online database maintained by the ICMP read in relevant fields: “Sufficient Reference Samples Collected” and “DNA match not found”. The entry in relation to Mr Dragoljub Bojić reads “Not Enough Reference Samples Collected” and “DNA match not found”. The name of Mr Mirko Bijelić is not listed in the ICMP database.[[5]](#footnote-5)
33. With respect to Mr Mirko Bijelić, an extract of the Humanitarian Law Centre publication “*Abductions and Disappearances of non-Albanians in Kosovo”* (2001), provides the following information:

“Bijelić’s father states that his son and other soldiers were transporting military hardware from Prizren to Leskovac in Serbia. Their column was ambushed by the KLA near Suva Reka. Bijelić’s commanding officer, [J.P.], informed the family that the KLA immediately killed all those taken, and that Bijelić’s body was found and buried in Prizren on 29 June 1999. When the families attempted to claim their son’s remains, the military authorities informed them that the bodies had not been recovered and that the identifications were based only on the boots and military tags found on the scene.”

*The attack on the Yugoslavian army convoy*

1. On 13 June 1999, at around 18:00, near the town of Suharekë/Suva Reka, municipality of Suharekë/Suva Reka, a Yugoslav army convoy that was withdrawing from Kosovo in accordance with the “Military Technical Agreement” (see § 12 above) was attacked by the KLA. Several members of the convoy went missing and were never heard from again. All four victims in this case were members of that convoy.

*Disclosure of relevant files*

1. In the present case, the Panel received from UNMIK copies of documents which were previously held by the former UNMIK OMPF and by the UNMIK Police WCIU. The Panel notes that UNMIK has confirmed that all documents available to it have been provided (see § 10 above).
2. Concerning disclosure of the 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.

*OMPF and WCIU Investigative Files*

1. The Panel notes that there are a large number of documents in the investigative files and that several copies of the same documents are found in the files for different victims, given the common circumstances of the abductions. In addition, some investigative documents are located in the WCIU files for some victims but not others. For ease of reference, the Panel has listed the documentation by each of the four victims separately. In cases where the same document is in more than one file, it is only listed once, but the duplication is noted when appropriate.

*OMPF and WCIU files of Mr Dragan Bucalo*

1. Most documents in the files concerning Mr Dragan Bucalo relate to other soldiers of the Yugoslav Army, also victims in the KLA attack of 13 June 1999.
2. The first document in the MPU file for Mr Dragan Bucalo is an undated ICRC Victim Identification Form, which provides a brief physical description of him as well as the name and contact details of his sister and brother, as his next-of-kin and persons to contact for identification purposes. The form is cross-referenced to the MPU case no. 2000-000250. The form lists his date of disappearance as 13 June 1999.
3. Further in the file there is an MPU Case Continuation Report, dated 16 February 2000, which is cross referenced to file no. 1999-000037. The Report states that file no. 1999-00036 was “combined with this file (1999-00037) – same set of facts/same occurrence. File subject now [Z. M.] + Dragoljub Bojić.”
4. The files Mr Dragan Bucalo, as well as the one for Mr Ivica Jovanović, contains a memo, dated 19 February 2000, citing file no. 1999-000037, from the MPU to Regional Police Units, the CCIU, Border Police and KFOR requesting information related to missing persons “[Z.M.] and Dragoljub Bojic”. The memorandum provides a basic description of the attack on their convoy on 13 June 1999 and information given by an unidentified complainant regarding Mr Dragoljub Bojić “being held in a prison in Musitiste.”
5. The file contains responses to the above memo, dated 26 February 2000 and 19 March 2000 by CCIU and the Regional Investigative Unit (RIU) in Gjilan/Gnjilane respectively, stating that a check was made in the records and a negative result was given for Mr Dragan Bucalo (MPU file no. 1999-00037).
6. The files for Mr Dragan Bucalo (as well as those for Mr Ivica Jovanović and Mr Dragoljub Bojić) contain an undated document titled “Data about missing 52nd artillery brigade anti-aircraft members”. The document contains the names of five missing Yugoslav servicemen, including Mr Dragoljub Bojić, along with their personal biographical details. Of particular note, the document states:

“According to pieces of information we have and to the statement given by C.G. a great number of VJ members were wounded and kidnapped by Albanian extremists. They were taken to an illegal detention center in Suva Reka. Kidnapped were kept in a school, and worked in a factory “Balkan” for the needs of Albanian extremists.

After one year, two Serbs from the mentioned detention center, managed to send a letter to their relatives. They described where they were, what they were doing etc. Among other things they mentioned two VJ members who were with them in that detention center. All data given in the letter match. The handwriting is credible. We still believe that some kidnapped VJ members are alive and that Albanian extremists keep them in illegal detention centers.”

1. Similarly, the WCIU file for Mr Dragan Bucalo contains a document, dated 10 April 2000, with a heading titled “[l]etter of the prisoners”. The document refers to a letter written by two persons, who were being held in a school in Suharekë/Suva Reka along with two VJ soldiers victims of the attack of 13 June 1999, including one of the victims in this case: Mr Ivica Jovanović. The document describes steps undertaken by KFOR “one month before the prisoners wrote the letter”, including contacting the KLA commander, I.T., who is named in the letter and “who confirmed that there was a combat 13/06/99 nearby Suva Reka.” The document has a heading labelled “[r]equest by UCK: to make exchanges of prisoners.” A copy of the letter from the prisoners and an English translation is attached to this document, dated 10 April 2000. The letter states that prisoners were sleeping in the school auditorium and made to work in the “Balkan” factory. It also names one V.S., as the person facilitating the exchange of letters from and to the detention centre and one N.V., reportedly the contact person for the exchange of prisoners referred to above.
2. The file also contains another MPU Case Continuation Report concerning the case of X.X., another soldier of the Yugoslav Army, originally believed to have also disappeared during the attack to the military convoy. The report, affixed with MPU case no. 2000-000250, has three entries. The first entry, dated 6 May 2000, states “Input DB OK”; the second entry, dated 3 May 2001, states “Input DVI-DB OK”; the third entry, dated 15 September 2002, states “Case-MPU-2000-000250 is to be closed. The MP is located alive by UNMIK Police. See attached report.” The report attached contains a letter from the Yugoslavian Commission for the Implementation of the Military Technical Agreement, dated 8 August 2002, informing KFOR of a surviving eyewitness to the attack on the convoy and his address in Kosovo. There is a subsequent letter to UNMIK Police confirming that the witness was alive and not missing.
3. The WCIU file contains a letter, dated 4 November 2002, from the Serbian MUP to UNMIK stating that Mr Ivica Jovanović, Mr Dragoljub Bojić and two others persons were kidnapped by the KLA on 13 June 1999. The letter concludes with a request to inform the MUP about any investigation results.
4. The WCIU file contains an UNMIK memo, dated 16 November 2002, requesting the RIU in Prizren to provide a status update on 15 cases, two of which involve Mr Ivica Jovanović (MPU file no. 1999-000199) and Mr Dragoljub Bojić (MPU file no. 2000-000267). A similar memorandum is also found in the files, dated 26 December 2002, addressed to the MPU in Prishtinë/Priština. A response to the second memo, dated 9 January 2003, is attached and addressed to the Prizren RIU, providing basic details of the attack and stating that both cases were closed.
5. The WCIU files contains an UNMIK Police document, dated 30 August 2003, titled “Supplement/Continuation Form” with file no. 2002-JU-129,[[6]](#footnote-6) which lists investigative actions related to the cases of five persons, including Mr Dragoljub Bojić (no. 2002-JI-130) and Mr Ivica Jovanović (no. 2002-JI-131), taken by local and international UNMIK Police in locating a “clandestine grave above Nishor village.” The document provides a summary of an on-site inspection and the discovery of the potential gravesite on 24 July 2003. The document states that UNMIK MPU was subsequently taken to the suspected gravesite. A supplemental report attached to the file, dated 10 October 2003, states that OMPF informed the investigators by telephone on 28 September 2003 that they had examined the site, with negative results. However, the MPU investigator noted in a later entry that the OMPF informed him that it did not search all the suspected gravesites in that village and was told “that it was unnecessary and that the pathologists and geologists decided so.” The investigator’s notes also state “On 10.10.2003 we also went to Nishor village at the place where the OMPF have digged. They have only opened first two bunches of soil from the lower part and didn’t continue further.”
6. The MPU files in relation to Mr Dragan Bucalo, Mr Mirko Bijelić and Mr Dragoljub Bojić contain the exact same MPU document entitled “Pillar Resource and Investigation Gravesite Assessment”, dated 4 October 2003, each referencing their respective MPU case numbers as well as investigation no. 0350/INV/02. The document provides the name of the surviving eyewitness X.X., a former soldier of the Yugoslav Army (see § 41 above) as well as a summary of the witness’s statement. In the field titled “Conclusion”, the document states: “[i]n this case X.X. is the key witness to the attack by UCK members on that day at Suvareka and he was the only survivor. His statement made to the undersigned on 24th September 2003 did not shed any light and provide any further information on the fate of the rest of the VJ soldiers who were still missing on that unfortunate day… Since this case depends entirely up to the out come of the statement of [the witness], and he know nothing of it, there is no more to lead to work on this case until we have further information on this matter. Since there is no other means to probe further, the case will be keep in view and will be pending until further development.”
7. The file contains three undated criminal complaints to the International Prosecutor in Prizren by Mr Ivica Jovanović’s father and family members of others in the convoy. The complaints all state that the victims were part of a Yugoslav army convoy that was attacked by the KLA on 13 June 1999 and that all men were kidnapped and were missing. All complaints state that the respective parties are “comprehensively prevented to receive any information about the destiny of the abducted person[s].”
8. The WCIU file also contains a witness statement, taken on 19 October 2003, by two local investigators from eyewitness X.X., named in § 41 and 45 above. According to the statement and to the report, the witness provided no new information to the investigators.
9. The file also contains an UNMIK memorandum, dated 8 March 2006, from the UNMIK Liaison Office for the Police Commissioner to the Chief of the WCIU. Attached to it is a copy of a letter from the Serbian MUP, dated 7 March 2006, which provides details related to the attack on 13 June 1999 on the convoy, the kidnapping of Mr Ivica Jovanović and his detention in a KLA camp. The name of a KLA commander, I.T., is given, along with his date and place of birth. An internal WCIU memo, dated 11 August 2006 is also attached, which lists a number of related cases that were closed and then moved to file 2000-00077. A letter of response from the WCIU to the MUP is in the file, dated 12 August 2006, referencing file no. 2000-00077 and requesting further details. It appears that file no. 2000-00077 was a group file number for eight of the missing soldiers, three of whom are victims in this case: Mr Dragan Bucalo, Mr Ivica Jovanović, and Mr Dragoljub Bojić.
10. The WCIU file for Mr Dragan Bucalo contains an UNMIK investigator’s report, dated 15 October 2007, referencing case no. 2000-00077. The report summarises the findings in many of the investigative documents in the file, including details of the attack by the KLA on the Yugoslav military convoy on 13 June 1999. The report lists eight victims who were kidnapped and remain missing after the attack, including Mr Dragan Bucalo, Mr Dragan Bojic and Mr Ivica Jovanović. The report also names three witnesses and survivors in the case, one being X.X., mentioned in § 41 and 45 above, who “could not provide details about the perpetrators.” The report also provides details of another witness, Dj.C., “who was also kidnapped and released a few days later”, but notes that no information on his actual location was provided, nor that of another soldier, I.S., who was allegedly rescued alive. Moreover, it provides detailed information on the camp where the Serbian prisoners were reportedly held (and from where they had written the letter mentioned in § 40 above), which here is referred to as “Caf Dulje”. The report also provides the full names of the KLA camp commander, I.T., and his deputy, I.G., stating that neither of them had been identified or interrogated by that time (October 2007). However, the document states that “KFOR contacted I.T. in March 2000 and this one confirmed that there was a combat nearby Suva Raka [*sic*] with VJ’s soldiers but he claimed he knew nothing about the prisoners.” The report states that DNA samples had been gathered from the families of the eight victims in the case. It also states that some excavations were made in 2003 “in the area of Nisor, Suva Reka municipality, but nothing was found. Two possible gravesites were checked in the area where there were more bunches of soil. Apparently it was decided by pathologists and geologists not to check all sites.” The investigator’s recommendation for the file was that the case should remain closed. A hand-written note was written on the document, dated 3 January 2008, stating that the document was reviewed and the case should remain closed.
11. The WCIU file contains an UNMIK WCIU Case Analysis Report, dated 18 January 2008, for case 2000-00077 with respect to some of the kidnapped members of the convoy of 13 June 1999. The report details the kidnapping and also refers to the KLA camp run by I.T. where a number of Yugoslav soldiers and Serbian civilians were reportedly detained and killed.

*OMPF and WCIU Investigative File of Mr Ivica Jovanović*

1. The first document in the MPU file for Mr Ivica Jovanović is an undated ICRC Victim Identification Form, which provides a brief physical description of him, lists D.R. as a person who was last with him and provides the names and contact details of Mr Ivica Jovanović’s mother and father. The form is cross referenced with MPU case no. 1999-000199 and lists his date of disappearance as 13 June 1999. Photos of him are included with the form. There is an ICRC letter to UNMIK in the file, dated 20 September 2001, stating that the ante-mortem data was collected and attached for Mr Ivica Jovanović.
2. The file contains a letter from a cousin of Mr Ivica Jovanović, R.S., living in the United States, to the UN Under-Secretary for Peacekeeping Operations, dated 3 January 2000, requesting assistance with respect to the disappearance of Mr Jovanović. The letter provides basic details of the attack on the Yugoslav army convoy as well as information about another possible eyewitness, a mechanic who survived the attack, who is not named in the letter. He also provides details of a truck that was missing and the vehicle identification number: “18 BSP K-22-07”. Attached to the letter is a United Nations Code Cable from the Under-Secretary for Peacekeeping Operations to the SRSG of UNMIK, dated 17 January 2000, stating “[p]lease find attached, for your information and appropriate action…” A similar letter from R.S. to the commander of KFOR, dated 29 January 2000 is attached to the file.
3. There is a memo, dated 27 January 2000, from UNMIK MPU to all regional police, the CCIU and border police which states “[a] request for information from UN New York on the above named missing person was send [*sic*] to Mr KOUCHNER and arrived at the MPU. There is not much information available on [the missing person] at this moment…A message of the Center for Peace and Tolerance tells us that his is kidnapped on the road from Prizren to Suva Reka…In order to provide an answer to UN NY, please inform us if any information about the above missing person is available in your region. Every detail that can lead to the present whereabouts of Jovanovic is welcome. *All answer, also negative one’s, are attended ASAP*. A copy of a similar letter to KFOR is included in the file. The file then contains numerous negative responses from several police detachments, which are detailed on a list that investigators updated, which indicates that all UNMIK police detachments contacted responded with negative responses*.* There are a number of follow-up messages and additional negative responses. The correspondence runs until May 2000.
4. There are additional 12 Case Continuation Reports in relation to Mr Ivica Jovanović, affixed with MPU case no. 1999-000199, with 18 entries from between 26 January 2000 and 17 June 2002. Of particular note are the following entries:
* 12 February 2000, investigators attached a copy of text used in an email to Mr Ivica Jovanović’s cousin in the United States: “Authorities here are in receipt of much information respecting alleged illegal detention facilities both in Kosovo and Albania…All allegations are pursued to the extent possible by KFOR and UNMIK Police.”;
* 16 October 2000, refers to information that “one of the Missing Persons from the convoy may be buried in the village of Belanica.”
* 11 June 2002, refers to a “[l]etter of the kidnapped (Sr.V. & S.V.) KFOR/JIC – replies to the MP family families of missing soldiers – letters “Country heros” – copies from the book.” There is a list of four names under “witness statement”: Dj.K. (the mechanic who survived the attack, mentioned in § 52 above], “officer” D.V., “officer” P. and another survivor to the attack, I.S. However, only the witness statement of Dj.K. is included in the file.
1. There are a number of copies of emails, dated between 26 January 2000 and May 2000, exchanged between UNMIK Police and the cousin of Mr Ivica Jovanović in the United States, R.S., including status updates on the investigation. The correspondence shows that the cousin frequently provided information that he managed to obtain from the Yugoslav authorities, including information on a vehicle ID no. as well as information that there were possible prison camps in Albania. In addition, one of the emails from R.S. states that he was informed by KFOR that a local KLA commander had referred to prisoner exchanges between the UCK and Yugoslav army. There is no correspondence in the file between UNMIK and Mr Ivica Jovanović’s next-of-kin listed in the ante-mortem forms mentioned in § 51 above.
2. The file also contains the memorandum (described in § 37 above), dated 19 February 2000, citing file no. 1999-000037, from the MPU to Regional Police Units, the CCIU, Border Police and KFOR requesting information related to missing persons “Z.M. and Dragoljub Bojic”.
3. There is an undated document in the file titled “Data about missing 52nd artillery brigade anti-aircraft members” (described in § 39 above).
4. The WCIU file for Mr Ivica Jovanović contains a memorandum, dated 4 June 2000, titled “Information on Illegal Detention Centers.” The document refers to the same letter of 10 April 2000, mentioned in § 40 above) written by two prisoners at the KLA detention centre in a village named “Pogaruša” in Suharekë/Suva Reka, who were reportedly detained, among others, with Mr Ivica Jovanović. The letter gives the name of a KLA commander, I.T., who had been in charge of the detention centre and that of a person who had delivered a letter to them in detention. The memorandum states that “KFOR evaluated this information as ‘most probably true’ and decided that this is a police matter. They just hand over the information without further action…The MPU evaluate this information also as most probably true.” The document also refers to the named KLA commander: “[I.T.] appears in the MPU file 1999-000109 in a witness statement. Two kidnapped Serbs were “interrogated by [I.T.], the commander of the UCK and owner of the restaurant…”
5. The file includes an UNMIK initial report, dated 20 June 2000, containing the name of the cousin of Mr Ivica Jovanović as a complainant. The document contains the basic information about the attack on the convoy as well as the name and contact details of a mechanic who is a survivor and witness to the attack, Dj.K., who is ostensibly the witness referred to in the letter from the cousin of Mr Ivica Jovanović (see § 52 and 54 above). The next document is an UNMIK memo, dated 25 June 2000, to the Serbian Police requesting support in taking a witness statement from the surviving eyewitness referred to previously (§ 52 above). A case supplement form, dated 2 July 2000, states that the investigator was assigned to this case on 17 June 2000. There is a memorandum in the file, dated 13 August 2000, stating that Serbian police responded to the request and that investigators were invited to take the witness statement in Serbia proper. A copy of the witness statement of Dj.K. is attached to the memorandum, dated 5 August 2000, where he states he was driving a tow truck in the convoy heading from Prizren to Suharekë /Suva Reka. He states he saw German KFOR near the road and then when they were 500 meters inside Suharekë/Suva Reka they saw a truck blocking the road and then described shooting from all sides by machine guns. He states that lay on the ground during the attack and crawled to the truck at around midnight with other soldiers. He states he was wounded by gunfire and went to the hospital in Prizren with other soldiers. He states in the statement that he does not know what happened to Ivica Jovanović. The investigator concludes “[n]othing in the statement tells us what happened to Ivica Jovanovic…Due to the above information I will suggest this file to be closed.”
6. The file also contains a letter from UNMIK Police, dated 28 June 2000, requesting information regarding the attack on the military convoy in Suharekë/Suva Reka. The letter states that UNMIK Police discovered two Serbian military vehicles in the area. Photos of two destroyed trucks and a photo of one of the registration plates were attached to the letter. There is a response from the Republic of Serbia, Ministry of Internal Affairs, dated 5 July 2000, stating that “checkings are in action and we will additionally inform you about results of checking.”
7. The WCIU file contains a report, dated July 2001, titled “Report on Information of Illegal Detention Centres” citing “SP Case no. 0002/2001.” The report is with respect to the kidnapping of Mr Ivica Jovanović and one other person. The report states “[b]oth of these people are believed in illegal detention center in Pogarusa (a village near Suva Reka), which run by [I.T.] the owner of the Restaurant…in Orahovac. The findings and comments of the report state that, on 14 July 2001, “officers went to the village of Pagarusa. They received information from the missing persons unit that there was an alleged detention site in this village. They conducted several interviews with villagers and the investigators are able to locate the site that was used as a TMK headquarters. The officers conducted an interview with several of the [K.] family members. It appears that the [K.] family was the main focal point for this small village…During the course of the interview with [A.K.] the officers confronted her with several questions about Serbian people that may have been captured or killed. She became evasive with her answers. After several different attempts she still would not directly answer these questions. [A.K.] did allow us to take pictures of their property and wander freely around their residence looking for clues and or information…There is no evidence linking the allegation of a detention site in this area. This case is closed in reference to an illegal detention site. We have exhausted all leads and or information in an attempt to substantiate this allegation.” Attached to the report is a memo, dated 2 April 2001, stating the unit was assigned to conduct the investigation.
8. The file also contains an UNMIK interoffice memorandum, dated 21 August 2001, which provides details of investigators who interviewed a former KLA commander of “brigade 123” who became a KPS officer and had information regarding the convoy attack in Suharekë/Suva Reka. The statement reads as follows [original text preserved]:

“On the 13th of June their soldier were at the bridge they just have let the Serbian people loaded on the trucks to pass as they were on the bridge (the bridge is just behind the corner so you don’t have a clear view) so as KLA soldiers were on the bridge there came on VJ convoy, there was a fight over there one KLS soldier and one VJ soldier died (this he mentioned on the first time) after that VJ soldiers escaped on the direction of the village Sopi, they have passed the village Sopi and headed for the village Sallagrazd where was a fight with the local people, there was one dad [*sic*] VJ soldier and one civilian, after this VJ soldiers escaped in unknown direction. This is all that he stated…”

1. There are two additional MPU Case Continuation Reports in relation to Mr Ivica Jovanović, affixed with MPU case no. 1999-000199. The first Report has two entries, dated 14 November 2001; the first entry states “DVI Input OK”, and the second entry, dated 11 June 2002, states “DVI Input– OK”. The second Report has one entry, dated 19 December 2002, which states “See memo.” There is a memorandum attached to this Report, also dated 19 December 2002, titled “Missing files”, which states “This memo is to inform all Officers that the content of this file is only a printed version of the Ante Mortem inputted in the Disaster Victim Identification Database of the Missing Persons Unit. The original file went missing (date unknown), and could not be located anymore. Please be aware that this information is poor, and by contacting the families all Officers should check if more information is available.”
2. The file contains UNMIK MPU information circular, dated 24 June 2002, which states that “the file was recently updated with new data.” The report states that the file had been recently updated with new data including: “witness statement (VJ soldiers and Officers who were in this incident)”, “interview with one family of missing VJ soldier”, “AM data”, “Reconstruction of the combat with sketch”, “correlation of data given by VJ soldiers and UCK D/commander in this incident”, “[c]orrelation of data from other cases of kidnappings in the same place and app. Time with indication of the same style and perpetrators.” None of the above-mentioned document is attached to this circular. The document concludes with a heading titled “Reinvestigation”, which states “[t]his new information is considered as important new fact and lead that should be examined and in this manner missing persons search investigation is recommended…We are basically concerned to investigate possible gravesites that could be linked with this case in order to light up the destinies of missing soldiers. Other criminal aspects and criminal investigation are out of the MPU mandate.”
3. The WCIU file contains the letter (described in § 42 above), dated 4 November 2002, from the Serbian MUP to UNMIK stating that Mr Ivica Jovanović, Mr Dragoljub Bojić and two others persons were kidnapped by the KLA on 13 June 1999.
4. The WCIU file also contains the UNMIK memorandum (described in § 43 above), dated 16 November 2002, requesting the RIU in Prizren to provide a status update on 15 cases, as well as a similar memo, dated 26 December 2002, addressed to the MPU in Prishtinë/Priština and response to the second memo, dated 9 January 2003, stating that both cases were closed.
5. The MPU file contains a memorandum, dated 18 February 2003, with a subject heading “[p]rogress on Investigation of VJ Soldiers – Suvareka 13-06-1999 Ivica JOVANOVIC MPU1999-000199.” The document refers to a number of previous memos that were received by MPU regarding the “missing VJ Soldiers during ambush by UCK on 13th June 1999.” The memorandum states that “as a result of those memos, Investigation Pillar MPU opened up 10 new investigation files.” The document then provides brief details of each of the 10 investigation files, including file no. 0350/INV/02, which refers to the eyewitness interview with one of the soldiers. The document closes with “[s]ince he knew nothing about the fate of the missing VJ soldiers, the investigation could not go on and the case is closed until further information is received.”
6. The file also contains an MPU “Gravesite Assessment”, dated 1 August 2003 of the site mentioned in § 44 above. The report describes the actions of investigators who went to the site on 31 July 2003 and includes the names of Mr Ivica Jovanović and Mr Dragoljub Bojić as two of five persons missing. The investigators concluded that “there is sufficient reason to believe that there could be bodies here.” A number of photos and a map of the location are included in the file. The WCIU file for Mr Dragan Bucalo contains an email related to this search, dated 7 October 2003, from UNMIK OMPF stating that it had “performed an exhumation on the 25th of September 2003 in Nisor with negative result…As shown by your office the first two areas were tested.”
7. The WCIU file for Mr Ivica Jovanović contains the UNMIK Police document (described in § 44 above), dated 30 August 2003, titled “Supplement/Continuation Form” with file no. 2002-JU-129, which lists investigative actions related to the cases of five persons, including Mr Dragoljub Bojić (no. 2002-JI-130) and Mr Ivica Jovanović (no. 2002-JI-131), taken by local and international UNMIK Police in locating a “clandestine grave above Nishor village.”
8. The WCIU file also contains a witness statement (described in § 47 above), taken on 19 October 2003, by two local investigators. The witness provided no new information to the investigators.
9. The WCIU file for Mr Ivica Jovanović contains an UNMIK memo, dated 17 August 2006, referencing the related cases. The document states “find attached a printout send to [A.A.] from ICMP regarding victims in above-mentioned cases. Both cases seem to be related. It is possible that this is one case with a total eleven or twelve victims.” The names of Mr Dragoljub Bojić and Ivica Jovanović are listed along with others in the memo, which also restates the negative results of the exhumation that was conducted at “Site name Nisor”.
10. The WCIU file also contains an UNMIK Case Analysis Report, dated 22 October 2007, referencing case no. 2002-00114. The Report refers to the kidnapping of Mr Ivica Jovanović as part of a convoy that was attacked by the KLA on 13 June 1999. The report states that there were no witnesses, witness statements or suspects in the case. The document also states that “[c]ase does not exist anymore, it’s the same as 2000-00077.” The recommendation of the investigator is “[c]ase closed. Files fusion.” There is an UNMIK WCIU Case Report from the same date that contains the same information and conclusion. The file also contains an UNMIK Case Analysis Report, dated 5 October 2007, referencing a related case. The recommendation of the investigator was for “this case to be OPEN as there might be helpful information in reports taken by KFOR and ICRC.”
11. The final document in the file on the investigation with respect to Mr Ivica Jovanović is an UNMIK Police report titled “War Crimes Investigation Unit – Case Report”, dated 18 January 2008, referencing the related cases containing information on the capture of Mr Dragoljub Bojić and others. The Report provides updated information, referring to the MUP letter mentioned above, along with details of a KLA camp and the name of the KLA commander referred to in § 58 above.

*OMPF and WCIU Investigative File of Mr Dragoljub Bojić*

1. The first document in the MPU file in relation to Mr Dragoljub Bojić is an undated ICRC Victim Identification Form which provides a brief physical description of him, lists Z.M., M.N. and P.I. as persons who disappeared with him and provides the name and contact details of Mr Dragoljub Bojić’s brother. The form is cross-referenced to the MPU case no. 2000-000267 and contains a photograph of him. The form lists his date and place of disappearance as 13 June 1999 from the centre of Suharekë/Suva Reka. There is an English version of the form, dated 8 January 2000, which states that he was attacked by the KLA and that there are rumours that he died in a truck that “turned from road”. The form also states that KFOR could have more information, as they “were on South side of town.”
2. There is an undated document in the file titled “Data about missing 52nd artillery brigade anti-aircraft members” (described in § 39 above).
3. There are two Case Continuation Reports in relation to Mr Dragoljub Bojić, affixed with MPU case no. 1999-0036 and 2000-000267 respectively. The first has two entries, both dated 2 January 1999 [*sic*], which state “Input OK”, and “Proposal \* Does KFOR have more information on this? \* Note to the region demanding if they have files on this. !Went missing together with MPU037. The second Report has three entries with three different dates: the first entry, dated 06 May 2000, states “Input DB OK”; the second entry, dated 19 April 2001, states “Input DVI OK”; the third entry, dated 04 September 2001, states “Additional information for Bojic Dragoljub. The documents about Bojić Dragoljub are transferred from the file no 1999-000037 which doesn’t exist anywhere ‘at all’ document.”  Some photos of Mr Dragoljub Bojić are attached along with a hand-written letter describing his kidnapping including three telephone numbers. Upon closer inspection, it appears that the MPU file of Mr Dragoljub Bojić under file no. 1999-000037 was at some point changed to file no. 2000-000267.
4. The MPU file contains an UNMIK document from the MPU to the ICRC, dated 16 February 2000, citing file no. 1999-000037 and naming Mr Dragoljub Bojić, which states “[a] records check respecting the above-named missing person is requested.” There is a similar document, dated 19 February 2000, addressed to the OSCE, which includes a “date of disappearance” field indicating 13 June 1999. Both documents indicate a “positive” result of the records check stating “person not located.”
5. The file for Mr Dragoljub Bojić also contains an UNMIK Information Circular, dated 27 August 2002, from UNMIK Police in Belgrade to UNMIK MPU, which provides details of the kidnapping of 13 Yugoslav soldiers and copies from the file for Mr Ivica Jovanović, MPU file no. 1999-000199, “that indicates on possibilities for the gravesites.” The document also states that a number of documents were attached, including an “[i]nformant/witness Statement given by ex UCK Commander, recorded by CCIU – extracted from 1999-000199.” There is an investigation database printout, dated 29 August 2002, which refers to file no. 0350/INV/02 and states “Possible gravesite.” Also included is an extract from a Case Continuation Report from MPU file no. 1999-000199 which lists missing Yugoslav soldiers “with updated MPU file numbers and more precise locations”, as well as a list of Albanian and Serbian civilians who went missing on the same day in the vicinity of Suhareke/Suva Reka.
6. The MPU file contains a report titled “Gravesite Assessment Report”, dated 28 October 2002, referencing investigation no. 0350/INV/02. The field titled “Background of Case” states “the Missing Persons [Liaison Officer] in Belgrade, the case is divided into two (2) categories. One was about the fate of missing VJ soldiers on 13-06-1999 and 4 VJ soldiers on 11-04-1999 during an attack at the Suvareka by UCK members. An ex - VJ soldier [X.X., mentioned in §§ 41, 45, 47, 49 above] survived the attack…and the other category was the possibilities of civilians’ gravesites in villages around the vicinity of Suvareka Municipality... All these villages have been investigated by the undersigned and closed.” The document then states that the case was assigned to the reporting investigator “on 11/09/2002” for further investigation. The report then provides details of investigative steps taken by investigators in visiting the Prizren police station and a village near Prizren on 1 October 2002 to interview the surviving eyewitness, X.X., and his family. The witness told investigators that he was in a convoy of empty trucks that was attacked by the KLA on 13 June 1999. He described how, once the shooting started, he ran to the bushes and was shot in the leg while running and reached home two days later. He stated that he did not recognize any of the KLA attackers. He also stated that Mr Mirko Bijelić was the driver of the truck in front of him and that he had attended a meeting with the other soldiers’ families arranged by the ICRC in September 2002. The conclusion of the report states: “Since this case depends entirely up to the outcome of the statement of [X.X.], and he nothing of it, there is no more lead work on this case. Until we have further information on this matter, it is recommended that this case is close. [*sic*]”
7. The file also contains a document, dated 6 August 2003, affixed with file no. 0350/INV/02, which states “Unable to locate the gravesite as the only witness that survived the ambush at Suvareka did not know what happened to his compatriots nor did he know the gravesite, case is closed in investigations. No action until further information is established.” The next line states “Case re-opened.”
8. The last document in the file for Mr Dragoljub Bojić also contains a memo, dated 10 June 2004, with a subject line titled “Case Continuation Report regarding 0053/INV/04, MPU File#2000-000267.” The document states that investigators attempted to visit the witness, X.X., named above, but at that time he was “not living there anymore”. The memorandum concludes that the case will be kept as “PENDING until further information on this matter from some authenticated channel.”

 *OMPF Investigative File of Mr Mirko Bijelić*

1. The first document in the MPU file in relation to Mr Mirko Bijelić is an undated ICRC Victim Identification Form which provides a brief physical description of him, lists D.B. and Mr Dragan Bucalo as persons who disappeared with him and provides the name and contact details of Mr Mirko Bijelić’s mother and father, the complainants in his case and next-of-kin. The form is cross-referenced to the MPU case no. 2000-000073 and lists his date of disappearance as 13 June 1999.
2. The file also contains MPU a Case Continuation Report for Mr Mirko Bijelić, affixed with case no. 2002-000073, containing two entries. The first entry, dated 11 February 2002, states “Input-DB-OK”, and the second entry, dated 12 February 2002, states “Input-DVI-OK”.
3. The last document in the file of Mr Mirko Bijelić contains the document (described in § 45 above) entitled “Pillar Resource and Investigation Gravesite Assessment”, dated 4 October 2003, which provides the summary of a surviving eyewitness’ statement (X.X.) and conclusion that the case “will be pending until further development.”
4. THE COMPLAINTS
5. The complainants complain about UNMIK’s alleged failure to properly investigate the abduction of their immediate family members. 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).
6. The complainants also in essence complain about the mental pain and suffering allegedly caused to them by this situation. In this regard, they rely on Article 3 of the ECHR.
7. THE LAW

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

### The scope of the Panel’s review

1. Before turning to the examination of the merits of the complaints, the Panel needs to clarify the scope of its review.
2. In determining whether it considers that there has been a violation of Article 2 (procedural limb) 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.

1. 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.
2. 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 complainant complains about acts that occurred after that date, they fall outside the jurisdiction *ratione personae* of the Panel.
3. 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 § 89 above). 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.
4. 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).

### The Parties’ submissions

1. The complainants in substance allege violations concerning the lack of an adequate criminal investigation into the abduction and disappearanceof their family members. The complainants also state that they were not informed as to whether an investigation was conducted at all, and what the outcome was.
2. At the outset, the SRSG submits that, as UNMIK handed over all investigative files to EULEX, it “ceased to be the custodian of police records in Kosovo and could not, as a matter of principle, retain copies of classified and on-going police investigation files.” According to the SRSG, upon UNMIK’s request, and based on its own assessment, EULEX “may, or may not, release … such investigative records.” Therefore, according to the SRSG, “a failure to transmit a complete investigation file to the HRAP cannot lead the HRAP to the irrebutable presumption that UNMIK failed to carry out a proper investigation”.
3. The SRSG generally accepts that the disappearance of Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić occurred in life threatening circumstances. The SRSG states that in June 1999, shortly after the arrival of KFOR and UNMIK in Kosovo, the security situation was “tense, with a number of serious criminal incidents targeting Kosovo-Serbs and Kosovo-Albanians, including abductions and killings”. Citing the UN Secretary-General’s report to the United Nations Security Council of 12 July 1999, the SRSG describes the situation as follows:

“The general situation in Kosovo has been tense but is stabilizing. The KLA has rapidly moved back into all parts of Kosovo, in particular the south-west, and a large number of Kosovo Serbs have left their homes for Serbia. While the first wave of Kosovo Serb departures was prompted by security concerns rather than by actual threats, a second wave of departures resulted from an increasing number of incidents committed by Kosovo Albanians against Kosovo Serbs. In particular, high profile killings and abductions, as well as looting, arsons and forced expropriation of apartments, have prompted departures. This process has now slowed down, but such cities as Prizren and Pec are practically deserted by Kosovo Serbs, and the towns of Mitrovica and Orahovac are divided along ethnic lines.

The security problem in Kosovo is largely a result of the absence of law and order institutions and agencies. Many crimes and injustices cannot be properly pursued. Criminal gangs competing for control over scarce resources are already exploiting this void. While KFOR is currently responsible for maintaining public safety and civil law and order, its ability to do so is limited due to the fact that it is still in the process of building up its forces. The absence of a legitimate police force, both international and local, is deeply felt, and therefore will have to be addressed as a matter of priority.”

1. Accepting that Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić disappeared in life-threatening circumstances, the SRSG does not dispute UNMIK’s responsibility to conduct an investigation into their case under Article 2 of the ECHR, procedural part. In the words of the SRSG, “the essential purpose of such investigation [was] to secure the effective implementation of the domestic laws which protect the right to life, as defined by UNMIK Regulation No. 1999/1 On the Authority of the Interim Administration in Kosovo of 25 July 1999 and subsequently, by UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo of 12 December 1999, as amended.”
2. The SRSG underlines that the complainant does not allege a violation of the substantive part of Article 2, but rather of its procedural element. The SRSG states that “the procedural element of Article 2 is essentially two-fold: (i) an obligation to determine through investigation the fate and/or whereabouts of the missing person; and (ii) 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(s).”
3. The SRSG further observes that when determining applications under Article 2, procedural part, consideration must be given to not imposing an impossible or disproportionate burden on UNMIK. In this regard, the SRSG recalls the judgment of 15 February 2011 rendered by the European Court of Human Rights 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. Furthermore, after a long and brutal war, Bosnia and Herzegovina underwent fundamental overhaul of its internal structure and political system: Entities and Cantons were set up pursuant to the Dayton Peace Agreement, power-sharing arrangements were introduced in order to ensure effective equality between the “constituent peoples” in the post-conflict society (see *Sejdić and Finci v. Bosnia Herzegovina* [GC], nos. 27996/06 and 34836/06, ECHR 2009-…), new institutions had to be created and the existing ones had to be restructured. Some reluctance on the part of the former warring parties to work with those new institutions could be expected in the post-war period, as evidenced in the present case. While it is difficult to pinpoint when exactly this process ended, the Court considers that the domestic legal system should have become capable of dealing effectively with disappearances and other serious violations of international humanitarian law by 2005, following comprehensive vetting of the appointment of police and judiciary and the establishment of the War Crimes Sections within the Court of Bosnia and Herzegovina. All this considered and since there has been no substantial period of inactivity post-2005 on the part of the domestic authorities in the present case, the Court concludes that, in the circumstances obtaining at the material time, the domestic criminal investigation can be considered to have been conducted with reasonable promptness and expedition.”

1. In the view of the SRSG, the situation that UNMIK faced in Kosovo “from 1999 to 2008” was “in most respects similar to that experienced in Bosnia and Herzegovina from 1995 to 2005”.
2. The SRSG states that during the Kosovo conflict thousands of people went missing, at least 800,000 people were displaced and thousands were killed. Many of the persons who went missing were abducted, killed, and buried in unmarked graves inside or outside Kosovo, which made very difficult locating and recovering their mortal remains.
3. In June 2002, UNMIK created the OMPF with the mandate to determine the fate of the missing; however its work was faced with many challenges at the beginning of its operations, due to the work previously done mostly by actors independent from UNMIK. In particular, the SRSG states that the collection of evidence of war crimes began with the arrival of NATO in 1999 with independent teams from several countries operating under the loose coordination of the ICTY. A lack of standard operating procedures or centralisation led to problems with the evidence gathered in this phase. In 2000, 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.
4. The SRSG states that locating and identifying the missing in the context described above is a very difficult and time-consuming task. He further states that the number of missing persons recovered and identified by OMPF is “testament to the vigour of its work between 2002-2008” and that “more bodies continued to be located in burial sites and more identifications and returns to family members are taking place, often based on information contained in UNMIK-OMPF files”. The SRSG continues that “therefore, it is apparent that 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 Kosovo as reflected in the *Palić* case referred to above. The SRSG further notes that this process was “reliant on a number of actors rather than just UNMIK, for example the International Commission on Missing Persons, the International Committee of the Red Cross and local missing persons organisations.”
5. 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 Police WCIU included both international UNMIK Police and local Kosovo Police Service officers and focused on the criminal investigation of cases of missing persons. Their responsibility included locating illicit graves, identifying the perpetrators and collecting evidence relating to crimes. UNMIK international police officers working on cases of missing persons had to adjust to conducting investigations in a foreign territory and cultures, with limited support from the still developing Kosovo Police.
2. He further states that, after the conflict, all local institutions in Kosovo, including law-enforcement institutions and those responsible for locating the missing, were non-functional and had to be established from scratch. In addition, 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, all these constraints inhibited the ability of the UNMIK Police to conduct investigations according to the standards that may be expected from States “with more established institutions and without going through the difficulties associated with a post-conflict situation.”
3. With regard to these particular cases, the SRSG submits that, with respect to Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić, “[a]lthough each missing person case was assigned a separate MPU case number, it appears as though the disappearance…was investigated as one case.”
4. Concerning UNMIK’s “[a]ttempt to locate [the] mass grave site”, the SRSG points out that an interview was conducted with a KPS officer, I.M., who was then a deputy commander in the KLA, to gather information regarding the convoy attack and the location of the gravesite (note § 78 above). The former commander confirmed the attack and gave information on a potential gravesite, where investigators later went to collect information about the case.
5. The SRSG also refers to the visit conducted by investigators on 31 July 2003 to a potential grave site near Nishor/Nišor village in Suharekë/Suva Reka. “The MPU investigators took numerous photos and drew a map to assist an anthropologist in finding the site. No witnesses were interviewed as the situation was deemed politically sensitive.” The SRSG refers to the conclusion of investigators that “there is sufficient reason to believe there could be bodies here”. The SRSG states that exhumations were made in two possible sites but that “[a]pparently it was decided by pathologists and geologists not to check all sites.”
6. The SRSG provides details of the interviews investigators had with a surviving eyewitness, X.X., in 2002 (§ 79 above) and 2003 (§ 45 above) and states that the eyewitness had no information that could assist with respect to locating mass graves in Suharekë/Suva Reka. The SRSG describes the investigators’ interview with the second surviving eyewitness, Dj.K., who was also unable to provide additional information with respect to the fate of others (see § 59 above).
7. The SRSG then describes the investigation into the reported detention centre, including the information received from KFOR with respect to its existence and the letter that was reportedly written by Serbians who were being held there (as noted in § 40 above). The SRSG refers to I.T., the person who was named as the KLA commander in charge of the detention centre as the owner of a local restaurant and quotes the investigator’s report on a site visit, including a summary of interviews with a prominent family in the village (see § 61 above).
8. In addition, the SRSG states that UNMIK responded to a letter from the Serbian Ministry of Internal Affairs, dated 8 March 2006, regarding the same detention centre (see § 48 above), requesting further information in order to proceed with the investigation, but with no response in the case file.
9. Concerning the OMPF and UNMIK police investigation, the SRSG states that “it is evident that UNMIK did open and pursue an investigation into the possibility of identifying the perpetrators and the whereabouts of Messrs. Bucalo, Jovanović, Bijelić and Bojić” including collecting “ante-mortem information from the families of the missing persons.”
10. The SRSG also states that the “case-file also includes e-mail correspondence between the MPU and a cousin of Mr. Jovanović from April-May 2000. The MPU informed Mr. Jovanović’s cousin that it had no new information regarding the whereabouts of Mr. Jovanović.” The SRSG states that the cousin was “only able to provide limited additional information to UNMIK.” However, he points out that the cousin provided information with respect to the identification number of the vehicle Mr Ivica Jovanović was in and that two army trucks were found by UNMIK Police in that area, one with a different number plate and the other with no plates. The SRSG states that “it is not clear whether Messrs. Bucalo, Jovanović, Bijelić and Bojić were in either of the trucks discovered by UNMIK Police when they disappeared.”
11. The SRSG quotes at length a summary of the UNMIK investigators’ report, dated 15 October 2007, described in § 49 above, providing a description of the witness statement taken from one of the eyewitnesses, X.X.,, specifying that DNA samples were taken from the families of the missing soldiers, providing information regarding the KLA commander of the camp and his deputy, stating that neither was identified or interrogated and identifying the names of two other potential survivors, Dj. C., and I.S., who were not interviewed, and that excavations that were done in 2003 in Nishor/Nišor at two possible sites, but not at all sites. Finally, the SRSG states that the investigator “marked the case “Closed” and recommended that it should be reopened if further information regarding the location of the missing persons and perpetrators was made available”.
12. The SRSG argues that the “investigative activities of UNMIK must be assessed by the Panel against the broader context of UNMIK’s criminal investigations in post-conflict Kosovo, as outlined above” and that “UNMIK sought to comply with its obligation to determine, through an appropriate investigation, the circumstances surrounding the disappearance of Messrs. Bucalo, Jovanović, Bijelić and Bojić. There was a lack of information concerning the case as eye witnesses to the events surrounding their disappearance were unable to provide any information regarding the location of the missing persons or a grave site and were unable to give evidence concerning the identity of the possible perpetrators.”
13. The SRSG asserts that “the lack of any physical evidence or investigative information from eyewitnesses all posed a real hurdle to the conclusion of any investigation by UNMIK. UNMIK has noted in other missing persons’ cases that, without investigative information from witnesses or physical evidence being discovered, police investigations inevitably stall because of lack of evidence.”
14. The SRSG argues “it is evident that UNMIK Police and the OMPF did conduct an investigation in accordance with the procedural requirements of Article 2 of ECHR, aimed at locating Messrs. Bucalo, Jovanović, Bijelić and Bojić’s [*sic*] or their remains and bringing the perpetrators to justice. UNMIK notes that the identity of possible perpetrator(s) had not been established by the time the file was transferred to EULEX.”
15. The SRSG concludes that “it is clear from the available files that UNMIK Police and the OMPF followed up on all available investigative leads, however, none led to the successful identification, arrest and prosecution of the perpetrators. Taking into account UNMIK’s previous comments and the foregoing, UNMIK therefore reserves its right to make further comments on the allegations related to the inadequacy of investigations to HRAP, should additional information be brought to its attention.”

### The Panel’s assessment

1. The Panel considers that the complainants invoke a violation of the procedural obligation stemming from the right to life, guaranteed by Article 2 of the ECHR in that UNMIK Police did not conduct an effective investigation into the abduction and disappearanceof Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić.

#### Submission of relevant files

1. At the Panel’s request, on 21 July 2015, the SRSG provided copies of the documents related to this investigation, which UNMIK was able to recover. On 04 November 2015, UNMIK confirmed to the Panel that no more files have been located, thus the disclosure may be considered complete (see § 10 above).
2. 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).
3. The Panel also notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigations to their handing over, is crucial to the continuation of such investigations and failure to do so could thus raise *per se* issues under Article 2 (see HRAP, *Bulatović*, no. 166/09, opinion of 13 November 2014, § 62).
4. The Panel has no reason to doubt that UNMIK undertook all efforts in order to obtain the relevant investigative documents. However, UNMIK has not provided any explanation as to why the documentation may be incomplete, nor with respect to which parts.
5. The Panel itself is not in the position to verify the completeness of the investigative files received. The Panel will therefore assess the merits of the complaint on the basis of documents made available (in this sense, see ECtHR, *Tsechoyev v. Russia*, no. 39358/05, judgment of 15 March 2011, § 146).

#### General principles concerning the obligation to conduct an effective investigation under Article 2

1. 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.
2. In order to address the complainants’ allegations, the Panel refers, in particular, to the well-established case-law of the European Court on 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 of the Convention, 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, § 105, *Reports of Judgments and Decisions* 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).
3. 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 § 92 above, at § 136); ECtHR [GC], *Mocanu and Others v. Romania*, nos 10865/09, 45886/07 and 32431/08, judgment of 17 September 2014, §317).
4. The authorities must act of their own motion once the matter has come to their attention, and they cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedure (see ECtHR, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, judgment of 6 April 2004, § 310; see also ECtHR, *Isayeva v. Russia*, no. 57950/00, judgment of 24 February 2005, § 210; ECtHR [GC], *Mocanu and Others v. Romania*, cited above, § 321).
5. Setting out the standards of an effective investigation, the Court has stated that besides being independent, accessible to the victim’s family, carried out with reasonable promptness and expedition, affording a sufficient element of public scrutiny of the investigation and its results, the investigation must also be effective in the sense that is capable of leading to a determination of whether the death was caused unlawfully and if so, to the identification and punishment of those responsible (see ECtHR [GC]*, Varnava and Others v. Turkey*, cited in § 92 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, § 312; and *Isayeva v. Russia*, cited above, § 212).
6. In particular, the investigation’s conclusion must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of enquiry undermines to a decisive extent the investigation’s ability to establish the circumstances of the case and the identity of those responsible (see ECtHR, *Kolevi v. Bulgaria*, cited in § 126 above, 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 investigation work (see ECtHR, *Velcea and Mazărev. Romania*, no. 64301/01, judgment of 1 December 2009, § 105).At the same time, the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation. (see ECtHR [GC], *El-Masri v. “the former Yugoslav Republic of Macedonia”*, no. 39630/09, judgment of 13 December 2012, § 183; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 127 above, at §322).
7. 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); ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 127 above**,** at §317).
8. Specifically with regard to persons disappeared and later found dead, which is not the situation in the current case, 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 § 129 above, at § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited in § 92 above, at § 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, § 46; in the same sense ECtHR [GC], *Varnava and Others v. Turkey*, cited above, § 145). While the location and the subsequent identification of the mortal remains of the victim may in themselves be significant achievements, the procedural obligation under Article 2 continues to exist (see ECtHR, *Palić v. Bosnia and Herzegovina*, cited above, § 64).
9. On the requirement of public scrutiny, the Court has further stated that there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim’s next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see ECtHR, *Ahmet Özkan and Others*, cited in § 128 above, at §§ 311 - 314; ECtHR, *Isayeva v. Russia*, cited in § 128 above, at §§ 211-214 and the cases cited therein; ECtHR [GC], *Al-Skeini and Others v. the United Kingdom*, judgment of 7 July 2011, no. 55721/07, § 167, ECHR 2011; ECtHR [GC], *Mocanu and Others v. Romania*, cited in § 127 above, at §324).
10. The Court has also underlined the great importance of an effective investigation in establishing the truth of what transpired thereby satisfying the right to truth not only for the families of victims, but also for other victims of similar crimes, as well as the general public, who have the right to know what occurred (ECtHR [GC], *El-Masri v. “the former Yugoslav Republic of Macedonia” cited at* § 130 above; 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).

#### Applicability of Article 2 to the Kosovo context

1. The Panel is conscious that Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić were abducted and subsequently disappeared shortly after the deployment of UNMIK in Kosovo, when crime, violence and insecurity were rife.
2. For his part, the SRSG does not contest that from its deployment in Kosovo in June 1999 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.
3. 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.
4. 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).
5. 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 § 129 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 § 133 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 § 128 above, at §§ 85-90, 309-320 and 326-330; *Isayeva v. Russia*, cited in § 128 above, at §§ 180 and 210; ECtHR, *Kanlibaş v. Turkey*, no. 32444/96, judgment of 8 December 2005, §§ 39-51).
6. The Court has acknowledged that “where the death [and disappearances] 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, § 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 § 126 above, at §§ 86‑92; ECtHR, *Ergi v Turkey,* cited above, §§ 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, §§ 215‑224; ECtHR, *Musayev and Others v. Russia*, nos. 57941/00 and others, judgment of 26 July 2007, §§ 158-165).
7. 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 above, at § 1; HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, communication no. 1447/2006, views of 22 April 2009, § 11.2, CCPR/C/95/D/1447/2006). Further, the HRC has stated the applicability of Article 2 (3), 6 and 7 of the ICCPR with specific reference to UNMIK’s obligation to conduct proper investigations on disappearances and abductions in Kosovo (see HRC, Concluding Observations of the Human Rights Committee: Kosovo (Serbia), 14 August 2006, §§ 12-13, CCPR/C/UNK/CO/1).
8. 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 § 19 above).
9. 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.
10. Lastly, in response to the SRSG’s objection that Article 2 must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, either in the context of policing activities or that of priorities and resources, the Panel takes into account that the European Court has established that what amounts to an impossible and/or disproportionate burden must be measured by the very particular facts and contexts (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 129 above, at § 70; *Brecknell v. The United Kingdom,* no. 32457/04, judgment of 27 November 2007, § 62).
11. The Panel puts on record that it has already analysed the effectiveness under Article 2 of numerous investigations conducted by UNMIK with respect to killings, abductions and disappearances related to the conflict in Kosovo. The Panel has identified common shortcomings in these investigations such as delays in the registration of the cases and lengthy periods of inactivity from the outset and in the period within the Panel’s jurisdiction; failure to take basic investigative steps and follow obvious lines of enquiry; lack of coordination among different units of UNMIK Police; lack of regular and meaningful reviews of cases; lack of prosecutorial oversight; failure to provide family members with minimum necessary information on the status of the investigation (compare with ECtHR, *Aslakhanova and Others v. Russia*, cited in § 132 above, at § 123). The Panel also records systemic failures such as a deficient system of setting investigative priorities and lack of proper handover. In the great majority of these cases the Panel has found that the investigations were not effective in the meaning of Article 2 and that UNMIK’s failures, which persisted throughout the period of the Panel’s jurisdiction, could not be justified in the light of difficulties encountered by UNMIK at the beginning of its mission.

#### Compliance with Article 2 in the present case

1. Turning to the circumstances of the present case, the SRSG states that UNMIK conducted investigations regarding the abduction and disappearance of Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić and provides dates of various investigative actions, but does not specifically state when files were opened for these missing persons.
2. The Panel notes the SRSG’s submission that UNMIK was obliged to hand over all police files to EULEX in 2008 and that it may now seek permission from EULEX to access such records for archiving purposes. The SRSG states that “a failure by EULEX to transmit a complete investigation file cannot lead the HRAP to the irrebuttable presumption that UNMIK failed to carry out a proper investigation or that files were not accurately handed over by UNMIK to EULEX”.
3. The Panel notes that the proper maintenance of investigative files concerning crimes such as killings and disappearances, from the opening of the investigations until their completion, including the proper record of all hand overs which might have taken place, is crucial to the continuation of such investigations and failure to do so could thus raise *per se* issues under Article 2. In this respect, the Panel notes that the proper handover of criminal files should include at least an inventory and receipt of all transferred files, including for the purpose of maintaining the chain of custody, a basic principle in criminal investigations.
4. The Panel, having considered all the investigative documents, considers that UNMIK was made aware of the abduction and disappearances, at the latest, of Mr Ivica Jovanović by 17 January 2000 (see § 52-53 above), of Mr Dragoljub Bojić by16 February 2000 (see § 77 above), of Mr Dragan Bucalo by 26 February 2000 (see § 38 above) and of Mr Mirko Bijelić by 10 September 2001 (see § 26 above). The Panel also notes that since the earlier stage of the investigation, UNMIK authorities were informed that the victims had been abducted and disappeared in the context of an attack to a group of VJ soldiers in June 1999.
5. The purpose of this investigation was to discover the truth about the circumstances of the abduction and disappearance of all the victims, to establish their fate and to find the perpetrators and bring them before a competent court established by law. To fulfil these purposes, those conducting the investigation were required to seek, collect and preserve all necessary evidence leading to identification of the perpetrator(s).
6. The Panel recalls that in order to be effective, the investigative actions must be conducted promptly and expeditiously, with the authorities taking all reasonable steps and following obvious lines of enquiry to secure the evidence concerning the incident, including, *inter alia* eye-witness testimony, forensic evidence etc. The investigation must also ensure a sufficient element of public scrutiny and be reasonably accessible to the victim’s family. The investigation’s conclusion must be based on thorough, objective and impartial analysis of all relevant elements. In addition, the investigation should be periodically reviewed, in order to ensure that all available information is considered. As the obligation to investigate is not an obligation of results but of means, in assessing the investigation’s effectiveness, the circumstances of the particular case and the practical realities of the investigative work must be taken into consideration (see §§ 129 - 132 above).
7. Therefore, it was UNMIK’s responsibility to ensure, *first*, that the investigation is conducted expeditiously and efficiently; *second*, that all relevant investigative material is properly handed over to the authority taking over responsibility for the investigation (EULEX); and *third*, that the investigative files could be traced and retrieved, should a need for that arise at any later stage.
8. The Panel further notes that, according to the 2000 Annual Report of UNMIK Police, at least by 27 October 1999 the whole system of criminal investigation in the Prizren region was under the full control of UNMIK.
9. The Panel notes that there were obvious shortcomings in the conduct of the investigation from its commencement. However, in light of the considerations developed above concerning its limited temporal jurisdiction (see § 92 above), the Panel recalls that it is competent *ratione temporis* to evaluate the compliance of the investigation with Article 2 of the ECHR only for the period after 23 April 2005, while taking into consideration the state of the case at that date (see ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 129 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 § 21 above).
10. The Panel now turns to the assessment of this particular investigation against the first part of the procedural obligation under Article 2 of the ECHR, which is discovering the whereabouts and establishing the fate of the victims.
11. The Panel is mindful that in any investigation, and particularly in an investigation of a disappearance in life-threatening circumstances, the initial stage is of the utmost importance, and it serves two main purposes: to identify the direction of the investigation and ensure preservation and collection of evidence for future possible court proceedings (see the Panel’s position on a similar matter expressed in the case *X*., nos 326/09 and others, opinion of 6 June 2013, § 81; HRAP, *Ibraj*, case nos 14/09 et al, opinion of 6 August 2014, § 142).
12. The Panel notes that already by 10 September 2001 UNMIK Police possessed some information, including a very basic description of the abduction of Mr Ivica Jovanović, Mr Dragoljub Bojić, Mr Dragan Bucalo and Mr Mirko Bijelić, as well as the name and contact details of certain members of their respective families (see §§ 34, 51, 74 and 82 above). The Panel notes that by 10 September 2001 UNMIK Police also had some relevant information on the circumstances surrounding the attack on the convoy and subsequent disappearance of all four of the victims.
13. The Panel also notes that investigators followed leads and interviewed an eyewitness, X.X., in October 2002 with respect to the attack on the convoy on 13 June 1999 and to the possible location of gravesites for all four missing persons; however the witness was unable to provide this information (see §§ 45 and 79 above). With respect to the investigation into the abduction and disappearance of Mr Ivica Jovanović, an earlier interview was conducted on 5 August 2000 with a second surviving eye-witness, Dj.K., apparently also with no useful information (see § 59 above).
14. The Panel notes that investigators also canvassed and conducted on-site inspections of suspected gravesites with respect to Mr Ivica Jovanović and Mr Dragoljub Bojić on 24 July 2003 (see § 44 above). While potential gravesites were identified and reported to the MPU for exhumation, the file states that while the OMPF did examine the site, it did not search all the suspected gravesites. It is not clear why the remaining sites were not examined. The only explanation given in the file for not examining the other sites was that “it was unnecessary and that the pathologists and geologists decided so.” The investigating officer thought that this was worth noting in his report. Moreover, there is nothing in the report indicating that the examination included a search for the remains of Mr Dragan Bucalo and Mr Mirko Bijelić, and if this was the case why not, as by this time UNMIK was aware that they were together in the same convoy.
15. The Panel also notes that the name of Mr Mirko Bijelić is not in the ICMP database, which probably means that no DNA samples were collected. The same database indicates that there were insufficient DNA reference samples collected with respect to Mr Dragoljub Bojić (see § 28 above). There is nothing in the file indicating that the UNMIK MPU attempted to collect DNA samples from family members for either person. It would be reasonable to assume that some attempt would be made to gather DNA data for persons for whom there is no, or insufficient, data. The Panel notes that no explanation has been given by the SRSG in this regard.
16. It is widely accepted that the only way to have a certain identification of mortal remains after such a long period of time is through comparison of samples of DNA material. Thus, the collection of sufficient samples from the next-of-kin of a missing person becomes imperative; without this, the chances of establishing the identity of mortal remains, if found, are very slim. Therefore, since the on-going failure to collect such samples seriously undermines the possibility of identifying the mortal remains of Mr Mirko Bijelić and Mr Dragoljub Bojić (in case they have been or will be found), the Panel considers that the first part of the procedural obligation under Article 2 of the ECHR is not satisfied (compare the Panel’s approach in the case *P.S.*, no. 48/09, opinion of 31 October 2013, § 95; and *Jošanović*, no.124/09, opinion of 11 September 2015, § 107).
17. In the view of all that, the Panel determines that, since investigators did not take adequate steps, UNMIK was not able to locate the whereabouts of these victims, or positively identify their mortal remains. Now the Panel now turns to the investigation carried out by UNMIK Police with the aim of identifying the perpetrator(s) and bringing them to justice, that is, the second element of the procedural obligation under Article 2 of the ECHR.
18. The Panel notes that by early 2000, UNMIK Police already possessed some relevant information on the abduction and disappearance of Mr Ivica Jovanović, Mr Dragoljub Bojic and Mr Dragan Bucalo. The earliest evidence of UNMIK formally possessing information on Mr Mirko Bijelić is 10 September 2001 (see § 26 above).
19. The Panel is concerned that the investigative files are in a great deal of disorder and it is difficult at times to determine whether investigative activities were carried out with respect to all four missing persons or only one of the persons. This is evidenced in a report dated December 2002, which states that the original file for Mr Ivica Jovanović went missing at an unknown date with instructions to officers to check for more information (see § 63 above). The Panel also notes that, contrary to the SRSG’s assertion that UNMIK investigated the disappearance of the victims as “one case” (see § 106 above), the files show that several uncoordinated investigations were pursued concerning different victims or group of victims in the same attack.
20. There was some action taken with respect to learning more about the fate of Mr Ivica Jovanović, with enquiries sent to various UNMIK Police units throughout Kosovo on 27 January 2000(see § 53) and 19 February 2000 (see § 37 above). A similar enquiry was sent with respect to Mr Dragoljub Bojić on 16 February 2000 (see § 77 above) and Mr Dragan Bucalo on 19 February 2000 (see § 37 above). There were no positive responses from any of the responding stations.
21. The Panel notes that UMMIK Police located two Serbian military vehicles (see § 60 above) and provided details to the Serbian police, seeking further information as to whether any troops that were with them are unaccounted for. Nothing in the file indicates that any examination or forensic examination of the vehicles was done to obtain any evidence of an attack or whether residents of neighbouring villages in the area were questioned about the vehicles and the fate of the passengers.
22. The file indicates that UNMIK Police took investigative actions on 14 July 2001, with respect to Mr Ivica Jovanović, including canvassing Pagarushë/Pagaruša which allegedly housed a detention centre. The Panel notes that the village is the same one referred to in the letter of April 2000 as the location of the detention centre holding Mr Ivica Jovanović (see § 58 above). The investigative notes indicate that an interview was conducted with a member of a family that is considered to be prominent in the village and noted her evasiveness in responses to questions with respect to captured or killed Serbians (see § 61 above). There is no explanation given as to why the visit was made 15 months after the letter was sent or why the investigative unit was assigned the case a year after the letter was written, in April 2001.
23. The Panel also notes, with respect to the investigation in locating the detention centre, although the investigators went to the suspected village in Pagarushë/Pagaruša where the camp was located and spoke to villagers at a site of former TMK headquarters, there is nothing in the file indicating that the investigators tried to locate and inspect the school auditorium and the “Balkan” factory, where detainees, including Mr Ivica Jovanović, were reportedly held and made to work, according to the letter of 10 April 2000 in the possession of the WCIU (see § 60 above).
24. The Panel notes that there are several references in the file to I.T., the KLA commander who was in charge of the suspected detention centre (see §§ 58, 61, 49 and 110), but the file contains no reference to any attempt by UNMIK Police to interview him even though it was known that he owned a local restaurant and is generally well known in the region. In fact, an investigator mentioned in a later report that neither he, nor his deputy I.G., were never interrogated nor identified (see § 49 above). Further, the letter mentioned above, which is included in the files concerning several victims, provided two additional investigative leads: the name of a person who delivered the letter, as well as the name of an individual indicated as “contact person” for the exchange of prisoners (see § 40 above). However, there is nothing in the file indicating that UNMIK Police made any attempt to locate and interview these persons.
25. The Panel also notes that, in August 2001, UNMIK Police interviewed a local Kosovo Police officer, who was a former KLA deputy commander of “Brigade 123” in Suharekë/Suva Reka, regarding the incident. He stated that there was an incident at the location that resulted in the death of at least two Yugoslav soldiers, one KLA soldier and one civilian (see § 62 above). However, the interviewee did not provide any more detailed information than what had already been reported.
26. The Panel also notes that the investigative notes in the OMPF file relating to Mr Ivica Jovanović indicates that there is a list of four names under “witness statement”: Dj.K., D.V., “Officer’ P. and I.S. (see § 54 above). However, the interview note of only one of the statements is included in the file, that of Dj.K. (see § 59 above). There is nothing in the file related to the statements taken by the other three witnesses. Moreover, two additional survivors from the attack that are listed later on in the file, Dj.C. and I.S., yet there is nothing in the file indicating any attempt to locate them (see § 49 above). The Panel notes that the preservation of witness statements would have benefited the investigation, especially within the context of a peacekeeping mission, where the rotation of police officers out of the duty station is quite frequent.
27. The Panel also notes that the UNMIK MPU had Victim Identification Forms for all persons, which included the full contact details of numerous family members outside of Kosovo. However, there is no indication in the investigative file that UNMIK attempted to contact any of the listed family members. While there is a significant amount of written contact between investigators and a cousin of Mr Ivica Jovanović living in the United States, it appears that all of these contacts ended in May 2000 (see § 53 above).
28. 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 § 132 above), the assessment of the whole investigation is brought within the period of the Panel’s jurisdiction.
29. In addition, the Panel considers that as those responsible for the crime had not been identified, UNMIK Police was obliged to use the means at their 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 regarding the progress of this investigation.
30. There is no evidence in the file of any further investigative activity or other meaningful action undertaken by UNMIK Police during the period within the Panel’s temporal jurisdiction. It appears from the investigative file that during this period, in August 2006, UNMIK WCIU investigators decided to join into one investigation, the cases of several VJ soldiers kidnapped in the same circumstances, until then investigated separately. However, the Panel notes that this joint investigation, recorded under case file no. 2000-00077, included only three victims in the present case: Mr Dragoljub Bojić, Mr Dragan Bucalo and Mr Ivica Jovanović (see § 48 above). No explanation has been provided by the SRSG as to why the UNMIK Police did not include also the case of Mr Mirko Bijelić.
31. The Panel notes that, on 15 October 2007, the WCIU reviewed under the joint case no. 2000-00077, the cases of Mr Dragoljub Bojić, Mr Dragan Bucalo and Mr Ivica Jovanović (see §§ 48 and 72 above). However, the Panel notes that the information in the review report only re-states the same basic information that had long been known to UNMIK Police. No other action was recommended, even though the reviewing investigators pointed out that a KLA commander and his deputy allegedly involved in the case had not been located and interviewed until then (see §§ 49, 50, 58 and 159 above). The Panel notes that, on 3 January 2008, a further review of this file was undertaken, which resulted into closure of the file. The Panel also notes that, with regard to Mr Mirko Bijelić, there is no evidence in the file that any action whatsoever or review was undertaken on his case since 2003 (see § 84 above).
32. The Panel recalls the SRSG’s argument that there “was a lack of information concerning the case as eye witnesses to the events surrounding their disappearance were unable to provide any information regarding the location of the missing persons or a grave site and were unable to give evidence concerning the identity of the possible perpetrators” (see § 115 above). In this regard, the Panel, again, stresses that almost any investigation at its initial stage lacks information. Finding the necessary information to fill those gaps is the main goal of any investigative activity. Therefore, a lack of information at the beginning of the investigation should not be used as an argument to defend inaction by the investigative authorities. As explained above, the file does not reflect adequate action by UNMIK authorities to follow the available leads and obvious lines of enquiry. To the Panel this is sufficient evidence of UNMIK’s inaction. In addition, the Panel fears that such inaction indicates certain reluctance on the part of UNMIK Police to pursue the investigation.
33. Likewise, the file does not indicate the involvement of a public prosecutor in this investigation, within the period of the Panel’s mandate. As the Panel has mentioned previously, a proper prosecutorial review of the investigative file might have ensured that certain investigative actions were undertaken and that additional recommendations were made, so that the case would not have remained inactive for long periods of time (see HRAP, *Stojković*, no. 87/09, opinion of 14 December 2013, § 160; HRAP, *Buljević*, opinion of 13 December, at § 120). Thus, in the Panel’s view, the prosecutorial review of the case was far from being adequate.
34. The Panel finds in the case before it that no substantive effort was made by UNMIK investigative authorities to investigate the abductions and disappearances in a systematic and coordinated manner. Given that this was a case of the abduction and disappearance of multiple victims which all required investigations, the need for coordination was especially important. This failure continued during the period under review as, by that time, no system seems to have been put in place by the UNMIK Police to establish effective coordination among its different units.
35. In this case, the Panel also notes that the investigative file likewise reflects no efforts made by UNMIK Police to follow an obvious line of enquiry leading to the commander of the KLA group controlling the detention centre in Rahovec/Orahovac (I.T.) who had been implicated by witnesses (see also, in relation with a mass abduction and disappearance in July 1998, HRAP, *Kostić and others*, 111/09 and others, opinion of 23 October 2015).
36. The apparent lack of any reaction from UNMIK Police, either immediately or at later stages, may have suggested to 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 which UNMIK had encountered at the beginning of its mission, which were discussed above, do not justify such inaction, either at the outset or subsequently. Certainly, in the Panel’s view, such inaction did not help UNMIK to defuse the “[t]empers and tensions … running high amongst all ethnic groups, exacerbated by reports of missing and dead persons”, mentioned by the SRSG (see § 103 above).
37. The Panel is 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 § 129 above), as required by Article 2 of the ECHR.
38. Finally, in relation to the procedural requirement of public scrutiny, the Panel recalls that Article 2 also entails that the victims’ next-of-kin be involved in the investigation to the extent necessary to safeguard his or her legitimate interests. The Panel notes that there is no documented contact between UNMIK investigators and the complainants or any other family member listed in the documentation provided to UNMIK, with the exception of the extensive contact that was made with a cousin of Mr Ivica Jovanović, living in the United States, for a brief period early in the investigation, from January until May 2000, as he was providing information to assist in their investigation. The Panel is concerned that specific attention to Mr Ivica Jovanović’s family in the United States was given due to the instructions that came to the SRSG from UN Headquarters in New York (see § 52 above). Notwithstanding, after May 2000, there is no record of any further contact with investigators. No statement was ever taken by UNMIK Police and no further contact with the complainant or other family members is documented in the file. The Panel therefore considers that the investigation was not open to adequate public scrutiny, as required by Article 2 of the ECHR (see, *a contrario*, ECtHR [GC], *Mustafa Tunç v. Turkey*, no. 24014/05, judgment of 14 April 2015, §§ 210-216).
39. The Panel, in light of the shortcomings and deficiencies in the investigation described above, considers that the cases of Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić, as well as other cases of killings, abductions and disappearances previously examined, well exemplify a pattern of perfunctory and unproductive investigations conducted by the UNMIK Police into killings and disappearances in Kosovo (see § 145 above; compare with HRC, *Abubakar Amirov and Aïzan Amirova v. Russian Federation*, cited in § 141 above, at § 11.4; see also HRAP, *Bulatović*, cited in § 122 above, at §§ 85 and 101, HRAP, *Stojković*, cited above in §178, at § 165; and HRAP, *Kostić et al,* cited above,at § 252).
40. Therefore, considering all the above reasoning, the Panel concludes that UNMIK failed to carry out an effective investigation into the abduction and disappearance of Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić. There has accordingly been a violation of Article 2, procedural limb, of the ECHR.

## Alleged violation of Article 3 of the ECHR

1. The Panel considers that the complainants also invoke a violation of their right to be free from inhumane or degrading treatment arising out of the abduction and disappearance of Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić, as guaranteed by Article 3 of the ECHR. In this regard, they are deemed to rely on Article 3 of the ECHR.

### The scope of the Panel’s review

1. 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 §§ 89 - 92 above).
2. 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 § 140 above, at § 139; ECtHR, *Palić v. Bosnia and Herzegovina,* cited in § 129 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).
3. 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).

### The Parties’ submissions

1. The complainants allege that the lack of information and certainty surrounding the abduction and disappearance of Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić, particularly because of UNMIK’s failure to properly investigate it, caused mental suffering to themselves and their families.
2. Commenting on this part of the complaint, the SRSG accepts that situations of relatives of disappeared and missing persons “may disclose inhumane and degrading treatment contrary to Article 3 [ECHR]”, which lies in the authorities’ reactions and attitudes to the situation when it was brought to their attention.
3. The SRSG stresses that the complainants do not allege “any bad faith on the part of UNMIK personnel involved with the matter, nor of any attitude by UNMIK that would have evidenced any disregard for the seriousness of the matter or the emotions of the Complainants and their family members emanating from the disappearance of their family members.” The SRSG also points out that none of the complainants had witnessed the disappearances of their respective family members.
4. In this context, the SRSG stresses that “the understandable and apparent mental anguish and suffering of the Complainants based on the disappearance and death of his [*sic* their] relative cannot be attributed to UNMIK, but is rather a result of the inherent suffering caused by the disappearance and death of the family member.” Furthermore, the suffering of the respective family members was not “distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation.”
5. Therefore, in the SRSG’s view, UNMIK cannot be held responsible for a violation of Article 3 of the ECHR in this case.

### The Panel’s assessment

####  General principles concerning the obligation under Article 3

1. 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.
2. 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 § 125 above, at § 150).
3. 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.
4. 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. Uruguay*, 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).
5. 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 § 188 above, at § 94).
6. 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).
7. 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*, cited in § 141 above, at § 11.7).
8. 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).
9. 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 § 199 above, at § 109; ECtHR, *Gelayevy v. Russia*, cited in § 189 above, at § 147; ECtHR, *Bazorkina v. Russia*, cited in § 140 above, at § 140).
10. 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 applicants’ mental distress caused by the commission of the crime itself.
11. 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).

#### Applicability of Article 3 to the Kosovo context

1. 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 §§ 135 - 145 above).
2. 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 § 19 above).
3. 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.
4. 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.

#### Compliance with Article 3 in the present case

1. 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.
2. The Panel notes the proximity of the family ties between the complainants and their missing relatives. Mrs Gordana Bucalo is the wife of Mr Dragan Bucalo, Mrs Žaklina Omasta-Jovanović is the wife of Mr Ivica Jovanović, Mrs Sofija Bijelić and Mr Vladislav Bijelić are the parents of Mr Mirko Bijelić, Mrs Milica Radunović is the sister of Mr Dragoljub Bojić.
3. The Panel recalls the failure established above in relation to the procedural obligation under Article 2. In this respect, the Panel reiterates that from the standpoint of Article 3 it may examine UNMIK’s reactions and attitudes to the complainants in their entirety.
4. The complainants claim that they have never been contacted by any UNMIK authority in relation to the investigation into their relatives’ abduction and disappearance. Indeed, the file has no documents suggesting that such contact(s) ever took place, with respect to Mr Dragan Bucalo, Mr Mirko Bijelić and Mr Dragoljub Bojić, which is also not disputed by the SRSG. Furthermore, as mentioned above, in their complaint to the IPP at the Prizren DPPO, the family of Mr Ivica Jovanović, as well as the others who reported the same crimes, expressed their dissatisfaction with the complete absence of information from UNMIK about any investigation in this regard (see § 46 above).
5. As mentioned above, the UNMIK authorities contacted only a cousin living in the United States of one of the victims, Mr Ivica Jovanović, but the last recorded contact was in May 2000 (see §§ 55, 113 and 172 above). The Panel recalls its finding above, in relation to Article 2 of the ECHR, that UNMIK authorities failed to ensure that the all complainants in this case and their families, were involved in the investigative process to the extent necessary to safeguard their legitimate interests.
6. The Panel considers that this situation, which continued into the period of the Panel’s temporal jurisdiction, caused uncertainty to the complainants and their families about the fate of their close relatives.
7. In view of the above, the Panel concludes that the complainants and their families have suffered severe distress and anguish for a prolonged period of time, a big part of which falls within the Panel’s temporary jurisdiction, on account of the way the authorities of UNMIK have dealt with the case and as a result of their inability to find out what happened to Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić. Thus, in the Panel’s view, it is obvious that the pain, which was inflicted on the complainants and their families, who had to live in uncertainty about the fate of their close relatives, must have been unbearable.
8. For the aforementioned reasons, the Panel concludes that, by its behaviour, UNMIK contributed to the distress and mental suffering of the complainants and their families, in violation of Article 3 of the ECHR.
9. CONCLUDING COMMENTS AND RECOMMENDATIONS
10. In light of the Panel’s findings in this case, the Panel is of the opinion that some form of reparation is necessary.
11. The Panel notes that enforced disappearances constitute serious violations of human rights which shall be investigated and prosecuted under any circumstances. The Panel also notes that UNMIK as the territorial administration of Kosovo from 1999 to 2008 had the primary responsibility to effectively investigate the abduction and disappearance of Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić, and that 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.
12. The Panel notes the SRSG’s own concerns that the inadequate resources, especially at the outset of UNMIK’s mission, made compliance with UNMIK’s human rights obligations difficult to achieve.
13. 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 § 21 above), UNMIK’s responsibility with regard to the administration of justice in Kosovo ended on 9 December 2008. UNMIK therefore is no longer in a position to take measures that will have a direct impact on the investigations that are still pending before EULEX or local authorities. Likewise, following the unilateral declaration of independence by the Kosovo Provisional Institutions of Self-Government on 17 February 2008, and subsequently the entry into force of the Kosovo Constitution on 15 June 2008, UNMIK ceased to perform executive functions in Kosovo, this fact limiting its ability to provide full and effective reparation of the violation committed, as required by established principles of international human rights law.
14. 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 complainants 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 § 195 above, at § 333; *Al-Saadoon and Mufdhi v. United Kingdom*, no. 61498/08, judgment of 2 March 2010, § 171; ECtHR [GC]), *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, § 109), must endeavour, with all the means available to it *vis-à-vis* competent authorities in Kosovo, to obtain assurances that the investigations concerning the case at issue will be continued in compliance with the requirements of an effective investigation as envisaged by Article 2, that the circumstances surrounding the abduction and disappearance of Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić will be established and that the possible perpetrators will be brought to justice. The complainants and/or other next-of-kin shall be informed of such proceedings and relevant documents shall be disclosed to them, as necessary;

**-** Publicly acknowledges, including through media, within a reasonable time, responsibility with respect to UNMIK’s failure to adequately investigate the abduction and disappearance of Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić, as well as the distress and mental suffering subsequently incurred, and makes a public apology to the complainants and their family in this regard;

**-** Takes appropriate steps towards payment of adequate compensation to the complainants for the moral damage suffered due to UNMIK’s failure to conduct an effective investigation, as well as for the distress and mental suffering incurred by them as a consequence of UNMIK’s behaviour.

**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;**
3. **RECOMMENDS THAT UNMIK:**
4. **URGES THE COMPETENT AUTHORITIES IN KOSOVO TO TAKE ALL POSSIBLE STEPS IN ORDER TO ENSURE THAT THE CRIMINAL INVESTIGATION INTO THE ABDUCTION AND DISAPPEARANCE OF Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić IS CONTINUED IN COMPLIANCE WITH ARTICLE 2 OF THE ECHR AND THAT THE PERPETRATORS ARE BROUGHT TO JUSTICE;**
5. **PUBLICLY ACKNOWLEDGES, INCLUDING THROUGH MEDIA, RESPONSIBILITY FOR ITS FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION INTO THE ABDUCTION AND DISAPPEARANCE OF Mr Dragan Bucalo, Mr Ivica Jovanović, Mr Mirko Bijelić and Mr Dragoljub Bojić, AS WELL AS FOR DISTRESS AND MENTAL SUFFERING INCURRED, AND MAKES A PUBLIC APOLOGY TO THE COMPLAINANTS AND THEIR FAMILIES;**
6. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION TO THE COMPLAINANTS FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF ARTICLE 2 AND ARTICLE 3 OF THE ECHR.**
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 COMPLAINANTS AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

Anna Maria Cesano Marek Nowicki

Acting Executive Officer Presiding Member

*Annex*

# ABBREVIATIONS AND ACRONYMS

**CCKM** Coordination Centre for Kosovo and Metohija of the Republic of Serbia

**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

**HLC** Humanitarian Law Centre

**HRAP**  Human Rights Advisory Panel

**HRC** United Nation Human Rights Committee

**IACtHR** Inter-American Court of Human Rights

**ICMP** International Commission of Missing Persons

**ICRC** International Committee of the Red Cross

**ICTY**  International Criminal Tribunal for former Yugoslavia

**IPP** International Public Prosecutor

**KFOR** International Security Force (commonly known as Kosovo Force)

**KLA** Kosovo Liberation Army (Albanian: *Ushtria Çlirimtare e Kosovës, UÇK*)

**MP** Missing Person

**MPU** Missing Persons Unit

**MUP** Ministry of Internal Affairs (Serbian: *Министарство унутрашних послова, МУП*)

**NATO** North Atlantic Treaty Organization

**OMPF** Office on Missing Persons and Forensics

**OSCE** Organization for Security and Cooperation in Europe

**SRSG** Special Representative of the Secretary-General

**UN** United Nations

**UNHCR**  United Nations High Commissioner for Refugees

**UNMIK** United Nations Interim Administration Mission in Kosovo

**VRIC** Victim Recovery and Identification Commission

**WCIU**  War Crimes Investigation Unit

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 22 January 2016. [↑](#footnote-ref-3)
4. The ICRC database is available at: http://familylinks.icrc.org/kosovo/en/pages/search-persons.aspx (accessed on 22 January 2016). [↑](#footnote-ref-4)
5. The ICMP online database is available at [www.ic-mp.org/fdmsweb/index.php?w=mp\_details&l=en](http://www.ic-mp.org/fdmsweb/index.php?w=mp_details&l=en) (accessed on 22 January 2016). [↑](#footnote-ref-5)
6. The file for Mr Ivica Jovanovic had the number “129” scratched over with “125”. [↑](#footnote-ref-6)